

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No. 3261/2013

New Delhi this the 4th day of March, 2016

Hon'ble Mr. A.K.Bhardwaj, Member (J)

Prof (Dr.) M.C.Sharma,
Director & Vice Chancellor
Indian Veterinary Research Institute
Presently posted as
Officer on Special Duty
ICAR, Head Quarters,
Krishi Bhawan, New Delhi. ... Applicant

(By Advocate :- Mr. Devesh Singh)

VERSUS

1. Union of India
Through
Secretary,
Department of Agricultural Research and Education,
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
2. President
Indian Council for Agricultural Research
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
3. Director General
Indian Council for Agricultural Research
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
4. Secretary
Indian Council for Agricultural Research
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
5. Director (Vigilance)
Indian Council for Agricultural Research
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001

6. Director (Personnel)
Indian Council for Agricultural Research
Govt. of India,
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
7. Dr.K.M.L.Pathak
Dy. Director General (Animal Sciences)
Indian Council for Agricultural Research
Krishi Bhawan, Dr. Rajender Prasad Road,
New Delhi-110001
8. Dr.Gaya Prasad
Assistant Director General (AH), ICAR
Presently working as Acting Director,
IVRI Izatnagar, Bareilly-243122 ... Respondents

(By Advocate Mr.Rajeev Sharma, Ms. Priyanka Raj and
Ms. Radhalakshmi R)

ORDER

In terms of the Office Order No. F.No.38(1)/2009-Per.III dated 03.07.2012, the applicant herein was directed to report at ICAR Headquarters, Krishi Bhawan, New Delhi with immediate effect, in public interest and until further orders after handing over the charge of the post of Director, IVRI to Dr. Gaya Prasad, Assistant Director General (Animal Health), ICAR Headquarters. Subsequently, in terms of Office Order No.F.No. 38(1)/2009-Per.III dated 23.11.2012, the applicant was posted as Officer on Special Duty, Eastern Regional Station of IVRI at Kolkata with immediate effect in public interest.

2. The applicant filed present Original Application on 12.09.2013, praying therein:-

” i) to quash and set aside Office Order No. F.No.38(1)/2009-Per.III dated 3rd July, 2012, whereby he was asked to report to ICAR Head Quarters, Krishi Bhawan, New Delhi with immediate effect allegedly in “**public interest**” after handing over the charge of Director, IVRI to Dr. Gaya Prasad, Assistant Director General (Animal Health), ICAR Head Quarters.

- ii) to quash and set aside Office Order No.F.No.38(1)/2009-Per.III dated 23rd of November 2012, whereby the applicant was once again transferred from the ICAR Head Quarters as Officer on Special Duty, Eastern Regional Station of the IVRI, Kolkata allegedly once again in "**public interest**" and asked to report to the said Regional Station overlooking the material fact that the said Regional Station was a subordinate office to his office as Director & Vice Chancellor, Indian Veterinary Research Institute.
- iii) Direct the Official Respondents to allow the Applicant to resume his charge as Director & Vice Chancellor, Indian Veterinary Research Institute, Izatnagar, Bareilly.
- iv) pass such other and further orders as this Ld. Tribunal may deem fit in the facts and circumstances of the case."

3. Mr. Devesh Singh, counsel for the applicant espoused:-

- * The appointment of the applicant to the post of Director, IVRI, Izatnagar (UP) was on tenurial basis for the period upto 31.01.2014 i.e. the date of his superannuation, which could not have been curtailed.
- * The transfer is fall out of malafide of respondent Nos 7 and 8.
- * In terms of the provisions of Chapter 6 of ICAR Agricultural Research Service Rules, the applicant being as Scientist-6 could be transferred from one post to another, but should have been allowed to carry his own grade irrespective of the grade earlier assigned to the post.

In order to substantiate the allegation of malafie, Mr. Devesh Singh, learned counsel for the applicant read out the charges alleged against the applicant in the disciplinary case extensively and made valiant efforts to establish that both the transfer orders as well as the charge sheet are result of malafides. To buttress the plea that a tenurial assignment cannot be curtailed, he relied upon an order dated 31.10.1990 passed by Division Bench of this Tribunal. The relevant excerpt of the order read thus:-

“Reference was made to the decision of the Division Bench of this Tribunal in the case of Dr. Ratnakar Nagarcenkar Vs. Union of India (OA No.404/90) decided on 14.4.1990. The applicant who worked as Director, National Dairy Research Institute, Karnal filed an application under Section 19 of the Administrative Tribunals Act, 1985 challenging an order of transfer to the post of Officer on Special Duty (Education) at the ICAR Headquarters, New Delhi for being quashed. In that case it was urged on behalf of the respondents that transfer order merely involved a change in his Headquarters which was in conformity with the terms of his appointment which provided for his transfer anywhere in India. It had also been stated that the transfer order had been made in public interest and that there was no ground to consider it as illegal or unfair. This was also a case where the applicant had been appointed as Director, N.D.R.I., Karnal on tenure basis for a period of five years. In this case also a plea was taken that while functioning as Director, N.D.R.I. the applicant had the status of Vice-Chancellor of a deemed University which he would cease to enjoy after he becomes O.S.D. or DDG (Edn.). The Division Bench held that:

“...the position of the Vice-Chancellor of the deemed University being ex-officio in nature, the applicant cannot claim it is a matter of right, once he is transferred from that post to another equivalent post.”

The Bench also held that it will be open to the appointing authority to curtail the period of appointment to a tenure-1 post, if it is so warranted in the public interest or in the exigencies of service. The Bench also, noticed a significant feature that when the applicant was appointed as Director of I.V.R.I., Karnal, w.e.f. 19.7.1985, it was also made clear

that the appointment was until further orders" and not for a fixed term of five years from 19.7.1985. This, in our opinion, clearly dictatorship the case of Dr. Ratnakar Nagarcenkar from that of the applicant. There is no such order to clarify the appointment of the applicant "until further orders". On the contrary, the applicant have completed the first five years and was reappointed for a further term of five years. It was clearly a tenure-1 post and the applicant did not continue "until further orders" as in the Nagarcenkar's case. Consequently, we are of the view that his term could not be reduced unless there was a regular inquiry and the findings warranted a decision by the appointing authority to terminate his tenure.

Reference was also made to the case of Gujarat Electricity Board and Another Vs. Atma Ram Subcomal Pohaki (1969(3) JT 20) and Union of India Vs. H.N.Kirtaria (1989(3) JT 131). These cases were of Government servants holding transferable post. The decision in these cases laid down the broad aspect that the Courts and Tribunals should not interfere with the orders of transfer made in public interest or in the course of their service. It proceeded on the basis that there was an equivalent post somewhere else to which he could as a matter of course, be transferred. Same is not the position with that of the applicant. He was holding a post of the Director, IVRI and he could only be transferred, if at all, to a similar post under the ICAR. That was not done. He has been transferred as OSD which in our opinion, is not equivalent to the post of Director, IVRI.

There have been allegations also that the move was oriented so as to preclude him to become the Director General of ICAR. It is not necessary to speculate on this at present.

Having considered the matter, we are of the view that the transfer of the applicant from the IVRI first to Karnal and then to the Headquarters of the ICAR at Delhi in the capacity of OSD was bad in laws and is liable to be set aside. The applicant was holding a tenurial post for five years and until there was a finding in a regular inquiry proceedings of his being guilty of serious charges, his tenure could not be curtailed nor could he be transferred from the post of Director, IVRI. Even if he was to be transferred in public interest, it would be necessary that there was at least a clear finding that his continuance at the IVRI was contrary to public interest.

We, therefore, allow the OA and set aside, the order of transfer of the applicant from IVRI Izatnagar to the ICAR Headquarters as OSD. The order of his suspension

is also set aside and he is entitled to resume his charge as Director, IVRI Izatnagar (Bareilly). We order accordingly. However, the respondents are at liberty to continue the investigation and inquiry against the applicant. There will be no order as to costs.”

4. Mr. Rajeev Sharma, learned counsel for respondents opposed the OA. To distinguish the order of this Tribunal (*ibid*), he submitted that in the said case, the applicant was allowed to continue for five years and there was no indication in the order of appointment that the appointment was to be made till further orders. According to him, in the present case in the appointment order itself it had been indicated that the appointment was for the period upto 31.01.2014 i.e. the date of superannuation or until further orders whichever is earlier.

5. In the detailed counter reply filed on behalf of respondent nos 1 to 6, an effort has been made to establish that in view of certain complaints against him, the applicant was not fit to be continued as Director, IVRI. The arguments put forth on behalf of the applicant that he was made to report to his junior is rebutted by the respondents and in para 19 of the reply, it is averred that had the applicant joined the place of transfer he could have reported to DG, ICAR. Learned counsel for respondents also produced a copy of the order passed in Writ Petition (Civil) No. 3597/2011 and submitted that since the applicant has already retired from service, the decision in the present OA would not serve any purpose and as has been viewed by Hon’ble Delhi High Court, this Tribunal should not proceed

to decide the issue raised in the OA. Para 12 of the judgment relied upon by the learned counsel read thus:-

“12. A perusal of the reliefs claimed in the petition, as reproduced hereinabove would show that the grant of the said reliefs would call for adjudication by this Court of powers and functions of the Board and Members of the Respondent No.1 Prasar Bharati and which it is not deemed apposite to do, when both the petitioner and the respondent No.2 have ceased to be in the respondent No.1 Prasar Bharati and when the present incumbents of the said offices are not before this Court. It is settled legal position laid down by the Supreme Court in **Arnit Das Vs. State of Bihar** (2001) 7 SCC 657 and followed by the Division Bench of this Court in **Association for Department Vs. Union of India** MANU/DE/1491/2010 and **Surender Singh Khurb Vs. State Election Commission** MANU/DE/ 2576/2014 that the Constitutional Court does not proceed to decide issues, the decision whereof would not serve any purpose and which questions have become otiose or have lost their relevance, though may be relevant at the time when the petition was filed.”

Learned counsel for respondents also submitted that the applicant has already been given all such benefits which could be received by him as Director, IVRI. In view of the such stand taken by the learned counsel for respondents and being bound by the judgment of Hon'ble Delhi High Court in **A.K.Jain Vs. Prasar Bharati (Prasad Bharati Broadcasting Corporation of India) and Anr.**, I dispose of Original Application as infructuous. Nevertheless, it is made clear that if in view of the impugned transfer orders, the applicant has suffered any loss of pay and perks for the relevant period of five years, it would be open for him to make a representation to respondents to claim the same and in the event of

being unsuccessful, he would be at liberty to file an Misc. Application for adjudication of the issues raised by him in the present OA. No cost.

(A.K.Bhardwaj)
Member (J)

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