

**Central Administrative Tribunal
Jabalpur Bench**

OA No.126/06

Jabalpur this the 9th day of May 2006.

C O R A M

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Hon'ble Ms.Sadhna Srivastava, Judicial Member

Balwant Rai

S/o Late Shri Atma Ram

Assistant Administrative Officer

National Research Centre for Weed Science

Jabalpur.

R/o A-21, Professors Colony

Suhagi, Adhartal

Jabalpur.

Applicant.

(By advocate Shri S.Paul)

Versus

1. The Director General
Indian Council of Agricultural Research (ICAR)
Krishi Bhawan
New Delhi.
2. The Secretary
Indian Council of Agricultural Research
Krishi Bhawan
New Delhi.
3. Shri B.N.Rao
Deputy Secreary (Admn)
Indian Council of Agricultural Research
Krihi Bhawan
New Delhi.
4. The Director
National Research Centre for Weed Science
Maharajpur
Jabalpur.

Respondents.

(By advocate : Shri S.K.Mishra))



ORDER

By Ms. Sadhna Srivastava, Judicial Member

Applicant has assailed his transfer order dated 27.2.2006 (Annexure A1) whereby he has been ordered to be transferred from National Research Centre for Weed Sciences (NRCWC), Jabalpur to Indian Veterinary Research Institute (VRI), Izatnagar (Uttaranchal) with the approval of competent authority in public interest. He has prayed for quashing of the order with consequential benefits.

2. Since pleadings are complete, we have taken up the matter for final disposal at the admission stage. Accordingly, we have heard the counsel for both parties. We have also perused the pleadings and records in this case.

3. The applicant has challenged the aforesaid transfer order mainly on the ground that he is not subject to transfer. He could have been transferred on mutual basis; therefore, the transfer is without authority, jurisdiction and competence and is bad in law. He has also submitted that the order-dated 27.2.2006 has been issued out of malafide for the reason that the applicant had approached this Tribunal time and again with his grievance. He has also submitted that though the transfer order is couched as if it were in public interest, in view of malafide alleged, this Tribunal is well within its jurisdiction to interfere with the transfer order.

4. Respondents have filed their reply and contended that the applicant has been transferred in public interest with the approval of competent authority. Learned counsel of the respondents submitted that no judicial review is required to be undertaken in such case; where there is no malafide in issuance of the transfer order and the transfer order has not been passed in violation of any statutory rules. They have further stated in the reply that the transfer is not actuated by any malafide intention or extraneous consideration. It is neither the result of any bias in the mind of competent authority pre-determined.



to punish the applicant nor it has been issued on the dictates of vigilance department. The competent authority has considered it necessary to transfer the applicant to an another place as continuing of the applicant in present institute is not in the administrative interest and also to avoid any possibility of tampering with records as departmental proceedings are pending against him. The transfer has been made for conducting an impartial enquiry and in the interest and discipline of the institute. They have referred the judgment passed in OA No.1230/96 wherein same applicant had challenged his earlier transfer order dated 4.1.96 by which he had been transferred from NRCWS, Jabalpur to National Research Centre on Agro Forestry, Jhansi, on the same ground as in the present OA. The said OA was dismissed on merit on 14.5.98 by Allahabad Bench of the Tribunal. The respondents have stated that the issue involved in the instant OA had already been considered and decided in the aforesaid OA. Hence this OA is also liable to be dismissed.

5. Learned counsel for the applicant has filed rejoinder reiterating the facts and grounds as mentioned in the OA. He has placed reliance on the judgment passed in OA No.235/03 by Cuttack Bench of the Tribunal.

6. The first ground of attack is that the transfer order is passed in violation of rules. Applicant has stated that he belongs to a post, which is institution based and, therefore, he cannot be subjected to transfer. The Cuttack Bench on the literal words of Rule 5 "Inter Institutional Transfer" has held that the post of Assistant Administrative Officer is institution based post, and therefore, transfer can only be made when mutually agreed upon and acceptable by the Directors of both the institutes. The Allahabad Bench had taken a view that the rule does not place any absolute bar in the matter of transfer on administrative grounds. The Allahabad Bench has further observed as follows:

"However, from these provisions of Rules, it is noted that the intention is that transfers to such posts from




one institution to another should not be allowed as this will affect the promotion prospect of the staff of the Institution. However, these rules do not specifically bar that no transfer can be done in the interest of administration. These instructions are mainly to protect the promotional interest of the Staff. Further it is noted that though the cadre of the Assistant Administrative Officer is institutional basis, further grades constitute a combined cadre. This would imply that for promotion to next grade of Administrative Officer, inter-se seniority, as Assistant Administrative Officer will count. Therefore, the transfer of the applicant from one institution to another will not affect his further promotion as Administrative Officer."

7. We have given our anxious consideration to the reasoning adopted by two single member Benches of the Tribunal. We consider that it is not proper to put absolute embargo on transfer even on administrative grounds or in public interest. It may create chaos. The rules must not be so rigidly interpreted. The Allahabad Bench has rightly observed, in our opinion, ordinarily a transfer will not be made but in administrative exigency it can always be made. The Apex Court in the case of UOI Vs. J. Debnath (2004) 4 SCC 245 has held that the question whether the employee could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for the court to direct one way or the other.

8. The law relating to scope of judicial review in transfer order of government servants has been fairly settled by Apex Court in catena of judgments and some of them are UOI Vs. S.L. Abbas 1994 SCC (L&S) 230; Rajendra Roy Vs. UOI AIR 1993 SCC P.1236; E.P. Royappa Vs. State of Tamil Nadu AIR 1974 SCC P.555; State of U.P. & Ors. Vs. Govind Lal AIR 2004 SC 2165; State of U.P. & Ors. Vs. Siyaram & another AIR 2004 SC 4121.

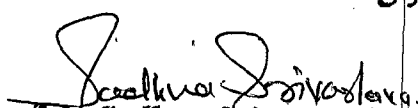
9. In nutshell, it may be put that an order of transfer of an employee is part of service condition and is not required to be interfered with by any court of law in exercise of its discretionary

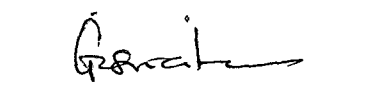


jurisdiction unless the court finds that either the order is malafide or the transfer order is without jurisdiction, examining the facts of the case on the touchstone of the aforesaid principles.

10. Additionally, it was pointed out by the standing counsel for the Union of India that as indicated in the written statement itself that the cadre of Administrative Officer is institution based, further grade constitutes a combined cadre. This would imply that for promotion to next grade of Administrative Officer, inter-se seniority as Assistant Administrative Officer will count. Therefore, the transfer of the applicant from one institution to another will not affect his future promotion as Administrative Officer. Hence there is no question of any loss of seniority or promotional prospects. These are the aspects, which can be gone into in appropriate proceedings, if at all there is any adverse order in the matter of seniority or promotion.

11. As regards malafides, the stand of the applicant is that since the applicant had approached this Tribunal as well as the High Court time and again with his grievance, the respondents have got annoyed. No material is placed on record in support of his contention. The burden is on the applicant to produce sufficient material to show malafides. We are of the opinion that simply because the applicant had filed earlier OA as well as a petition for redressal of his grievance, respondent No.3 got annoyed, and thus out of malafides, he has transferred the applicant, cannot establish a ground for malafides. We are, therefore, satisfied that the ground of malafides does not exist. No interference is called for. The above analysis leads us to an inescapable conclusion that, this OA has no merit and same is liable to be dismissed. Accordingly the OA is dismissed. No costs.


(Ms. Sadhna Srivastava)
Judicial Member


(Dr. G.C. Srivastava)
Vice Chairman