

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 31st day of May, 2006

CORAM:

HON'BLE MR. V.K.MAJOTRA, VICE CHAIRMAN
HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

ORIGINAL APPLICATION No. 563/2005

N.R.Verma
s/o Shri Sripal Verma,
aged about 53 years,
permanent resident of M.F.9-72,
MIG Scheme, Nehru Nagar, Bhopal,
presently working as
Assistant Administrative Officer
at Central Institute of Research on Goat,
Makhdoom, Farah.

.. Applicant

(By Advocate: Mr. Rajendra Prasad Sharma)

Versus

1. Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
2. Director, National Research Centre on Rapeseed Mustard, Sear, Bharatpur.
3. Director, Central Institute for Research on Goat, Makhdoon, Farah district, Mathura.
4. Shri J.L.Sharma, Assistant Administrative Officer, National Research on Rapeseed Mustard, Sear, district Bharatpur.

.. Respondents

(By Advocate: Mr. V.S.Gurjar)

ORIGINAL APPLICATION No.411/2005

Laxmi Kant Sharma
 s/o Shri Giriraj Krishna sharma
 aged about 52 years,
 r/o Q.No. Type-III/1,
 National Research Centre on
 Rapeseed Mustard,
 Sewar, District Bharatpur.

.. Applicant

(By Advocate: Mr. Rajendra Prasad Sharma)

Versus

1. Indian Council of Agriculture Research through its Secretary, Krishi Bhawan, New Delhi.
2. Director, National Research Centre on Rapeseed Mustard, Sewar, Distt. Bharatpur.
3. Shri J.L.Sharma, Assistant Administrative Officer, Central Research Institute on Goat, Makhdoom (Farah).

.. Respondents

(By Advocate: Mr. V.S.Gurjar)

O R D E R (ORAL)

By this common order, we propose to dispose of the aforementioned OAs as the ultimate decision in one case will have effect on another case.

2. In both these OAs, the grievance of the applicants is regarding transfer and posting order dated 30th August, 2005 (Ann.A1) as modified vide corrigendum of the same date Ann.A2 and both the

lq

applicants have prayed that these orders may be quashed and set-aside.

3. By the impugned order dated 30th August, 2005 (Ann.A1) transfer of four Assistant Administrative Officers (AAO, for short) were effected with immediate effect. Here, we are concerned with transfer of Shri N.R.Verma, AAO from National Research Centre on Rapeseed Mustard (NRCRM), Bharatpur to Central Institute of Research on Goat (CIRG), Makhdoom, Farah. This transfer order was effected in place of Shri H.S.Sharma, who was asked to join at NRCRM, Bharatpur in place of Shri N.R.Verma, applicant in OA No.563/2005. However, vide corrigendum of the same date Ann.A2 name of Shri H.S.Sharma was substituted to that of Shri J.L.Sharma.

3.1 The grievance of the applicant Shri N.R.Verma is that the said transfer order has been passed in violation of Para 5.1.3 under Chapter 16 of the Manual of Administrative Instructions dealing with transfer and also in violation of the provisions contained in Para 4 of Annexure-22 of the said Manual which deals with constitution of combined cadre of Administrative Officers in the Indian Council for Agricultural Research and whereby amendment has been incorporated in the recruitment rules for various grades of Administrative Officers in the institutes under the Council.

3.2 However, the grievance of the applicant in OA No.411/2005 namely Shri Laxmi Kant Sharma is that respondent No.3 could not have been transferred in place of Shri N.R.Verma as appointment to the post of AAO is institute base and appointment thereto can be made amongst the eligible candidates in the institute. There is no mode of appointment to the post of AAO by way of regular transfer and the only mode is by way of promotion from the eligible candidates of the institute failing which appointment can be made only by deputation. According to the applicant, by resorting to such a mode, right of consideration of the applicant to the post of AAO will be jeopardized, inasmuch as, Shri N.R.Verma, AAO is already working in that capacity for more than last 10 years whereas respondent No.3 was promoted as AAO in the year 2003. Thus, according to the applicant, Shri N.R.Verma, on the basis of his seniority as AAO, is likely to be promoted as Administrative Officer shortly and as such, on promotion of Shri N.R.Verma, post of AAO can be filled from eligible candidates of the institute i.e. NRCRM. Since the applicant has already put in more than 8 years of service as Assistant and is eligible for promotion to the post of AAO, his chances of promotion will be seriously jeopardized for number of years in case respondent No.3 is allowed to continue to work as AAO, NRCRM, Bharatpur and if the impugned order is not quashed and set-aside.

4. Since the result of OA No.411/05 is dependent upon the decision in the case of applicant in OA No.563/05, as such, we propose to consider and decide OA No.563/04 first.

5. OA No. 563/05 has been filed by Shri N.R.Verma, AAO who was transferred from NRCRM, Bharatpur to CIRG, Makhdoom and in his place Shri J.L.Sharma has been transferred. In sum and substance the grievance of the applicant is that transfer order has been passed in violation of guidelines governing inter-institutional transfer as contained in Chapter 16 of the Manual of Administrative Instructions. The applicant has further stated that he has also made representation to the authorities after his transfer but the said representation has not been decided. On the contrary, the stand taken by the official respondents in the reply is that the order of transfer has been passed by the competent authority and transfer of a person from one institute to another is a condition of service as incorporated in the appointment letter. The respondents have further stated that even in the event of transgression of administrative guidelines cannot be interfered with, as they do not confer any legally enforceable right.

6. Respondent No.3 has also filed separate reply thereby taking the same stand as taken by the official respondents.

7. We have heard the learned counsel for the parties and gone through the material placed on record.

8. The case of the applicant is based on Manual of Administrative Instructions as contained in Para 5.1.3 of Chapter 16 relating to condition of transfer. It will be useful to quote Para 5.1.3, which is in the following terms:-

“5.1.3 Scientific as well as non-scientific posts recruitment to which is made wholly by way of promotion:

Inter-institutional transfers against equivalent posts can be made only on mutual transfer basis, provided the persons are acceptable to the Directors of both the Institutes.”

Thus, in view of provisions as reproduced above, inter-institutional transfer can only be made on mutual transfer basis with the consent of Directors of both the institutions and no other mode of inter-institutional transfer is permissible. In Para 4 (VI) of the OA, the applicant has made the following averment, relevant portion of which is reproduced hereinbelow:-

“..... It is worthwhile to be mentioned here that transfer of the applicant having been made vice Shri H.S.Sharma is absolutely illegal and void abinitio because the applicant did neither give his consent nor made any request to transfer him on mutual basis vice Shri H.S.Sharma whereas under the transfer regulations/policy for the post of AAO, inter-institute

transfer is permissible if request is made for mutual transfer and is acceptable by both the Directors of the concerned institutes. This requirement has completely been neglected, thus, it render the transfer illegal, void and inoperative."

The respondents have not controverted this part of pleadings. In reply to para 4 (VI), the official respondents have made the following averments:

"(VI) That the contents of sub-para (VI) of para 4 of the original application are not disputed to the extent of the contents of the order dated 30.08.2005 (Annexure-A/1). Rests of the contents are emphatically denied being thoroughly misconceived, misleading and without any factual foundation for the reasons detailed out in the foregoing paras of this reply and material present on record. The action of the humble answering respondents is perfectly legal, valid and in consonance with the service law jurisprudence."

Thus, from what has been stated above, it is clear that transfer of the applicant was made in violation of the guidelines contained in para 5.1.3 under Chapter 16 of the Manual of Administrative Instructions. That apart, promotion/posting of the AAO, Superintendent, Assistant, Junior and Senior Clerks are institute base and promotion to these posts has essentially to be made from amongst eligible candidates within the institute in which higher post exists. At this stage, it will be useful to quota Para 4 of Annexure-22 of the Manual of Administrative Instructions whereby amendment has been incorporated in the recruitment rules for various grades of Administrative Officers in the institutes under Indian Council of Agricultural Research and thus reads:-

"4. The Council has further decided to constitute a combined cadre of Administrative Officers comprising the three senior grades of Administrative Officers, Senior Administrative Officers and the Chief Administrative Officers, in the pay scales of Rs. 700-1300, Rs. 1100-1600 and Rs. 1300-1700 respectively to enable them to have a centralized system of recruitment, promotion, postings and transfers. The grade of Assistant Administrative Officers in the scale of Rs. 650-1200 will continue to be institute-based as already decided and appointments there to be made from amongst the eligible candidates in each Institute. A copy of service rules framed to administer the combined cadre is enclosed (Annexure-23). These rules which have been approved by the Governing Body and the President of the Council came into force w.e.f. 1.12.1975."

At this stage it will also be useful to quote sub para (i) of Para 1 of Annexure-A22 whereby amendment has been incorporated in the recruitment rules for the post of AAO, which is in the following terms:-

"(i) ASSISTANT ADMINISTRATIVE OFFICERS (Rs.650-1200)"

- (a) Superintendents in the scale of Rs. 500-900 have been made eligible for promotion to the grade of Assistant Administrative Officers alongwith the Superintendents/Superintendents (Accounts) in the scale of Rs. 500-750 and Rs. 550-900.
- (b) Assistants at the Headquarters of the I.C.A.R. having eight years service in the grade, who were eligible for promotion to the grade of Assistant Administrative Officers, are no longer eligible for such promotion in the Institutes."

Thus from the combined reading of these two provisions, it is clear that promotion to the post of AAO can be made from Superintendents and Assistants who fulfil the eligibility criteria as prescribed in the recruitment rules, relevant portion of which is extracted above and such promotion has to be made on institute basis. These rules do not stipulate any other mode, as such, it is not legally permissible to effect inter-institutional transfer in respect of the post of AAO even if there exists a provision as contained in para 5.1.3, as reproduced above.

That apart, if for the sake of arguments, it is to be accepted that inter-institutional transfer can be effected as per provisions contained in Para 5.1.3, as reproduced above, even then the respondents have not complied the instructions as contained in that Para which stipulate that inter-institutional transfer against equivalent posts can be made only on mutual basis provided both the persons are acceptable to the Directors of both the institutes. It is admitted that prior to resorting of transfer order vide Ann.A1 and A2 no consent was taken either from the applicant or from respondent No.3. Further, consent of both the Directors of the institutes was not taken. Thus, we are of the view that the transfer of respondent No.3 in place of applicant is in violation of provisions as contained in the recruitment rules for the post of AAO where method of recruitment to the post of AAO is - 75% by promotion and 25% by limited departmental competitive examination confined to Superintendent (Admn.)/Sr. Steno having requisite years of service failing which by deputation and failing both by way of direct recruitment. There is no mode of appointment against the post AAO by way of transfer. As such inter-institutional transfer of respondent NO.3 is in violation of statutory rules.

9. The matter on this point is no longer res-integra. The similar issue came for consideration

62

before the Cuttack Bench in OA No. 235/2003, Dilip Kar vs. Indian Council of Agricultural Research, decided on 2.8.2005. At this stage, it will be useful to quote Para 6 and 7 of the judgment which thus reads.

“6. Having heard the submissions of the parties and having perused the material placed on record, it is felt necessary and prudent to quote the Rules/instructions relied on by the learned counsel for the applicant; which reads as under:-

“5. INTER INSTITUTIONAL TRANSFERS:-

The inter institutional transfers shall be regulated by the following guidelines:

1.5.1. xxx

xxx

xxx

1.5.2. Posts, other than scientific posts, recruitment to which is made from open market either wholly or partly:-

Inter Institutional transfers against equivalent posts are normally admissible, provided the candidate is otherwise acceptable to the Institute to which he seeks his transfer and is taken against a post meant to be filled in by direct recruitment.”

The amended Recruitment Rules came into force w.e.f. 1.12.1975 framed by the Governing Body and the President of the Council for various grades of Administrative Officers in the Institute under the council which provides that the Directors of the respective research Institute are the Appointing Authorities. Para 4 of the said rules provides that “The grade of Assistant Administrative Officers in the scale of Rs. 650-1200/- will continue to be Institute based as already decided and appointments there to be made from amongst the eligible candidates”

From the above rules, it is abundantly clear that the recruitment to the posts of AAO are being made by the Directors and those are institute based posts and their inter institutional transfers can only be made mutually, provided persons are acceptable to the Directors of both the Institutes. The respondents placed no materials to show the above rules have ever undergone any change. They have also failed to produce any material to show that the transfer has been made as per the rules. Mere stating that transfer has been made as per rules and with the approval of the competent authority will not expose their action to healthy administration/personnel management. That apart, it is also seen that even though the applicant has specifically brought to the notice of the authorities about the violation of the Rules, no emphasis has been laid down by the authorities to clarify their position. They have failed to show as to on which rules they have exercised their powers to issue the orders of transfer. The decision relied upon by the Respondents are no help; since the transfer has been made in gross violation of the statutory and mandatory Rules. Since the Posts of AAOs are institutional based posts and no transfer guidelines have been produced to show that they are liable

to be transferred through out the country, it may so happen that on joining the new station/Institute the Applicant may stand junior most AAO in the new wrings of ICAR. This view is fortified because there is no all Indian seniority list of AAOs is being maintained in the ICAR. The Respondents have also failed to prove that transfer was a condition of service in so far as AAO under the ICAR is concerned.

7. As regards the plea of the Respondents that since the order of Transfer has been made in public interest/exigencies of service, the Tribunal should not interfere with it, it is to be noted that no explanation has been given to show as to what was the public interest which compelled the Authorities of transfer the Applicant. While focusing attention on the term "public interest", it has been held by this Tribunal that the expression 'public interest' is not a magic word which can do service for anything in any situation nor is it a carpet under which anything could be concealed. The expression 'public interest' has to bear a definite purpose and the reason need be made available/disclosed at the earliest in course of judicial scrutiny. The expression 'public interest' like the expression 'exigency of service' often made as an apology for something that can not be justified. It is not that these concepts are not capable of visible demonstration and in no circumstances that can be allowed to be used as a camouflage for a collateral purpose." In the present case except such bald statement of public interest, no public interest has been shown to exist while passing the impugned order of transfer. In the circumstances, it is the bounden duty of the Respondents' Department to explain as to what the public interest was, which prompted them to disturb the applicant in gross violation of Rules. Apparently, the respondents have failed to produce a scrap of paper/material to explain the 'public interest/administrative exigency' excepting the fact that in order to accommodate another employee, which by any stretch of imagination can only be construed as 'personal interest.'

Similarly the Allahabad Bench of this Tribunal in the case of N.Raja decided on 29th July 98 (Ann.A12) in para 21 and 22 has held as under:-

"21. The learned counsel for the applicant relied on a guidelines which governed the transfer. He relied on rule 5.1.3 which is as under:

Scientific as well as non-scientific recruitment to which is made wholly by way of promotion:

Inter-institutional transfers against equivalent posts can be made only on mutual transfer basis, provided the persons are acceptable to the Directors of both the Institutes."

On perusal of the said provision it is clear that inter-institutional transfer against equivalent posts can be made only on mutual transfer basis provided the persons are acceptable to the Directors of both the institutions. Thus, the requirement of said rule stands fulfilled in the co-existence of the two things (i) mutual transfer (ii) acceptance with regard

leg

to persons by the Directors of both the institutes. In the present case, it is true that directors of both the institutes- Jhansi and Jabalpur accepts the transfer of the employees but it is not a case of mutual transfer, hence the said rule is inapplicable.

22. I do not agree with the learned counsel for the respondents, that this is a case of mutual transfer for the reason in case of mutual transfer both the employees must agree for transfer from one station to another."

10. Thus, for the foregoing reasons, we are of the view that transfer of the applicant has been effected in violation of the statutory rules and also that the respondents have not followed even the guidelines contained in Para 5.13 of Chapter 16 of the Manual of Administrative Instructions on which reliance has been placed by the respondents that they have power to effect inter-institutional transfer. At this stage, we may notice the judgment cited by the learned counsel for the respondents in support of the contention that transfer is the prerogative of the authority concerned and court should not normally interfere therewith. For that purpose reliance has been placed on para 7 of the judgment of the Apex Court in the case of State of UP and others vs. Gobardhan Lal, (2004) 11 SCC 402 Relevant portion of Para 7 is in the following terms:-

"7.....Even administrative guidelines for regulating or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have consequences of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not

confer any legally enforceable right, unless, as notices supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

We fail to understand how this judgment is helpful to the respondents, rather the law laid down by the Apex Court in the aforesaid case is helpful to the applicant. The Apex Court in the aforesaid decision has held that transfer of an employee is incident of service and such order should not be interfered except when (i) transfer order shown to be vitiated by mala fides or (ii) in violation of any statutory provisions or (iii) having been passed by the authority not competent to pass such orders. In the instant case, we have also noted statutory provisions for the post of AAO whereby it has been held that the post of AAO can be filled either from promotion or by limited departmental examination failing which by deputation and it is only thereafter that the post can be filled by direct recruitment. The statutory rule does not provide for appointment by transfer.

11. Thus, we are of the firm view that transfer of the applicant has been made in violation of the provisions contained in the statutory rules. Further, as per amendment incorporated in the recruitment rules for various grades of Administrative Officers in the institute under the Council under Para 4 of Annexure-22 which has been reproduced in the earlier part of

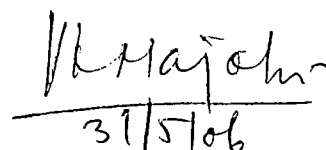
the judgment, it has been laid down that grade of AAO will continue to be institute base and appointment thereto has to be made amongst eligible candidate in each institute. It is further laid down in Para 4 that these rules have been approved by the Governing Body and the President of the Council and shall come into effect from 1.12.1975. Thus appointment including promotion and transfer to the post of AAO has to be made from eligible candidates in each institute and it is not permissible to make appointment by way of transfer from amongst employees of different institutes. Thus, in our view the impugned orders Ann.A1 and A2 have been passed by the respondents in violation of the provisions contained in the statutory rules for the post of AAO, as such, the same are quashed and set-aside. Consequently, the applicant will be entitled to join as AAO at National Research Centre on Rapeseed Mustard, Bharatpur.

12. Since we have quashed the order of transfer of Shri N.R.Verma, applicant in OA No. 563/2005, the grievance of the applicant in OA No.411/05 does not survive, as such, this OA shall stand disposed of having become infructuous.



(M.L.CHAUHAN)

Member (Judicial)



(V.K.MAJOTRA)

Vice Chairman