

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A No. 050/00351/2017

Reserved on 14.11.2017
Pronounced on 08.12.2017

CORAM :

Hon'ble Shri A. K. Upadhyay, Member (A)
Hon'ble Shri Jayesh V. Bhairavia, Member (J)

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1. S. Jagaveera Pandian, S/o Sri P. Sankariah, resident of 3/1308 V. Jetti Halli Road, District- Dharampuri, Tamilnadu.

.....Applicants

By Advocate : Shri J.K. Karna

VERSUS

1. The Union of India through the Secretary, Indian Council of Agricultural Research, Ministry of Agriculture, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi -110001.
2. The Additional Secretary, DARE & Secretary, ICAR, Government of India, Ministry of Agriculture And Farmer's Welfare, Department of Agricultural Research and Education, Krishi Bhawan, New Delhi-110001.
3. The Director General Indian Council of Agricultural Research Krishi Bhawan, Dr. Rajendra Prasad Road New Delhi -110001.
4. The Under Secretary (Pers). ICAR, Krishi Bhawan, Dr. Rajendra Prasad Road, New Delhi- 110001.
5. The Head of Office ICAR, Central Sheep & Wool Reasearch Institute, Avikanagar (Tehsil- Malpura, District- Tonk), Via- Jaipur (Rajasthan)-304501.
6. The Director, Indian Council of Agricultural Research Complex for Eastern Region, ICAR Parisar, P.O.- Bihar Veterinary College, Patna -800014.

....Respondents

By Advocate : Smt. Ranjana Kumari

ORDER

Per Jayesh V. Bhairavia, Member (J):

The applicants in this O.A is aggrieved by his transfer order dated 24th May 2017, issued by the Head of Office, ICAR, Central Sheep & Wood Research Institute, Avikanagar District- Tonk, as such, he prays for the following relief(s) :-

"[8.A] Letter No. 1 (30) R/73/VOL.XI/5989 dated 22/24.05.2017 issued by the Head of Office Office dated 24th May 2017, issued under the signature of Head of Office, ICAR Central Sheep & Wood Research Institute, Avikanagar, District Tonk, Jaipur (Rajasthan) as contained in Annexure A/5 may be quashed and set aside whereby the applicant has now been ordered to be relieved to join at CSWRI North Temperate Regional Station, Garsa, District- Kullu under State of

Himachal Pradesh instead of CSWRI, Avikanagar (Rajasthan), transferred by taking his option vide office order dated 20th May 2017 and its being approved by the Committee, as contained in Annexure A/4.

[8.B] The applicant may be directed to be posted at Avikanagar (Rajasthan as ordered vide office order dated 20th May 2017 issued under the signature of Under Secretary (Pers)ICAR, New Delhi on consideration of option for transfer exercised by applicant with the approval of the recommendations of the Committee on Distortion posting of Scientists in various categories at ICAR Institute as contained in Annexure A/4.

[8.C] Any other relief/reliefs as the applicant is entitled and Your Lordships may deem fit and proper in the ends of justice."

2. The brief facts of the case, as submitted by the applicants, are as below :-

[i] The applicant is a permanent resident of Tamilnadu. He was posted at Patna to the post of Scientist (Veterinary Medicine), in Indian Council of Agricultural Research (for brevity referred ICAR) on 18.05.2007 and since then applicant has been retained at Patna in the interest of administration.

[ii] In view of the fact that the applicant was working at Patna since a decade, the applicant had submitted his application in January 2017 followed by representation on 06.12.2016, requesting his transfer to Kodaikanal against vacant post (Annexure A/1), the Administrative Officer (E&A) ICAR, Patna vide office noted dated 11.05.2017, informed that the council has been trying to identify the scientific personnel/positions which are either not sanctioned or in excess of sanctioned positions in particular discipline/institute i.e in shortcoming under the distorted positions. According after completing the exercise, the council has issued letter dated 08.05.2017 wherein it has been intimated that you have been identified for transfer out of this Institute where you are presently working to restore credibility and sanctity of the sanctioned position of the ICAR system. Accordingly, the applicant was requested the applicant to apply online between 09.05.2017 to 12.05.2017 for consideration of his Transfer (Annexure A/2).

[iii] In compliance of that direction and information received in the office of the applicant, the applicant had submitted online application (on 09.05.2017 before the letter dated 11.05.2017 of the council received at Patna) for his transfer. The applicant had stated his preferred place of posting in the said online application are (1.) ICAR-NIVEDI, Bangalore, Karnataka (2) ICAR-CWRI, SRRC, Mannavanoor, Kodacanal (TN) (3) ICAR-CCARI-Goa (4) ICAR-CMFRI, Tuticorin, Tamilnadu (5) ICAR-CMFRI, Mandapam, Tamilnadu. However, on the date of submission of application, the link provided for the submission of application on official website of ICAR cadre management system, it was indicated that available vacancies in veterinary medicine discipline in scientist cadre are at some different places and accordingly, the applicant has also given his option/preference to the said place is where the available vacancies are indicated, the preference given by the applicant to the said centres are (1) CSRC Meerut, / CSWRI Avikanagar(1),/IVRI, Izzatnagar (2)/NRACYK, West Kameng (1) (Annexure A/3 refers).

[iv] On the basis of recommendations of Competent Committee, the applicant was transferred from Patna to CSWRI Avikanagar (Rajasthan) vide office order dated 20th May 2017 but he was not relieved to join his transferred post at Avikanagar (Rajasthan) from the office of Patna. (Annexure A/4)

[v] Vide Letter No. 1 (30) R/73/VOL.XI/5989 dated 22/24.05.2017 issued by the Head of Office order dated 24th May 2017, under the signature of Head of Office, ICAR Central Sheep & Wood Research Institute, Avikanagar, District-Tonk Jaipur (Rajasthan), by which the Director, ICAR, Patna has been directed to relieve the applicant to join at CSWRI, North Temperate Regional Station, Garasa, District- Kullu under the State of Himachal Pradesh instead of CSWRI Avikanagar (Rajasthan). Annexure A/5). The applicant had never given any option of his preference to sub unit of ICAR Avikanagar, Rajasthan. However,

the applicant has been ordered to be transferred more than 850 kilometre away, at a very remote place from their it will be difficult to reach to Tamilnadu where the entire family of the applicant resides.

[vi] The applicant thereafter submitted an application on 30.05.2017 thereafter on 01.06.2017 before the competent authority explaining all his grievances which elicited no response. It is submitted by the I/c for applicant that vide order dated 26.05.2017 the Director of the Council i.e ICAR, New Delhi vide its office order informed all the concerned head of the institute situated through out the india that re-deployment/ transfer/diversion/adjustment etc of posts shall be done only with prior approval of MoF (Annexure A.7 series refers).

[vii] The applicant was ordered to be transferred from Patna to CSWRI-Avikanagar (Rajasthan) from Patna by the ICAR New Delhi vide its order dated 20.05.2017. However, the applicant was not relieved to join the duty at transferred place by the office of his present working place i.e ICAR., Patna. Therefore, he could not join at Avikanagar, Rajasthan. Before the applicant relieved to join at the said place. In the meantime, the Head Office of ICAR, Avikanagar Rajasthan had passed an order dated 22/24.05.2017 transferring the applicant at CSWRI, North Temperate regional station, Garasa, Distt-Kulu (Himanchal Pradesh). The said action of the respondents is contrary to the direction issued by the council itself vide its order dated 20.05.2017. The power and authority to transfer of the scientist is under the domain of officer council New Delhi. However, the office of ICAR, Rajasthan without any authority to change the place of posting of the applicant from Avikanagar Rajasthan to Garasa, H.P. without any approval from the council, New Delhi and therefore, the action of the respondents is bad in law, arbitrary, passed the transferred order with malafide intention which cause serious prejudice in the interest of applicant. His representation remained unanswered; hence the applicant is seeking relief as per para 8 of this O.A.

3. The respondents through their written statement have submitted as below :-

[i] The learned counsel for respondents submitted that this O.A is not maintainable due to misjoinder of parties. The ICAR is a registered under the Society Act and as per the Rule 23 (C) of Bylaws, ICAR may sue or be sued through Secretary, ICAR only. Therefore, the Union of India and Director General, ICAR and Under Secretary, Personnel i.e respondent no. 1,3 & 4 respectively are neither proper nor necessary for adjudication of the issued raised in the instant O.A..

[ii] It is submitted that as per sanctioned strength of scientific cadre of CSWRI, Avikanagar, Rajasthan including its sub-station, there is only one vacant post of scientist (veterinary medicine) is available for sub-station i.e CSWRI, Garasa (HP). The ICAR , New Delhi vide its order dated 20.05.2017 transferred the applicant to the main institute i.e CSWRI, Avikanagar, Rajasthan. The said CSWRI Rajasthan having sub-station situated at different places including the CSWRI, Garasa (HP). Only one vacant post is available on the said sub-station, the applicant has been ordered to be posted over there from Patna with a view to avoid extra expenditure to call him at Avikanagar office situated in Rajasthan and from there to send the applicant again to the vacant post at Garasa (HP). In view of this fact the applicant's grievance is misconceived and the decision taken by the respondent is an administrative exigency and its a pure administrative order therefore not required to be entertained under the limited jurisdiction of judicial review in the transfer matter.

[iii] The learned counsel for the respondents further submitted that in view of the law laid down by the Hon'ble Supreme Court of India in State of U.P & Ors Vs Gobardhan Lal 2004 (11) SCC 402 wherein it has been observed that :-

" 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 Rules) or passed by an authority not competent to do so, an 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 mala fides or is made in violation of any statutory provision.

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 inspire 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 borne out of conjectures of surmises and except for strong and convincing reason, no interference could ordinarily be made with an order of transfer."

By placing reliance on the above stated judgement passed by the Hon'ble Apex Court, the I/c for respondents submitted that the said principle of law will apply in the present case and therefore the O.A required to be dismissed.

[iv] It is further submitted that, as per sanctioned strength of scientific cadre of CSWRI, Avikanagar including its sub-station, there is only one vacant post of Scientist (Veterinary Medicine) is available for sub-station of this institute namely CSWRI North Temperate Regional Station, Garasa (Himachal Pradesh). As per office order No. 7/(14)/2016-Per.I/dated 20.05.2017, Dr Jagaveera Pandian S. Was transferred consequent upon the approval of the recommendations of the Committee on "Distortion posting of Scientist in various categories at ICAR, Institute "by the competent Authority of the council. In the

light of this fact, the place of CSWRI of Cr. Pandian has been decided by looking to the available vacant post at CSWRI & its Sub-station.

4. The applicant has filed rejoinder reiterating his earlier submissions in the O.A. Apart from that he further submitted that vide order dated 20th May 2017 issued under the signature of Under Secretary (Pers) ICAR, New Delhi the applicant was ordered his transfer from Patna to CSWRI Avikanagar (Rajasthan) on consideration of option for transfer exercised by the applicant with the approval of the recommendations of the Committee on "Distortion posting of Scientists in various categories at ICAR Institute. On the basis of that recommendations the applicant was not relieved to join his transferred post at Avikanagar (Rajasthan). His representation is pending before the competent authority.

5. We have heard the learned counsel for both the parties and perused the records of the case.

6. It is noticed that the applicant is working as scientist with the office of ICAR. Though, applications were invited for transfer by the ICAR and accordingly, applicant had given his option of placing which are closed to his original native i.e Tamilnadu where his family resides. However, it is required to be consider the fact that no sanctioned post were vacant for which the applicant had submitted his preference. It is also required to be noted that the applicant had submitted his option subsequently for the centres where the posts were vacant and according to his preference the applicant was ordered to be transferred from Patna to CSWRI, Avikanagar, Rajasthan, the said CSWRI, Avikanagar office also consist of various sub-station including the CSWRI, Garasa (HP). The sanctioned vacant post was only available in the sub-station at said place that is Garasa (HP) therefore the applicant was ordered to be transferred at the said place by the Headquarter of CSWRI.

7. We are of the opinion that, posting of the employee and transfer all are administrative domain of the employer and this Tribunal cannot interfere in its administrative order passed by the respondents in the facts and circumstances stated hereinabove. It is settled principle of law that the government servant, in the matter of transfer should first report and join for work where he is transferred and

after joining the said post he may make a representation to the highest authority to ventilate his grievance.

8. While taking note of the above settled law, we also note that the respondent authority has themselves asked for four option from the employee, in response to which he gave four preferred locations. Therefore, it would meet the ends of justice if the applicant first join at the main campus of CSWRI, Avikanagar and request to the ICAR authority with his prayer. The O.A disposed of accordingly. Interim relief granted in the matter stand vacated.

[Jayesh V. Bhairavia]
Member(J)

[A. K. Upadhyay]
Member (A)

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