

**Central Administrative Tribunal
Madras Bench**

OA/310/01011/2019

Dated the 22nd day of August Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Dr.Raju Narayana Swamy, I.A.S.,
S/o K.S.V.Iyer,
Chairman (under repatriation),
Coconut Development Board,
Kera Bhavan, SRVHS Road,
Ernakulam South,
Kochi 682 011. .. Applicant
By Advocate **Mr.Muthappan**

Vs.

1. Union of India, rep by the
Secretary, Department of Personnel &
Training, New Delhi 110 001.
2. Secretary to the Department of Agriculture,
Co-operation & Farmers Welfare,
M/o Agriculture & Farmers Welfare,
New Delhi 110 001.
3. Mr.Dinesh Kumar,
Joint Secretary,
Mission for Integrated Development of Horticulture(MIDH),
D/o Agriculture,
Co-operation & Farmers Welfare, M/o Agriculture & Farmers Welfare,
New Delhi 110 001.
4. Mr.BNS Murthy,
Horticulture Commissioner,

Department of Agriculture,
Co-operation & Farmers Welfare,
M/o Agriculture & Farmers Welfare,
New Delhi 110 001.

5. Mr.Hemachandra,
Formerly Director,
Regional Office,
Coconut Development Board,
Bangalore (Permanent Residential Address:
No.363, 4th Main, 2nd Cross, First Stage,
Vijayanagar, Mysore 571 017).
6. Coconut Development Board, rep by its
Secretary, Kera Bhavan, SRVHS Road,
Ernakulam South, Kochi 682 011.
7. V.Usha Rani, IAS,
Holding Addl. charge as Chairman,
Coconut Development Board,
Kera Bhavan,
SRVHS Road,
Ernakulam South,
Kochi 682 011. .. Respondents

By Advocate **Mr.SU.Srinivasan, Mr.C.Kulanthaivel (R1&2), Mr.P.Vijayakumar (R6), M/s.Siby J.Monippolly(R5)**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“(i) call for the records leading to the passing of Annexure A7 by the 2nd respondent and set aside the same;

(ii) declare that the premature repatriation of the applicant from the post of Chairman of Coconut Development Board to his parent cadre is illegal, arbitrary and unsustainable in law;

(iii) declare that the applicant is entitled to continue in the post of Chairman of Coconut Development Board at least for a minimum fixed tenure of 2 years as stipulated in Annexure A10 notification in the light of the dictum laid down by the Hon'ble Supreme Court in TSR Subramanium's case;

and

(iv) issue such other reliefs as this Tribunal may deem fit and proper.”

2. The applicant herein was appointed as Chairman of the Coconut Development Board (CDB) and he took charge of the same on 08.8.2018. As per the Annexure A1 appointment order, he is appointed as such for a period of 1 year. But the applicant was prematurely repatriated in an arbitrary manner.

3. According to the applicant, the action of the respondents is arbitrary and

against public interest. Normally a civil servant appointed to any cadre post should be permitted to continue for 2 years, and any premature repatriation shall be made only after obtaining the views of the officer concerned and after consideration by Civil Services Board. According to the applicant, the action of the respondents is malafide and the real reason was the suspension order issued by him against the 5th respondent. The Ministry of Agriculture had directed the Board to conduct an enquiry about the allegation made against the 5th respondent. The 3rd and 4th respondents were against holding enquiry and they were exerting pressure on him. The 3rd and 4th respondents had fabricated complaints against the applicant stating that the applicant failed to perform duties in the cyclone affected areas.

4. The 1st and 2nd respondents appeared and filed reply denying the allegations. The applicant was repatriated to his parent cadre on 07.3.19 as per the decision of the Appointments Committee of Cabinet (ACC) and the charge of the Chairman was given to the 7th respondent. According to the 1st and 2nd respondents, the post of Chairman, CDB, is a deputation post under non-Central Staffing Scheme. Applications were invited from eligible persons on 26.8.2017 for filling the post. The short listed candidates were interviewed and the applicant and two other persons (Scientists) panel was prepared. On 13.7.2018, the name of the applicant was approved by the ACC and the applicant accepted the offer and took charge of CDB on 08.8.2018. The appointment was “initially for a period of 1 year from the date of assumption of charge of the post or until further orders, whichever is earlier.” CDB is an autonomous body under Department of Agriculture and as per Section 16 of CDB

Act, "the Board shall carry out such directions as may be issued to it from time to time by the Central Government for the efficient administration of this Act."

According to the 1st and 2nd respondents, the applicant failed to comply with the orders of the DoP&T to strictly record his attendance (Annexure R-1E). The applicant had a habit of continuously absenting from office and some members had given complaint regarding the same (Annexure R-1F). The applicant did not comply with the direction. He continued on tour on an average of 20-25 days in a month without obtaining approval or intimation to the ministry. He had also failed to submit proper tour report and also failed to prepare minutes of the meetings held by him during his tour. On verification, it was found that the applicant had incurred an expenditure of Rs.20,74,015/- on tour between August 2018 to February 2019. Another disobedience done is that the applicant has given advertisements with his own photographs which is against the direction of the Court and Government direction in this regard.

5. The Gaza cyclone had devastated Nagapattinam and Vedaranyam on 16.11.2018 causing uprooting of 80% of coconut trees. A Central Team was constituted including the applicant to visit the affected areas between 04.12.2018 and 08.12.2018. But the applicant failed to join the team till 05.12.2018.

6. The applicant was directed to be the Liaison Officer for the visit of the Parliamentary Committee visiting Port Blair between 25th and 27th February 2019. The applicant did not attend the said meeting and took leave. The respondents had narrated similar incidents further in their reply. The allegations made against the 3rd

and 4th respondents are totally misleading. According to them, there are sufficient reasons for repatriation. The applicant has proved himself unworthy of discharging his duties of the post of Chairman, CDB. The applicant was given sufficient opportunity for hearing his side but he evaded the same. Annexure R15 is an example for it. The respondents have every authority to terminate the appointment. The appointment order itself clearly shows the power to terminate the engagement. The respondents also produced the copy of the CDB, Act to show the eligibility for being appointed as Chairman as Annexure R8.

7. Respondents 5, 6 and 7 also filed their statements. It was submitted that the post of Chairman, CDB is not a cadre post coming under Rule 7(3) of the IAS Cadre rules and he is not eligible to get the benefit of 2 years term. According to R 6 and 7, the applicant has a habit of raising unsubstantiated allegations against other officers. He had made allegations through the press stating political pressure on him which is baseless. The Newspaper clippings are produced as Annexure R6(h). During his 7 months period, he suspended 10 officials on flimsy reasons. He transferred 18 officials to farflung areas.

8. We have heard both sides and we feel that the only point for consideration is whether the premature repatriation of the applicant is justifiable or not?

9. The applicant was appointed as Chairman, CDB as per the decision of the ACC dated 22.6.18 (Annexure R-1c) as follows:-

“2. The Appointments Committee of the Cabinet (ACC) has approved the appointment of Dr.Raju Narayana Swamy, IAS (KL:91) as Chief Executive

Officer (CEO), Coconut Development Board on deputation basis, initially for a period of 01 year from the date of assumption of charge of the post or until further order, whichever is earlier.

3. The ACC has further directed the Department of Agriculture, Cooperation & Farmers Welfare (DAC&FW):

- (i) to examine the feasibility of appointing a non-executive Chairman in the Coconut Development Board expeditiously and respond with its views by 31.07.2018; and
- (ii) to submit an appropriate proposal for additional charge of Chairman, Coconut Development Board w.e.f. 22.05.2016.”

10. From the above, it can be seen that the government is probing for the appointment of a non-executive Chairman in CDB and the government wants to explore the possibilities of the same. The decision clearly shows that the appointment is only for a period of 1 year and the government reserved its rights to cancel it at any time within that period. Annexure A1 is the order issued appointing the applicant as Chairman of CDB. It also clearly specifies the period of appointment and also for the possibility of premature repatriation.

11. The main thrust of argument raised by the counsel for the applicant is that the applicant being civil servant appointed to a cadre post is entitled to hold his office for 2 years. Counsel for the respondents 6 and 7 would contend that the Chairman, CDB is a selection post where any person eligible under Rule 10 of the Recruitment Rules notified as Annexure R1(A) can be appointed. On a perusal of the said rules, it can be seen that the post of Chairman is not a cadre post exclusively meant for civil service and there is no merit in the said contention of the counsel. IAS Cadre Rules,

1954 is not applicable to the post of the applicant. The learned counsel for the respondents had cited the case of ***T.S.R. Subramanian & Ors. v. Union of India & Ors. (WP(Civil) No.82/2011*** wherein the Hon'ble Apex Court had issued direction for having fixed tenure and constitution of Civil Services Board by the State Government and Union Governments to the appointments made. But this decision has no application to this case as this case does not come under the cadre post for IAS officers.

12. According to the respondents 1 and 2, the applicant was given chances for hearing his grievances on many occasions and he avoided the same. Annexure R-1V shows that the applicant was given an opportunity to air his grievances against JS(MIDH)/Horticultural Commissioner. But he did not avail the opportunity. He did not attend the meeting on 31.12.18.

13. Though the applicant states that the premature repatriation was due to the hostile attitude of the respondents 3 and 4, we find no merit in this contention. What is the personal enmity is not brought out. Being a borrowing department, CDB has every authority to terminate the engagement in the CDB. The respondents produced the judgment of the Hon'ble Supreme Court in ***Kunal Nanda v. Union of India & Another (AIR 2000 SC 20176)*** in support of their case wherein it is held that *“deputationist has no vested right of absorption and even continuance in the borrowing department”*. In ***State of Haryana v. Prem Singh (AIR 2000 SC 2078)*** the Hon'ble Supreme Court has held that *“....The basic principle underlying deputation itself is that the person concerned can always and at any time be*

repatriated to his parent department to serve in his substantive position therein at the instance of either of the departments and there is no vested right in such a person to continue for long on deputation or get absorbed in the department to which he had gone on deputation”. The applicant has no vested right to hold the post of Chairman, CDB and for getting the order of repatriation quashed. Further, the borrowing department had set out a list of short coming and misconduct on the part of the applicant for showing the displeasure and according to the counsel for the respondents, the applicant had to be repatriated to his parent cadre in the public interest.

14. So, we do not find any arbitrariness or illegality in the repatriation done in this case. A public servant has to function within the ambit of rules and regulations and discipline.

15. In the backdrop, there is no merit in the OA and it will stand dismissed. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

22.08.2019

/G/

Annexures referred to by the applicant in OA No.310/01011/2014:

Annexure A1: True copy of the Communication No.F.No.4-22/2015-MIDH(CDB) dated 17.7.2018 issued by the M/o Agriculture, Government of Kerala.

Annexure A2: True copy of e-mail dated 09.12.18 to the Secretary, M/o Agriculture, Co-operation & Farmers Welfare, Delhi.

Annexure A3: True copy of the representation before the Secretary, M/o Agriculture, Co-operation & Farmers Welfare, Delhi.

Annexure A4: True copy of the relevant pages of minutes of the 135 Board Meeting held on 30.1.19.

Annexure A5: True copy of the request made by the consortium dated 15.12.2018.

Annexure A6: True copy of the letter addressed by the Hon'ble Minister to the applicant dated 27.12.2018.

Annexure A8: True copy of the interim order in O.P.(CAT) No.85/2019 on the file of the Hon'ble High Court of Kerala dated 15.3.2019.

Annexure A9: True copy of the order in OA No.180/1025 of 2018 on the file of this Tribunal dated 18.3.2019.

Annexure A10: True copy of the notification issued by the government of India dated 28.1.2014.

Annexures with reply statement filed by respondents 1 & 2:

Annexure R-1A: True copy of Recruitment Rules to the post of Chairman Coconut Development Board.

Annexure R-1B: True copy of the above office Memorandum dated 23.12.2016.

Annexure R-1C: True copy of OM dated 22.6.2018.

Annexure R-1D: True copy of corrigendum dated 13.7.2018.

Annexure R-1E: True copy of DoP&T OM No.11013/9/2014-Estt.A-III dated 22.6.2015.

Annexure R-1F: True copy of complaint dated 31.12.2018 received from Shri P.R.Muraleedharan Non-official Member of CDB.

Annexure R-1G: True copy of the letter dated 2.1.2019 from M/o Agriculture & Farmers Welfare to CDB.

Annexure R-1H: True copy of letter dated 3.1.2019 from CDB to M/o Agriculture & Farmers.

Annexure R-1I: True copy of letter dated 25.1.2019 from Ministry of Agriculture & Farmers Welfare to Chairman CDB.

Annexure R-1J: True copy of letter dated 20.3.2019 from CDB to M/o Agriculture & Farmers.

Annexure R-1K: True copy of letter dated 8.5.2019 from CDB to M/o Agriculture & Farmers.

Annexure R-1L: True copy of letter dated 20.3.2019 from CDB to M/o Agriculture & Farmers.

Annexure R-1M: True copy of the Govt. of India direction dated 20.5.2015 regarding Govt. advertisements.

Annexure R-1N: True copy of the letter dated 20.3.2019 forwarded by the Secretary, CDB.

Annexure R-1O: True copy of OM dated 3.12.2018.

Annexure R-1P: True copy of the e-mail dated 03.12.18 from JS (MIDH) to CDB.

Annexure R-1Q: True copy of letter No.4-8/2019-MIDH (CDB) dated 15.2.19.

Annexure R-1R: True copy of TA Bill of applicant.

Annexure R-1S: True copy of the letter dated 9.12.18 submitted by the applicant.

Annexure R-1T: True copy of statement dated 4.1.19 submitted by Sri B.N.S.Murthy.

Annexure R-1U: True copy of the above letter dated 13.2.19 send by Vasudha Mishra to the applicant.

Annexure R-1V: True copy of the communication dated 26.12.18 sent to the applicant.

Annexure R-1W: True copy of letter dated 28.12.18 submitted by the applicant along with its enclosure.

Annexure R-1X: True copy of TA Bill of the applicant.

Annexure R-1Y: True copy of letter dated 4.2.19 submitted before the Agriculture Secretary a/w representation dated 30.1.19.

Annexure R-1Z: True copy of letter dated 12.2.19 of Minister for Statistics & Programme Implementation forwarding complaint of Non-Official members of CDB, alw enclosure.

Annexure R-1AA: True copy of letter dated 2.1.19 forwarded by Sri Nalin Kumar Kateel, Member of Parliament, alw enclosure.

Annexure R-1AB: True copy of complaint submitted by Coconut Growers & members of Parambayam Coconut Producers Society.

Annexure R-1AC: True copy of the above order No.4-22/2015-MIDH (CDB) dated 07.3.19.

Annexure R-1AD: True copy of Certificate of assumption dated 7.3.19 of V.Usha Rani.

Annexure R-1AE: True copy of the e-mail communication dated 7.3.19 from Smt.V.Usha Rani.

Annexure R-1AF: True copy of the minutes of the Review Committee meeting held on 19.6.18.

Annexure R-1AG: True copy of letter No.F4-22/2015-MIDH (CDB) dated 17.7.18.

Annexure R-1AH: True copy of letter No.4-45/2018-MIDH (CDB) dated 14.11.18.

Annexure R-1AI: True copy of letter No.4-45/2018-MIDH(CDB) dated 18.12.18

from M/o Agriculture & Farmers Welfare.

Annexure R-1AJ: True copy of order of CAT Ernakulam Bench in OA No.180/1025/2018 dated 18.3.19.