

OA.No.170/00467/2017/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00467/2017

DATED THIS THE 03rd DAY OF JANUARY, 2018

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Prof. Ram Rajasekharan
 Aged about 57 years
 S/o.K.Ramachandran
 Director
 CSIR – Central Food Technological
 Research Institute
 Cheluvamba Mansion
 Mysuru-570 020
 Karnataka.Applicant

(By Advocates Sri T.P.Rajendra Kumar Sungay & Sri P.S.Rajagopal
 Sr.Advocate)

Vs.

1. Council of Scientific and Industrial Research
 Anusandhan Bhawan
 No.2, Rafi Marg
 New Delhi-110 001 by its Joint Secretary (Admin.)
2. The Director General
 Council of Scientific and Industrial Research
 Anusandhan Bhawan
 No.2, Rafi Marg
 New Delhi-110 001.
3. The Controller of Administration
 Central Food Technological
 Research Institute
 Mysore-570020.
4. Union of India by its
 Secretary to Government
 Department of Science and Technology
 Technology Bhavan
 New Mehrauli Road
 New Delhi-110 016.Respondents

(By Advocates Sri.M.Vasudeva Rao, Sr.CGPC & Sri Ashok Haranahalli,
 Sr.Counsel)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant, aggrieved by his transfer, has filed the present OA seeking the following relief:

"Quash the impugned Official Memorandum bearing No.3(38)/Director/2017-DRC dated 25.8.2017(Annexure-A8) and Office Memorandum bearing No.3(38)/Director/2017-DRC dated 28.8.2017(Annexure-A9) issued by the Joint Secretary (Admn), Council for Scientific and Industrial Research, New Delhi, as arbitrary, illegal, discriminatory for the reasons stated in the application, while directing the respondents to the effect that the applicant be retained as Director of CFTRI, Mysuru which is a tenure post that he is holding for a period of 6 years as approved by the President of the CSIR, i.e., the Hon'ble Prime Minister, vide his appointment order bearing No.7(171)10/2012-E-II(PD) dated 18.7.2012(Annexure-A5)."

2. The applicant submits that pursuant to the advertisement No.1/2011 issued by the Council of Scientific and Industrial Research(CSIR) inviting applications to hold the position of Director in two of its laboratories namely CECRI, Karaikudi and at CFTRI, Mysore(Annexure-A4), he applied for the post of Director at CFTRI. After being shortlisted, he was interviewed by the selection committee and was recommended for the post of Director at CFTRI, Mysore. Thereafter vide OM dtd.18.7.2012(Annexure-A5), he was appointed to the post of Director for a period of 6 years or till the age of superannuation, whichever is earlier and he joined the post on 2.8.2012. He submits that the CFTRI(Central Food Technological Research Institute) is one of the research laboratories under the control of CSIR, New Delhi which is governed by Memorandum of Association, Rules & Regulations and Bye-Laws framed by its Governing body. In exercise of powers pertaining to recruitment and promotion of all categories of staff of the society, the recruitment rules 2008 for the post of Director of CSIR Laboratory were framed. According to Clause 10 of the recruitment rules 2008, the post of Director is to be

OA.No.170/00467/2017/CAT/Bangalore Bench appointed by the President of the CSIR, i.e. the Hon'ble Prime Minister of India for a tenure period of 6 years or till superannuation whichever is earlier. After joining the CFTRI, the applicant also functioned as Acting Director in the Academy of Scientific and Innovative Research, Chennai vide OM dtd.9.12.2014(Annexure-A6).

3. The applicant submits that while he was working as Director CFTRI for the past five years and has not completed his tenure, all of a sudden, the 2nd respondent by an official memorandum dtd.25.8.2017(Annexure-A8) transferred him from CFTRI, Mysore to CSIR Headquarters as Director(Special Projects and Initiatives) with immediate effect, without assigning any reasons whatsoever except stating that it is in public interest. Further vide office memorandum dtd.28.8.2017(Annexure-A9) he was relieved as Director of CFTRI, Mysore with immediate effect and directed to report to CSIR Headquarters, New Delhi. The applicant was also served with a relieving OM issued by the Controller of Administration without following the procedural handing over and taking over. He submits that orders of transfer and relieving are without authority of law and without jurisdiction as Director General is not competent to have curtailed the tenure of the applicant and relieving him from the post. Since the applicant was suffering from Bronchitis with post-viral asthenia, he was advised to take leave from 27.8.2017 to 3.9.2017(Annexure-A10).
4. According to the applicant, he had still 11 months of service at CFTRI, Mysore as per the terms of the order of appointment which is a tenure post for a period of six years and he has not attained the age of superannuation as on date. The said tenure period of six years' term cannot be curtailed except by following the principles of natural justice and CCS(CCA) Rules.

He has been unfairly and unjustly targeted for undisclosed reasons towards the end of his tenure and has been transferred to New Delhi though he was specifically appointed as Director of 1st respondent Institution for a stipulated term. He further mentioned that on the basis of either anonymous or pseudonymous instigated complaints, substances which were never disclosed to the applicant, three fact finding committees were constituted successively and each one of them gave clean chit to the applicant and could not come up with any report to even remotely implicate the applicant, which was learnt through the Vigilance Clearance letters issued by CSIR on 7.2.2017 and 13.2.2017(Annexures-A11 & A12 respectively). He further mentioned that the post of Director (Special Projects and Initiatives) at CSIR Headquarters to which the applicant is now transferred is a non-existing post. Further the post of Director General, CSIR, New Delhi is likely to fall vacant shortly in normal course. The transfer and posting of the applicant to a non-existing post is done deliberately to keep the applicant who is scientifically accomplished and is one of the senior most eligible persons to hold the said post, out of reckoning for appointment to the post of interim Director General, CSIR, New Delhi. Therefore, aggrieved by the said transfer, he has approached this Tribunal seeking the relief mentioned above.

5. The applicant further submits that the order of transfer is not sustainable in the eye of law as the applicant was appointed for a tenure period of six years which is yet to expire. According to the applicant, the appointment on tenure basis is non-transferable for the tenure of appointment. Only source of power to transfer relied upon by the respondents is clause 5 of the terms and conditions of appointment. However during the fixed tenure the said clause is not available. Moreover on the date the applicant

OA.No.170/00467/2017/CAT/Bangalore Bench entered office as Director, CFTRI, he lost his lien on the permanent post held by him in the Indian Institute of Science. The applicant has to exercise option for absorption in terms of clause 13 of the terms and conditions of appointment and any such option to absorb would come into operation when the absorption order is passed at the end of the six years tenure. Only then the power to transfer under clause 5 becomes operational and not till then. The applicant has also referred to several judgments of the Hon'ble Apex Court viz., *S.K.KACKER (Dr) v. ALL INDIA INSTITUTE OF MEDICAL SCIENCES* reported in (1996) 10 SCC 734 at page 738, *T.P.SENKUMAR v. UNION OF INDIA* reported in (2017) 6 SCC 801, *P.VENUGOPAL v. UNION OF INDIA* reported in (2008) 5 SCC 1, *B.P.SINGHAL v. UNION OF INDIA* reported in (2010) 6 SCC 331, *STATE OF MYSORE v. P.R.KULKARNI* reported in (1973) 3 SCC 597, *UNION OF INDIA v. SHARDINDU* reported in (2007) 6 SCC 276 and *UNION OF INDIA v. S.N.MAITY* reported in (2015) 4 SCC 164 in support of his contention.

6. The applicant finally submitted that he was holding the post of Director which is a Head of Institution with enormous administrative, executive and financial powers and it is for a tenure of 6 years. Even if salary of the applicant is protected on his transfer to a non-existent post in New Delhi, it cannot be justified with regard to the nature of appointment viz. tenure appointment and powers, duties, responsibilities and status attached to the post and hence the impugned orders are arbitrary, highhanded and unjustified. Hence he is entitled to the relief sought by him.

7. The respondents have filed a reply statement in which they have mentioned that the applicant was initially appointed as Director at CSIR-

CIMAP, Lucknow for a period of six years with the approval of the Prime Minister as the President, CSIR and he joined as Director, CSIR-CIMAP w.e.f. 4.4.2009 on foreign service terms. Later he was appointed as Director, CSIR-CFTRI, Mysore for a period of six years with the approval of the Prime Minister as the President, CSIR and he joined as Director at CSIR-CFTRI w.e.f. 2.8.2012. He had taken VRS from his parent organisation i.e. Indian Institute of Science, Bangalore and submitted a request in CSIR to get himself absorbed against the position of Scientist-H/Outstanding Scientist(equivalent to Director) as per clause 13 of his offer of appointment as Director, CSIR-CFTRI. However, his request for permanent absorption in CSIR is still pending for consideration. As per the recruitment rules, the position of Director in CSIR is a tenure post and appointment is made for a period of six years on contract with the clause that incumbent is liable for transfer to any of the establishment under the administrative control of the Council anywhere in India.

8. The respondents submitted that after the applicant joined as Director, CSIR-CFTRI, there are complaints of various nature along with reports of instability at CSIR-CFTRI which is also reported in various local media. Taking note of one of the complaints, Vice President, CSIR had constituted Fact Finding Committee comprising Dr.Shailesh Nayak, Ex Secretary, Earth Sciences and Sh.J.B.Mohapatra, Financial Advisor, DST. On the report of Fact Finding Committee and on the recommendation of Vice President, CSIR, the President, CSIR vide PMO ID dtd.11.7.2017 has communicated as follows:

‘Considering the facts and circumstances of the case, the Prime Minister has directed CSIR to explore the possibility of shifting the applicant, Director, CSIR-CFTRI from the post of Director, CFTRI with immediate effect to some other CSIR institution(without administrative responsibilities)’.

9. The respondents submitted that there have been deliberations and discussions internally at CSIR Hqrs. to put in place a suitable system to conceptualize, strategize, coordinate, plan, implement and monitor projects, schemes and new initiatives. The respondents further submitted that the relocation of the applicant from CSIR-CFTRI to CSIR Hqrs. is a considered administrative decision taken by the competent authority i.e. Vice President, CSIR on direction of the President, CSIR taking into account of various facts and circumstances and in public interest. The applicant has declined to receive the official communication regarding his transfer on 25.8.2017 and hence the transfer order as well as the order of subsequent relief from CSIR-CFTRI were sent by email to his official email ID. Instead of receiving the transfer order and relieving order, the applicant who was holding a leadership position in a premier scientific organisation of the country has submitted a leave application on medical ground supported by a medical certificate which appears as deliberate action only to avoid complying with the CSIR order. They further submitted that there is no need for invoking clause of CCS(CCA) which is applicable in case of misconduct and subsequent intention of imposing penalty and hence the clause of CCS(CCA) is not relevant in the present case. As per clause 5 of terms and condition of his appointment he is liable to be transferred to any establishment under the administrative control of the Council. The applicant was offered the position of Director with this condition and he joined the post only after accepting the same. Therefore, in no way his transfer in the interest of organisation can be termed as arbitrary and illegal. The reference of the applicant to the letters dtd.7.2.2017 and 13.2.2017 only pertains to forwarding of his applications for outside employment and it has nothing to do with the report of the Fact Finding

Committee and the subsequent alleged clean chit given to him. They further stated that the contention of the applicant that by transferring him to CSIR Hqrs. he will be denied the chance to become Director General of CSIR which is falling vacant shortly is also misleading. The tenure of the present DG, CSIR & Secretary, CSIR is up to 23.8.2018 whereas the applicant's tenure as Director is up to 1.8.2010. Moreover his working at CSIR Hqrs. is no way connected to the process of selection/appointment of DG, CSIR whenever it falls vacant. Moreover, on his transfer, the seniority among the Directors of CSIR is no way altered.

10. The respondents further submitted that the applicant's tenure as Director has not been curtailed and he will continue to hold the position of Director till his present tenure though his responsibilities would now be different. The administrative decision to re-locate him has been taken on the direction of the President, CSIR. Moreover no reason is required to be assigned in the transfer order which is issued in public interest and service conditions of the incumbent has a transfer clause clearly included in his terms of appointment. The applicant had accepted the terms and conditions of the appointment and has joined the post. Moreover the executive, administrative and financial powers attached to the post are mere tools to discharge duties and fulfil responsibilities assigned to the Council employee. It is not remuneration and cannot be termed as service benefits. It does not override the basic service conditions under which the incumbent has been appointed which includes transfer liability and adherence to the order of competent authority taken in organisational and public interest. Therefore the contention of the applicant does not merit any consideration.

11. The applicant had filed a rejoinder in which he submitted that this Tribunal had initially passed a detailed order on 6.9.2017 staying the transfer order dtd.25.8.2017. However, the said order of the Tribunal has been set aside by the Hon'ble High court in WP.No.43122/2017 on the ground that the Tribunal has not considered the effect of Clause 5 of the terms and conditions of appointment. The Hon'ble High Court however refrained from placing any interpretation on Clause-5 on the ground that it is for the Tribunal to examine it. The applicant further refers to Rule 10 of the recruitment rules which stipulates tenure of six years or till superannuation whichever is earlier. He submits that the Rule 10.2 speaks of extension of tenure in deserving cases. It does not speak of any transferability of a person appointed to the post of Director. He submits that the recruitment rules, employment notification, order of appointment and terms and conditions attached thereto have to be read harmoniously and every clause has to be given effect to without reducing any clause to a surplusage or a useless lumber. It is also well settled that when there is a conflict between the recruitment rules and the order of appointment issued thereunder, it is the recruitment rules that would prevail and if any condition in the order of appointment is irreconcilable with the recruitment rules to that extent clause in the order of appointment will be void and unenforceable. The applicant further mentioned the definition of Director under rules and regulations which says the Director shall mean Director of National Laboratory/Institute or Institution established by and/or functioning under the Council. Rule 17 speaks of Directors of National Laboratories are officers of the Society. Rule 18 speaks of temporary appointment to the post of Director empowers the President to appoint a Director of a National Laboratory to act temporarily as Director-General in

the absence of the Director General or in temporary vacancy of the office of the Director General. Thus, while the Director, CFTRI is eligible to be appointed temporarily and in temporary vacancy of the office of Director-General, the Director at Headquarters is ineligible to be so appointed.

12. The applicant further submitted that in the reply statement, the respondents categorically stated that the applicant was transferred as Director (special projects and initiatives) with the approval of the Vice-President, CSIR. This admission without anything more showed that transfer has been ordered by an incompetent authority as the appointing authority is the President, CSIR. The impugned transfer is not to an equivalent post and hence it is patently stigmatic. The applicant further mentioned that the transfer can be interfered when it is violative of any statutory provision, where it is not passed by a competent authority, where official status is affected adversely, where there is infraction of any career prospects, where there is reduction in emoluments and where it is actuated by mala fides. He referred to the several judgments of the Hon'ble Apex Court viz., *STATE OF U.P. v. GOBARDAN LAL* – (2004) 11 SCC 402 para 7 at page 406, *TEJSHREE GHAG v. PRAKASH PARASHURAM PATIL* – (2007) 6 SCC 220 – paras 15, 16 & 17 – pages 225-226, *THE MANAGER, M/s. PYARCHAND KESARIMAL PORWAL BIDI FACTORY v. ONKAR LAXMAN THENGE* – AIR 1970 SC 823 para-8, *VICE-CHANCELLOR, L.N.MITHILA UNIVERSITY v. DAYANAND JHA* – (1986) 3 SCC 7 (Judges) – para 8, *KAJI RAJ v. STATE OF J & K* – (2013) AIR SCW 660 – para 20 at page 669, *GENERAL OFFICER, COMMANDING-IN-CHIEF v. SUBASHCHANDRA YADAV* – (1988) 2 SCC 351 (Paras 16 & 17) and *DR. GIRIDHAR KAMALAPURKAR v. DR. VENUGOPAL RAM RAO*, (2001) 3 Kant LJ 467 in support of his

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contention.

13. The applicant further submitted that the notification issued by the 1st respondent was for the specific post of Director at CFTRI, Mysore and it does not state that the appointment is for the post of Director in CSIR. Referring to the submission of the respondents that there is alleged complaints against the applicant and alleged reports of instability at CFTRI in the local media, the applicant mentioned that at no point of time, any enquiry has been held against the applicant and even the Fact Finding Committees did not implicate him and there is absolutely no proven report against the applicant on any of the alleged allegations/complaints. He further submits that his transfer from the post having administrative and financial responsibilities to a post without such responsibilities can amount to demotion. It will avoid his career prospects and hence does not sustainable. On the contention of the respondents that he has deliberately avoided in accepting the transfer order, he submits that the impugned transfer order was deliberately passed on 25.8.2017 which was a holiday in the applicant's institution and next two days being Saturday and Sunday which were non-working days. Therefore, the 1st respondent has deliberately passed an order and directed one Mr.Jitendra J.Jadhav who is director, NAL, Bangalore to report for duty at CFTRI in the forenoon of 28.8.2017. The applicant was advised to take leave from 27.8.2017 to 3.9.2017 as he was suffering from Bronchitis with post-viral asthenia and accordingly, he submitted an application for leave for the said period. The medical report was issued on 28.8.2017 by the doctor since 26th and 27th were holidays. In the rejoinder the applicant reiterated some of the contentions already made in the main OA and prayed for providing relief sought by him.

14. The respondents have filed an additional reply in which they have again referred to the order of Hon'ble High Court setting aside the stay order of the Tribunal on the ground that the Tribunal has not considered the effect of Clause 5 of the terms and conditions of appointment. They mentioned that the transfer of the applicant was as per the directions of the President, CSIR who is the Hon'ble Prime Minister vide PMO ID dtd.11.7.2017. The impugned transfer is to an equivalent post as the post and designations is one and the same with all allowances and emoluments. They submit that judicial intervention in transfer order is very much limited and the same is subject to clear demonstration of certain conditions of which none of them exists in the present case.

15. The applicant has filed an MA.No.420/2017 seeking interim order of stay of the transfer to which the respondents have also filed a reply statement. However, since the matter is taken up for final hearing, it is not necessary to deal with the MA seeking interim direction any further.

16. We have heard the Ld.Senior Counsel for both sides who have also given written submissions. Sri.P.S.Rajagopal, Learned Senior Counsel for the applicant referred in detail to various contentions made in the OA and highlighted the fact that the applicant was appointed for a fixed tenure of six years or till the age of superannuation. Referring to the recruitment rules and Rule 49 of the Rules and Regulations of CSIR which stipulates a tenure of six years for the post of Director, he mentioned that clause-5 of the appointment order relating to transfer should be read harmoniously with the Rule-49 of the Rules & Regulation of the CSIR and Rule 10.1 & 10.2 of the recruitment rules. Clause-5 of the appointment order is introduced for the benefit of the employee so that he can continue even

OA.No.170/00467/2017/CAT/Bangalore Bench after the fixed tenure of appointment if he opts for absorption and is absorbed. It can neither be read in isolation nor in a manner destructive of registered rules nor in a manner which would render all other applicable provisions dead letters. He further referred to the reply of the respondents themselves on the report of the fact finding committee, the President has directed the CSIR to explore the possibility of shifting the applicant from the post of Director, CFTRI with immediate effect to some other CSIR institution. However he was transferred as Director with the approval of the Vice President, CSIR though it is only the President who is empowered to do so. He further mentioned that when the matter was initially taken up for hearing, it was pointed out by the respondents' Counsel and office representatives that the fact finding committee have pointed out a regional bias of the applicant and law and order problem in the institution. However, the report of the committee placed by the respondents does not indicate that the committee did find any substantial allegations made against the applicant. He stated that the respondents have now taken the stand that the complaints of the fact finding committee has not taken into consideration while passing the transfer order. There seems to be different stands taken by the respondents themselves which in turn indicate that the impugned transfer order is biased with malafide intention and without any substance.

17. Ld.Senior Counsel for the applicant further mentioned that the post to which the applicant is transferred is practically non-existent and hence the entire action of the respondents resulting in transfer of the applicant is without justification and the order needs to be set aside. He also made reference to various Court cases referred to in the OA and submitted separately to highlight that when a person appointed to a tenure post, the

tenure cannot be curtailed without justifiable ground and that the tenure is not subject to pleasure. There also instances where Hon'ble Apex Court held that even for non-tenure posts, premature transfers can be made only after following due safeguards and it can be interfered where it is violative of any statutory provisions, where it is not passed by a competent authority, where official status is affected adversely leading into damage in the career prospects or where it is actuated by mala fides. He mentioned that from the fact that the CSIR issued vigilance clearance to the applicant indicates that there is no merit in the contention made by the respondents that there were allegations or irregularities on the part of the applicant. Therefore, he submitted that the applicant should be allowed to continue to complete his tenure in the post to which he was appointed for a period of six years.

18. Sri M.V.Rao, Ld.Senior Govt.Counsel and Sri Ashok Haranahalli, Ld.Senior Counsel appearing for the respondents submitted that the OM dtd.18.7.2012 offering appointment to the applicant to the post of Director indicates the terms and conditions of appointment which the applicant was called upon to indicate the acceptance. Upon acceptance of the terms and conditions, the applicant joined as Director at CFTRI. Clause-5 of the terms and conditions clearly stipulate that he is liable to be transferred to any of the establishments under the administrative control of the Council anywhere in India. Further clause-6 indicated that the tenure can be severed at any time on three calendar months' notice if he proves unsuitable for the efficient performance of his duties. Further it can be severed with six calendar months' notice without assigning any cause. This being so, the very nature of the appointment makes it clear that it is terminable at the will of either of the parties. Therefore it is not open to the

OA.No.170/00467/2017/CAT/Bangalore Bench applicant to contend that he is functioning for a fixed tenure and cannot be shifted to any other post. He also referred to judgment of the Hon'ble Apex Court saying that a person cannot approbate and reprobate or accept and reject the same instrument. Therefore, having accepted the terms and conditions, the applicant cannot say that he is not bound by Clause-5 of the terms and conditions.

19. The Ld.Senior Counsel for the respondents further mentioned that the impugned transfer order is made in the public interest and the decision has been taken by the Hon'ble Prime Minister, the President of the CSIR who after going through the various reports advised to explore the possibilities of shifting the applicant from the post of Director with immediate effect to some other institute. The applicant has been called upon to report to CSIR Headquarters, New Delhi which manages not only CFTRI but other 38 laboratories. Since CFTRI is also a laboratory which come under CSIR, the applicant is duty bound to discharge all such responsibilities entrusted to him by CSIR. They further mentioned that there are also certain representations received against the applicant and fact finding committee has been constituted. The fact finding report is available in the records. However, those materials are not base for passing the impugned order of transfer. It is only an order of transfer passed in public interest due to administrative reasons. He further mentioned that there are several Supreme Court decisions stating that in matter of transfer, the scope of judicial review is limited. The Hon'ble High Court of Karnataka also while setting aside the interim order passed by the Tribunal have also referred to a decision of the Supreme Court and have also indicated that the clause-5 of the appointment order had not been examined correctly by the Tribunal. They submitted that the contention made by the applicant does not merit

any consideration.

20. We have carefully considered the facts of the case and the submissions made by either side and have also gone through the records. The main issue that has been raised by the applicant is validity of the transfer order in the context of the regulations of CSIR, recruitment rules and fixed tenure of six years stipulated in the appointment order. The other issue that has been raised is whether the transfer order needs interference due to various contentions raised by the applicant.

21. On the issue of validity of the transfer, the Ld. Senior Counsel for the applicant has referred to the rules and regulations of the CSIR and the recruitment rules. He had also referred to the Hon'ble Apex Court order in *P. Venugopal v. Union of India* (2008) 5 SCC 1, *Union of India v. Shardindu* (2007) 6 SCC 276, *Union of India v. S.N. Maity* (2015) 4 SCC 164 to say that once a person is appointed to a tenure post, his appointment to the said post begins when he joins and it comes to an end on the completion of tenure unless curtailed on justifiable grounds. He has also referred to the order Hon'ble Apex Court in *B.P. Singhal v. Union of India* (2010) 6 SCC 331 saying that the applicant holds a tenure post and it is not subject to pleasure. He also referred to Apex Court order in *T.P. Senkumar v. Union of India* (2017) 6 SCC 801 wherein it is held that the removal or displacement of any senior level officer from a tenure appointment must be for compelling reasons and must be justified by the authority concerned. He has also contended that if there is a conflict between the Recruitment Rules and the order of appointment issued thereunder, it is the Recruitment Rules that would prevail and if any condition in the order of appointment is irreconcilable with the Recruitment Rules to that extent

OA.No.170/00467/2017/CAT/Bangalore Bench clause in the order of appointment will be void and unenforceable. The Ld.Senior Counsel for the respondents, on the other hand, have argued that while offering the post of Director in CFTRI to the applicant, the terms and conditions clearly specify which included the liability of transfer and the applicant having accepted the terms and conditions have joined the post. Having accepted the terms and conditions, he cannot take a stand contrary to the terms and conditions of appointment itself. They referred to the judgment of Hon'ble Apex Court in *Shyam Telelink Limited v. Union of India* (2010) 10 SCC 165 in which it is held that the doctrine of approbate and reprobate is akin to the doctrine of benefits and burdens which at its most basic level provides that a person taking advantage under an instrument which both grants a benefit and imposes a burden cannot take the former without complying with the latter. Therefore, they contend that it is not open to the applicant to seek direction against transfer of a post of Director, CSIR-CFTRI. They have also mentioned that the applicant was once posted as acting Director in the Academy of Scientific and Innovative Research, Chennai which proves that he can shoulder responsibility other than that of Director of CFTRI.

22. It is evident from records that after the applicant was selected for the post of Director, CSIR-CFTRI on the recommendation of the Selection Committee, he was issued with offer of appointment vide OM dtd.18.7.2012 for a period of 6 years from the date of taking over the charge of Director at CFTRI, Mysore or till the age of superannuation whichever is earlier on the terms and conditions enclosed with the said OM. It also stipulated in the OM that if the offer of appointment is acceptable to the applicant on the terms and conditions, he may convey his acceptance and take over the charge of the post of Director, CSIR-

CFTRI immediately. In the terms and conditions of appointment to the post of Director in CSIR Labs/ Institution enclosed with the said office memorandum dtd.18.7.2012, para-2,5 & 6 reads as follows:

2. The appointment as Director, CSIR-Central Food Technological Research Institute, CFTRI, Mysore will be for a tenure of six years or till superannuation whichever is earlier.
5. You will be liable for transfer to any of the establishments under the administrative control of the Council anywhere in India.
6. The tenure of appointment/agreement may be severed:-
 - a. At any time on three calendar months' notice in writing given to the Director by the Council if in the opinion of the Council, he proves unsuitable for the efficient performance of his duties.
 - b. At any time without previous notice if the Council is satisfied on medical evidence that he is unfit and is likely for a considerable period to continue to be unfit for reason of ill-health for the discharge of his duties provided always that the decision of the Council that he is likely to continue unfit shall be conclusively binding on him.
 - c. By six calendar months' notice in writing given at any time by either party, without assigning any cause.
 - d. The Council may, however, in lieu of the notice provided for in clauses (a) and (c) above give him a sum equivalent to the amount of his pay for the period of notice, The Council may also give shorter notice on the payment of a sum equivalent to the amount of his pay for the duration by which notice falls short of the period prescribed.
 - e. "Pay" for the purposes of notice shall mean pay (including Special Pay and Personal Pay, if any) he receives under this offer. Any officiating pay which may be received by him will not be taken into account for this purpose.

23. The applicant had accepted the terms and conditions and joined the post of Director in CFTRI. It has been contended by the Ld.Counsel for the applicant that Rule-49 of the regulation, CSIR and Rule-10.1& 10.2 of the Recruitment Rules stated that term of the Director shall be made for a period of six years or till the age of superannuation whichever is earlier. Therefore, the applicant's tenure cannot be curtailed and it cannot be transferred to other establishment. Further clause-5 of the terms and conditions is not valid and cannot be enforced. In this context, we note that while clause-2 of the terms and conditions stipulated that the appointment

OA.No.170/00467/2017/CAT/Bangalore Bench is for a tenure of six years or till the age of superannuation whichever is earlier, simultaneously it is stipulated vide clause-5 that he is liable for transfer to any of the establishments under the administrative control of the Council anywhere in India. In addition clause-6 provides for severance of the tenure of appointment or agreement with three calendar months' notice if he proves unsuitable or six calendar months' notice without assigning any clause. It is therefore quite clear that the terms and conditions of appointment which was accepted by the applicant provided for six years' tenure along with a provision for transfer and also termination. When the applicant has accepted these conditions, he cannot now say that he will bind by only clause-2 of terms and conditions i.e. appointment with fixed tenure ignoring the other two conditions. The Hon'ble Apex Court orders referred to by the applicant would have been relevant to this case if the tenure would have been curtailed and the applicant has been relieved of his duties or if the enabling clause of transfer or termination would not have been there. In this case there is no curtailment of tenure. We are of the view that if the terms and conditions are considered in totality and in proper perspective, then it cannot be said that clause-5 and 6 cannot be acted upon in the context of clause-2 i.e. fixed tenure of six years or the age of superannuation whichever is earlier. Therefore, we hold that the validity of the transfer order cannot be questioned citing the Clause-2 of appointment order only.

24. The next question that has been raised is whether the transfer order is justified or not? The Ld.Senior Counsel for the applicant had referred to various orders of the Hon'ble Apex Court and specifically cited the case of *State of UP v. Gobardan Lal (2004)11 SCC 402* wherein it is held that even where appointment is not a tenure appointment, transfer can be interfered-

where it is violative of any statutory provision; where it is not passed by a competent authority; where official status is affected adversely; where there is infraction of any career prospects; where there is reduction in emoluments; where it is actuated by malafides. He submits that as for the respondents' own contention, the transfer order is issued by Vice President who is not the competent authority. Secondly, the allegation against the applicant was not found to have any substance by the fact finding committee and he was also given vigilance clearance twice by the authorities. He further mentioned that the applicant has been transferred to a non-existing post without any administrative powers whereas he is having full financial and administrative powers in the present assignment as Director, CFTRI. Therefore, it is practically amounts to demotion. He has also contended that the applicant being the senior most would have been eligible for holding the interim charge of Director General when it would fall vacant shortly since a Director of Laboratory can be entrusted with the Director General and by transferring him to the Headquarters, New Delhi as Director, he will be denied this opportunity. This amounts to infraction on his career prospects.

25. The respondents, on the other hand, had advanced their arguments saying that the transfer was not based on any allegations but it is passed only on public interest due to administrative reasons. Further the applicant has called upon to report to CSIR, Headquarters, New Delhi which manages not only CFTRI but other 38 laboratories and for a special task. He will continue as Director only and at the same level with the same emoluments and this cannot be termed as any demotion. They have also mentioned that based on the fact finding committee report, the matter was placed before the Prime Minister and President, CSIR who had directed

OA.No.170/00467/2017/CAT/Bangalore Bench the authority to explore the possibilities of shifting the applicant from the post of Director, CFTRI with immediate effect to some other CSIR institution (without administrative responsibilities). Pursuant to this direction, the applicant was transferred as Director (Special Projects and Initiatives). Therefore, it amounts to the order being issued with the approval of the President, CSIR.

26. During the hearing, the respondents have produced an office note from the records which was submitted to the Prime Minister for direction on the same. It seems that initially a two Member fact finding committee was constituted by the DG, CSIR to look into various allegations against the applicant as Director, CFTRI in February 2016 and they had not found merit in most of the allegations. However, based on the direction by the Vice President, i.e. Minister of Science and Technology a further committee comprising of Dr. Shailesh Nayak, Ex-Secretary, Earth Sciences and Sri J.B. Mohapatra, Financial Advisor, DST, were deputed to look into the charges afresh and they submitted a detailed report on 23.12.2016. Though the said report was not placed before us, from the note, it appears that there were some observations regarding the functioning of the Institute by the committee. In any case, the entire report along with observation of the Vice President was placed before the Hon'ble Prime Minister and President of CSIR and it was recorded the note from the PMO as follows:

Prime Minister's Office

South Block,
New Delhi-110 011.

Sub: Report of the Fact Finding Committee (FFC) constituted to investigate allegations levelled against Prof. Ram Rajasekharan, Director, CSIR-CFTRI, Mysore-reg.

Reference is invited to CSIR's communication vide

F.No.7(171)10/2012-PD-I dated 08.03.2017 on the above mentioned subject.

2. Considering the facts and circumstances of the case, the Prime Minister has directed CSIR to explore the possibility of shifting the applicant, Director, CSIR-CFTRI from the post of Director, CFTRI with immediate effect to some other CSIR institution (without administrative responsibilities).

3. CSIR's F.No.7(171)10/2012-PD-I along with five files/folders is returned herewith.

(V.Sheshadri)
Joint Secretary
Tel: 2301 3485

Director General, CSIR
PMO ID No.4584745/PMO/2017-ES.2 **Dated: 11.07.2017**

Accordingly, it is evident that the transfer order of the applicant was primarily based on the direction of the President, CSIR and the contention of the applicant that the transfer order was issued by the incompetent authority does not hold good.

27. The respondents in their reply statement had mentioned that based on the internal discussions at the Headquarters, a need was felt to place a suitable system to conceptualize, strategize, coordinate, plan, implement and monitor projects, schemes and new initiatives. For this they require an officer on full time basis without being burdened with the administrative and financial responsibilities and hence a need for a Director (Special Projects and Initiatives), a position to which the applicant was transferred. The level is same as the Director of Laboratories and hence transfer of the applicant to the said post cannot be construed as any demotion. Moreover whether a post carries administrative, financial responsibilities or not, as far as the functions and responsibilities are concerned it cannot be said that one post is less important compared to the other. We also do not think that such posting will have any impact on the career prospects of a person. On the point raised by the applicant that he would have got a

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chance to become acting Director General, CSIR on his retirement, the respondents have indicated in their reply that the current tenure of the present DG, CSIR, Secretary, DSIR is up to 23.8.2018 whereas the applicant's tenure is up to 1.8.2018 only. Hence the contention of the applicant about the possibility of being appointed as acting Director General does not appear to have any basis.

28. On the issue of justifiability and possible interference in the transfer order, on careful consideration of entire gamut of the matter, we do not find anything malafide in the said transfer order. In *State of U.P. v. Gobardhan Lal* [(2004) 11 SCC 402], referred to by the Hon'ble High Court of Karnataka in WP.No.43122/2017(S-CAT), vide para 7&8 of the order, the Hon'ble Apex Court held as follows:

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made, Even administrative guidelines for regulating transfers 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 the consequence 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 rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to in spite confidence in the Court

or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration born out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.

29. Further in *Shilpi Bose & Ors, v. State of Bihar & Ors.* in Civil Appeal No.5418/1990, The Hon'ble Supreme Court vide para-4 of order observed as follows:

4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.

30. On going through the facts and circumstances of the case and keeping in view the order of Hon'ble Apex Court in the above cited orders, we are of the view that the order of transferring the applicant from Director CSIR-CFTRI to CSIR Headquarters vide order dtd.25.8.2017 by the authority does not call for any interference by this Tribunal. Accordingly, we hold that the contention made by the applicant is without any merit and hence the OA is liable to be dismissed.

31. Accordingly, the OA stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

Annexures referred to by the applicants in the OA.170/00467/2017

Annexure-A1: A Copy of the Byelaws of the CSIR
Annexure-A2: A Copy of the Office Memorandum dated 24.3.2008
Annexure-A3: A Copy of the Biographical sketch of the applicant
Annexure-A4: A Copy of the Advertisement No.1/2011 issued by CSIR
Annexure-A5: A Copy of the Office Memorandum dated 18.7.2012
Annexure-A6: A Copy of the Office Memorandum dated 9.12.2014
Annexure-A7: A Copy of the Office Memorandum dated 3.6.2016
Annexure-A8: A Copy of the Office Memorandum dated 25.8.2017
Annexure-A9: A Copy of the Office Memorandum dated 28.8.2017
Annexure-A10: A Copy of the Application for Leave dated 27.8.2017 submitted by
the applicant
Annexure-A11: A Copy of the Vigilance Clearance Letter dated 7.2.2017
Annexure-A12: A Copy of the Vigilance Clearance Letter dated 13.2.2017

Annexures with reply statement:

-NIL-

Annexures with MA.420/2017 filed by the applicant:

Annexure-A13: A copy of official memorandum dt.22.9.2017

Annexures with rejoinder:

-NIL-

Annexures with addl. reply statement:

Annexure-R1: A copy of order dtd.21.9.2017 of the High Court of Karnataka in WP.No.43122/2017(S-CAT)

Citations relied on by the respondents:

Citation No.1: 2004 SCC(L&S) 631-Union of India & Others Vs. Janardhan Debanath & Anr.
Citation No.2: 2010 1 SCC(L&S) 503-Rajendra Sing and others Vs. State UP & Ors.
Citation No.3: (2006) 9 SCC 583 – S.C.Saxena Vs. Union of India & Ors.
Citation No.4: (2001) 5 SCC 508 – SBI Vs. Anjan Sanyal
Citation No.5: (1991) 17 ATC 935-Shilpi Bose (Mrs) & Ors. Vs. State of Bihar & Ors.

Citations relied on by the applicant:

Citation No.1: Dr.S.K.Kacker v. AIIMS & others (1996) 10 SCC 734
Citation No.2: T.P.Senkumar v. UOI & Others (2017) 6 SCC 801
Citation No.3: P.Venugopal v. UOI (2008) 5 SCC 1
Citation No.4: B.P.Singhal v. UOI (2010) 6 SCC 331
Citation No.5: UOI v. Shardindu (2007) 6 SCC 276
Citation No.6: State of Mysore v. P.R.Kulkarni (1973) 3 SCC 597
Citation No.7: UOI & Anr. v. S.N.Maity (2015) 4 SCC 164
Citation No.8: State of U.P. & Ors. v. Gobardan Lal (2004) 11 SCC 402
Citation No.9: Dr.Giridhar Kamalapurkar v. Dr.Venugopal Ram Rao, (2001) 3 Kant LJ 467
Citation No.10: Tejshree Ghag V. Prakash Parashuram Patil (2007) 6 SCC 220
Citation No.11: Vice-Chancellor, L.N.Mithila University V. Dayanand Jha (1986) 3 SCC 7
Citation No.12: T.S.R.Subramanian & Others v. Union of India & Others (2013)15 SCC 732
Citation No.13: Kavi Raj v. State of J & K – (2013) 3 SCC 526
Citation No.14: Sultana Begum v. Prem Chand Jain (1997) 1 SCC 373
Citation No.15: Badrinath v. Govt. of Tamil Nadu (2000) 8 SCC 395
Citation No.16: Central Inland Water Transport Corp. Ltd. & Anr. v. Brojo Nath Ganguly & Ors. (1986) 3 SCC 156
Citation No.17: Delhi Transport Corporation v. D.T.C.Mazdoor Congress & Ors. 1991 Supp (1) SCC 600

Enclosures with written arguments filed by the applicant:

-NIL-

Enclosures with written arguments filed by the respondents:

Enclosure No.1: Copy of judgment in (2010) 10 SCC 165 {Shyam Telelink Ltd. v. UOI }
Enclosure No.2: Copy of judgment in (2016) 1 SCC 454 {Madras Institute of Development Studies & Anr. v. K.Sivasubramaniyan & ors.}
Enclosure No.3: Copy of judgment in SLA(C) No.28464/2017(Arising out of WP.No.43122/2017 of Hon'ble High Court of Karnataka)

Enclosure No.4: Copy of reports of PMO & Fact Finding Committee (running 22 pages)
