

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1902 of 2003

New Delhi, this the 15th day of December, 2003

HON BLE MR. KULDIP SINGH, MEMBER (JUDL)

Dr. Vinod Tiwari
Principal Scientist (Plant Breeding)
Division of Genetics
Indian Agricultural Research Institute,
Pusa,
New Delhi-110 012. ... Applicant

By Advocate: Shri Davendra Singh.

Versus

1. The Secretary,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110 001.
2. The Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110 001.
3. The Deputy Director General (Crop Sciences)
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi-110 001.
4. Dr. H.S. Gupta,
Director,
Vivekanand Parvatiya Krishi
Anusandhan Sansathan (VPKAS),
Almora-263601, Uttaranchal.
5. The Joint Director (Administration)
Indian Agricultural Research Institute,
Pusa, New Delhi-110 012. ... Respondents

By Advocate: Shri R. Venkatramani, Sr. Counsel with
Shri V.K. Rao, counsel and Shri Ashok
Panigrahi, Counsel.

The applicant has assailed the office order dated 1.5.2003 whereby the applicant had been transferred from Indian Agricultural Research Institute (IARI) New Delhi to Vivekanand Parvatiya Krishi Anusandhan Sansathan (VPKAS) Almora.

2. Facts in brief are that the applicant was appointed to the post of Principal Scientist (Plant

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Breeding) at VPKAS, in response to an advertisement issued by the respondents. As per the advertisement the candidates were supposed to have specialisation and experience of research in breeding major crops grown in hills apart from three other essential qualifications. However, applicant was transferred to IARI, New Delhi on his own request from VPKAS Almora and by impugned order the applicant is being transferred back to Almora. The applicant submits that the order of transfer is actuated with mala fide action of respondent No.4 who is the Director of VPKAS, Almora.

3. The applicant further submits that he had been allotted peripheral work in plant breeding inspite he being senior.

4. It is further submitted that there are two Divisions at Almora one known as Division of Crop Improvement and second Division of Crop Production. Applicant is a Scientist associated with the division of Crop Improvement and as per hierarchy the applicant is the seniormost person in the Division of Crop Improvement and he was assigned duties to plan, conduct and guide research on the major crops grown in the hills and any other duty assigned by the Director/ICAR. It is also submitted that instead of assigning the duty of heading the major programme of crop improvement to the applicant as the Principal Scientist by the Director - respondent no.4 ignored the applicants 22 years of research experience of wheat breeding, which was a major programme of the Institute, the programme of wheat breeding was

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directed by the respondent No.4 for mala fide reasons and against public interest, to be headed by one Dr. Lashmi Kant a Plant Breeder, who is the junior-most leave officer in the hierarchy only to spoil the career of the applicant.

5. However, even while working the applicant was allotted peripheral work in wheat breeding, i.e., Evaluation of Genetic Stocks and Nurseries for one season only and on the directions of respondent No.4 the applicant was not associated with the main programme of wheat breeding. That in the peripheral work allotted to the applicant his achievements in purifying the wheat genetic stock was phenomenal which showed the previous scientist working on such evaluation in bad light. This was not appreciated by respondent No.4, who deliberately denigrated the work and achievement of the senior colleagues and promoted the juniors.

6. The applicant made a request to respondent No.4 to be allowed to work in wheat breeding and the request of the applicant annoyed respondent No.4 so much so that he resorted to coercive methods and with vengeance and personal vendetta made false allegations against the applicant and also humiliated the applicant in public as well as privately by, inter alia, making disparaging remarks about his academic credential. Threats were also executed to spoil the ACR of the applicant.

7. Applicant further alleges that respondent No.4 with a mala fide reasons systematically planned to remove the applicant from the wheat breeding programme and

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thereby harm his future career and he made representation that he was given threat by respondent No.4 that adverse entries would be made in his CR.

8. Besides that the applicant also alleged that even in the house allotment and charging of HRA etc. the respondent No.4 acted in a most mala fide manner and in those circumstances the applicant also sent a representation for request for transfer to some other place but respondent No.4 even refused to forward the applicant's transfer/request. Ultimately the applicant was transferred to Delhi.

9. To highlight the mala fides of respondent No.4 the applicant alleged that when there was a proposal to release of Barley variety VLB 56 to the Uttaranchal State Varietal Release Committee. Applicant submits that though he was made the incharge of Barley whereas credit has been given to all the scientists associated with the release of new crop by including their names in the list of persons who were associated with the development whereas the applicant who had been actively associated with the same, his name had been deleted at the behest of respondent No.4.

10. It is further submitted that when all these mala fides of the respondent No.4 had been highlighted, respondent No.4 had seen to it that the applicant is transferred back to Almora only to harm his career or that he may be compelled to resign, so it is submitted that the order of transfer is tainted with mala fide reasons and the same is liable to be quashed.

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11. The respondents who are contesting the OA submitted that the OA is not maintainable and the transfer order is made in public interest and for administrative reasons. It is denied that there is any ground to interfere with the transfer order the same has been passed in accordance with the statutory rules and there is no violation of the rules as such it is liable to be transferred.

12. It is further submitted that the transfer order does not violate any legal right of the applicant or the transfer policy.

13. It is further stated that the applicant was appointed initially at VPKAS, Almora and as per the terms of his appointment, he had to join the Institute at Almora vide letter dated 16.10.2000. In Para 2 of the said order it is clearly indicated that the appointment of the applicant was for VPKAS, Almora and he was liable to be transferred anywhere in India, therefore, applicant joined Delhi on request made by him. After the applicant had left Almora Institute, amongst 13 posts of plant breeders, only 4 are in position and the research work in plant breeding was suffering badly specially of pulses and oilseeds in which no plant breeder is presently associated and more so the day to day work of the Institute is suffering, as such the transfer was made in the administrative exigencies.

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14. Respondent No.4 has also filed his affidavit who stated that the allegation of mala fide raised against him by the applicant are totally false, frivolous, ill-founded and baseless. It is also stated that the concept of mala fide is totally misconceived, wrong and reiterated that since there is need of plant breeder at Almora so OA should be dismissed.

15. I have heard the learned counsel for the parties and gone through the records.

16. The learned counsel appearing for the applicant referred to various representations made by the applicant which highlighted that the applicant had been making representations only for legitimate and proper work to be assigned to him for which he had been selected. The applicant's representation also show that how he had been writing about the public humiliation meted out to him by the respondent No.4 as per his representation dated 21/22.9.2001. It also highlights how the applicant who had specialisation in wheat breeding was made to work under his junior and was also assigned to initiate breeding programme in pigeon pea and raimash etc. Then there are other letters written by the applicant which go to show that for allotment of residence and charging of HRA the applicant had been making representation to respondent No.4 but his request has never been considered sympathetically nor any reply has been given to him which may show that even as per rules he is not liable to be paid HRA which he has been claiming. Rather it was thrust upon him that he should continue to occupy a house at a place which is at a

distance than his place of work. Thus all these representations made by the applicant show that his stay at VPKAS particularly under respondent No.4 had not been comfortable at all and no congenial atmosphere was provided to him to work as a Scientist.

17. The respondents who are contesting the OA submitted that as per the advertisement issued itself the Headquarters of the applicant was to be at VPKAS, Almora. The letter of appointment also shows that his place of appointment was at Almora. The counsel for the respondents also referred to Annexure A-2 which shows that it is the Principal Scientist (Plant Breeding) who has to plan, conduct and guide research on major diseases of hill crops and any other duty assigned by the Director, ICAR. So on the basis of this the respondents pointed out that it was not necessary that the applicant should have been posted where the programme of wheat breeding was going on but he could be assigned any duty by the Director so the applicant cannot raise any hue and cry about assignment of work in development of crops and improvement of other crops instead of wheat.

18. It was also pointed out that the applicant with certain pressures had got himself transferred from VPKAS to New Delhi and now when the respondents want to get him back at his Headquarters, the applicant has filed this OA. The respondents further tried to justify that there are 13 posts of Plant Breeders and only 4 Plant Breeders are at station of VPKAS so plant breeding is suffering a lot as such the transfer order has been passed in public interest.

19. In support of their contention the respondents also referred to a celebrated judgment in the case of N.K. Singh Vs. U.O.I. and Others which prescribes that court cannot interfere in transfer case but interference is justified only in cases of mala fides or infraction of any professed norms or principle where career prospects remain unaffected and no detriment is caused.

20. I have given my anxious thought to the rival contentions raised by the parties.

21. At the outset I may mention that the applicant has been making complaints about the harassment meted out to him at the hand of respondent No.4 which he has highlighted in the OA and those harassments have also been supported by the documents such as representation made by the applicant in black and white to respondent No.4 so much so that some of the representations have not been forwarded to the higher authorities and the respondent No.4 though have filed affidavit to oppose the OA but I must say that the respondent No.4 has filed an affidavit only to rebut the allegations of applicant on merits and no comment have been offered particularly with regard to mala fide behaviour of respondent No.4 towards the applicant.

22. Respondent No.4 in his affidavit has in one line made a simple denial about the allegations of mala fide levelled against him by the applicant but the actions of the respondent No.4 which has been highlighted in the OA had not been rebutted by the respondents at all.

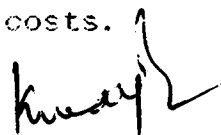
in their reply nor there is any denial about the same. The respondent No.4 had himself allowed him the work on barley project and when the new crop of barley was released then the name of the applicant was significantly omitted and these omissions itself harmed the interest of the career of the applicant. Thus it is quite clear that the applicant will not be able to work in a congenial atmosphere under respondent No.4.

23. I may further mention that the job of the applicant is of a Scientific nature and he has been posted as Principal Scientist. The job profile require the Scientists to conduct research to Develop and improvement of various crops and for such a Scientist a congenial atmosphere is a must only then a Scientist can conduct a research in his field. In this case when the applicant was being harassed over a trifle issue of accommodation and charging of HRA for which he had made a representation which was not answered to, it appears that the applicant's transfer back to VKPAS under respondent No.4 will be against the interest of his career and it is also not good for the institute. No doubt management is the best judge to decide as to where an employee is to be posted but in this case when the applicant was transferred from VPKAS, Almora to New Delhi the applicant had already made various representations against respondent No.4 alleging harassment at the hands of respondent No.4 and his request was considered by the management so he was transferred to New Delhi. But now again as the applicant alleges that he is being transferred back to VKPAS at the behest of respondent No.4 so it appears that the transfer of the applicant is

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not in public interest and even otherwise I am of the considered view that the transfer order cannot be sustained and it is tainted with mala fide of respondent No.4.

24. In view of the above, OA has to be allowed. Accordingly, the OA is allowed and impugned order of transfer is hereby quashed. However, the department will be at liberty to transfer the applicant to any other institute except under respondent No.4. No costs.


(KULDIP SINGH)
MEMBER(JUDL)

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