

CENTRAL ADMINISTRATIVE TRIBUNAL**ERNAKULAM BENCH****ORIGINAL APPLICATION NO. 180/00433/2017**

Wednesday, this the 21st day of November, 2018

CORAM

HON'BLE MR.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE MR.ASHISH KALIA, JUDICIAL MEMBER

Dr.Manoj Kumar.T.S, aged 46
S/o.T.N.Sankara Pillai
Principal Scientist
Krishi Vigyan Kendra, CPCRI, Kasaragod
Permanently residing at
Thachaparambil House, Near DIET
Thodupuzha Post, Idukki, Kerala – 685 584

... **Applicant**

[By Advocate Mr.Joby Cyriac]

V.

1. Indian Council of Agricultural Research (ICAR)
Represented by its Director General
Krishi Bhavan, Ministry of Agriculture
New Delhi – 110 001
2. The Secretary
Indian Council of Agricultural Research (ICAR)
Krishi Bhavan, Ministry of Agricultural
New Delhi – 110 001
3. Transfer Committee for Scientific Personal of ICAR
Represented by its Chairman/DG (ICAR)
Krishi Bhavan, New Delhi – 110 001

... **Respondents**

(By Advocate Mr.P.Santhosh Kumar)

This application having been finally heard on 16.11.2018, the Tribunal on 21.11.2018 delivered the following in the open court.

ORDER

Per: MR.ASHISH KALIA, JUDICIAL MEMBER

The reliefs sought by the applicant in the Original Application are as follows:

- “ (i) Call for the original records leading to Annexure A10 and set-aside the same;
- (ii) Pass appropriate order declaring that the applicant is having ARS-discipline of ‘Agricultural Structure and Process Engineering (ASPE);
- (iii) Pass appropriate order directing the respondents to upload the applicant’s ARS-discipline namely ‘Agricultural Structure and Process Engineering (ASPE)’ against the name of applicant in the ‘Personnel Management Information System’ of ICAR
- (iv) Pass appropriate order directing the respondents to transfer the applicant to ‘Central Institute of Fisheries Technology (CIFT) Kochi ”

2. The brief facts of the case are as under:

The applicant is presently working as Principal Scientist and in charge, Krishi Vigyan Kendra (KVK for short) of Central Plantation Crops Research Institute, (CPCRI), Kasaragod. The CPCRI comes under the administrative control of the 1st respondent, an autonomous Organisation/Society. The applicant was originally appointed in the post of Scientist (AS & PE) in the Agriculture Research Service (ARS) in the year 1997 under the discipline ASPE at Ginning Training Centre, Nagpur under Central Institute for Research

on Cotton Technology (CIRCOT) (Annexure A-1). Thereafter he was promoted to the post of Senior Scientist w.e.f 29.12.2007 under the discipline ASPE vide Annexure A1(a). As a direct recruitee, applicant was offered appointment to the post of Programme Co-ordinator at Krishi Vigyan Kendra, Kasargod under CPCRI, Kasargod by the 1st respondent on the recommendation of the Agricultural Scientists' Recruitment Board vide Annexures A2 & A-3. As per the provisions of career Advancement Scheme (CAS) for ARS (Agricultural Research Service) Scientists of ICAR, the applicant was promoted in the discipline of ASPE to the next higher grade of Principal Scientist with new pay scale w.e.f 4.6.2015 vide an office order dated 13.4.2015 (Annexure A-4). It is further submitted that there is Transfer Guidelines for scientific personnel of ICAR issued by the first respondent (Annexure A-5). As per Clause 3 of Transfer Policy posting shall be made as per sanctioned discipline of the Institute concerned. As the applicant has completed 7 years of service in the present Institute and he has become eligible to apply for transfer as per his choice depending upon vacancy. Applicant was not allowed to apply for transfer as he has not been allotted any specific discipline and as he is direct recruited Senior Scientist cum in charge KVK. As no specific discipline is allotted to him, he is in KVK, ICAR-CPCRI Kasaragod (Annexure A-7). Applicant contends that the remarks in the online portal that the applicant has not been allotted any specific discipline is against fact as evident from

Annexure A1, A1(a), A3 and A5 documents issued by the respondents and it is very injustice that the Head/In charge of KVK is not allowed to apply for transfer to the equivalent position in the respective discipline. He made representation dated 2.5.2017 requesting to upload the discipline of the applicant in its official web portal so as to enabling him to apply transfer (Annexure A-8). That was not responded to. Apprehending non-consideration of Annexure A-8 representation on merit, applicant filed this Original Application. After hearing the applicant, this Tribunal permitted the applicant to apply for transfer through paper and E-mail and directed the respondents to take a decision on the transfer request so made.

3. Thereafter, applicant applied for transfer to the equivalent post namely Senior Scientist (AS &PE) at Central Institute of Fisheries Technology (CIFT), Kochi (Annexure A-9). Despite the direction by this Tribunal, no decision was taken by the respondents thereon. This Tribunal again directed the respondents to take a decision on the request for transfer so made by E-mail. However, respondents informed the applicant vide Annexure A-10 that his request had been duly considered and the same was not acceded to since the post of Head, KVK is a location specific appointment thus non-transferable one and Senior Scientist and Head KVK do not have any ARS – discipline earmarked. Being aggrieved by this, applicant has approached this Tribunal for redressal of his

grievances.

4. Notices were issued to the respondents. They have entered appearance and filed reply statement. Respondents have taken preliminary objection that the O.A is bad for misjoinder of parties. Indian Council of Agricultural Research, an autonomous body, which is registered under the Societies Registration Act may sue or be sued through Secretary, ICAR only as per Rule 23(c) of rules and bye laws of ICAR. Respondents prayed for dismissal of the O.A as it is not proper.

5. Respondents further submitted that ICAR is the apex body for co-ordinating, guiding and managing research and education in agriculture including horticulture, fisheries and animal sciences in the entire country with 101 ICAR Institutes and 71 agricultural universities spread across the country. It is further submitted that the applicant joined the ICAR as ARS Scientist under the discipline of Agricultural Structure & Process Engineering at Ginning Training Centre, Nagpur and as per the provisions of the Career Advancement Scheme for ARS Scientists of ICAR and on the recommendation of ASRB, the applicant was given the next higher grade of Principal Scientist in the pay scale of Rs.37400-67000 + RGP of Rs.10000/- with effect from 4.6.2015. It is further submitted that no specific post and no discipline has been allotted to the

applicant at the time of selection and it cannot be presumed that the applicant is in the discipline of ASPE since the selection is through direct recruitment appointment against the position of KVK which is in Extension Division. It is further submitted that the appointment of Programme Co-ordinator (now Senior Scientist cum Head, KVK) is a location specific post and no discipline has been allotted anywhere in the appointment order. Therefore, no provision is available for his transfer considering the nature of duty performing in KVK and after consider his application, Annexure A-10 was passed.

6. Rejoinder thereto has been filed by the applicant denying the submissions made in the reply statement and reiterated the averments made in the O.A.

7. Heard Mr.Joby Cyriac, learned counsel for the applicant and Mr.P.Santhosh Kumar, learned standing counsel for the respondents at length and perused the records.

8. During the course of argument, learned counsel for the applicant has drawn our attention to Annexure A2(1) memorandum offering appointment to the applicant. As per the same respondents stated that the applicant's Headquarters will be at CPCRI, Kasaragod for the present but he will be liable to be transferred anywhere in India in an equivalent position and he could not

seek transfer until a minimum period of 5 years of service in the initial place of selection/posting is completed. Thus, the counsel tried to convince this Tribunal that this post is transferable and the respondents should have considered his request for transfer to Kochi.

9. On the contrary, respondents submitted that the applicant is a Senior Scientist and his post was upgraded as Principal Scientist. So his basic Cadre is Senior Scientist in KVK and the post of Programme Co-ordinator at KVK is a location specific post. As the applicant was not allotted any specific discipline, he cannot be considered in the discipline of ASPE as he was directly recruited to the position of KVK which is in Extension Division and there is no provision for his transfer considering the nature of duty performing in KVK. In nut shell, respondents have considered the case of the applicant but due to the limitations, his request was not acceded to.

10. As held by the Apex Court in numerous decisions, transfer is an incidence of service and nobody can claim it as a matter of fact. It is the prerogative of the department to see who can be considered for which post. In the present case, applicant is working in a non-transferable post. Even if this post is said to be transferable, even then as a matter of right, the applicant cannot claim that he should be transferred to such and such location.

11. Thus, we are of the view that the Original Application has no merit on its side and it is liable to be dismissed. Ordered accordingly. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

- Annexure A1 - True copy of the offer of appointment vide Memorandum No.F.No.35-120/97-Per.1 dated 1.12.1997 issued by 1st respondent
- Annexure A1(a) - True copy of the Office Order No.39 dated 6.5.2013
- Annexure A2 - True copy of the memorandum No.F.No.29-04/2005-Per-Ii dated 8.12.2009 offering appointment
- Annexure A3 - True copy of the memorandum No.F.No.29-04/2005-Per-11 dated 9.8.2010 offering appointment
- Annexure A4 - True copy of the office order No.F.no.2-PS/2015-AU dated 13.4.2015 issued by the 1st respondent
- Annexure A5 - True copy of the Transfer Guidelines for scientific personnel of ICAR issued by the 1st respondent vide PER-F.No.38(2)/2011-Per.IV dated 20.2.2017
- Annexure A6 - True copy of the circular No.F.No.11-3/2016-Per.II dated 22.5.2017 issued by the ICAR
- Annexure A7 - Re-typed copy of screenshot of web port of the 1st respondent namely 'Personal Management Information System.'
- Annexure A8 - True copy fo the representation dated 2.6.2017 submitted before the 1st respondent along with forwarding note No.F.no.4(3)/ARS/2014-Estt.
- Annexure A9 - True copy of the transfer application dated 8.6.2017 submitted by the applicant
- Annexure A10 - True copy of the communication No.F.No.29-4/2005 Per-Ii dated 10.11.2017 of the 2nd respondent
- Annexure R4(a) - True copy of the letter No.3-21/ZPD VIII/2015-16 dated 10.8.2015.
- Annexure R4(b) - True copy of the letter F.No.29-4/2005 Per.-II, dated

10.11.2017 sent by ICAR to the petitioner

Annexure R4© - True copy of the letter No.3-21/ZPD VIII/2015-16 dated 10.8.2015

Annexure A-11 - True copy of the screen short of ICAR Personal Management System with respect to 2018 transfer cycle.

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