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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Reserved on: April 02, 2013

Judgment Pronounced on: April 08, 2013

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W.P.(C) 7079/2012

INDIAN COUNCIL OF AGRICULTURAL
RESEARCH & ORS.

..... Petitioners

Represented by: Mr.Jagdeep Dhankar, Sr.Advocate
with Mr.S.R.Mathur, Advocate
versus

SANJEEV KUMAR TYAGI AND ORS

..... Respondents

Represented by: Mr.Shanker Raju, Advocate with
Mr.Ashwin Vaish, Mr.Vinod Kumar
Pandey and Mr.Sanjeev Manchanda,
Advocates

W.P.(C) 7366/2012

SANJEEV KUMAR TYAGI

..... Petitioner

Represented by: Mr.Shanker Raju, Advocate with
Mr.Ashwin Vaish, Mr.Vinod Kumar
Pandey and Mr.Sanjeev Manchanda,
Advocates

versus

UNION OF INDIA & ORS.

.... Respondents

Represented by: Mr.B.V.Niren, Advocate for R-1
Mr.Jagdeep Dhankar, Sr.Advocate
with Mr.S.R.Mathur, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. Two writ petitions have been filed challenging the order dated August 16, 2012, passed by the Central Administrative Tribunal disposing of OA No.1605/2012.
2. Challenge by Sanjeev Kumar Tyagi, the applicant before the Tribunal was to an order dated September 16, 2011 transferring him from the Central Institute of Post Harvest Energy & Technology (CIPHET) Ludhiana, Punjab to Indian Institute of Natural Resin & Gums (IINRG) Ranchi, Jharkhand. Upholding the transfer on the ground of exigencies of service but limited till when the post of Principal Scientist (to head IINRG was filled up) the Tribunal has directed that thereafter Sanjeev Kumar Tyagi would be re-transferred to Ludhiana.
3. Vide WP(C) No.7366/2012, Sanjeev Kumar Tyagi challenges the impugned order insofar it has upheld he being transferred from Ludhiana to Ranchi, vide WP(C) No.7079/2012, Indian Council of Agricultural Research and its functionaries challenge the impugned order insofar it directs that upon the post of Principal Scientist at IINRG being filled up, Sanjeev Kumar Tyagi would be re-transferred to Ludhiana.
4. Sanjeev Kumar Tyagi holds not only a Doctorate i.e. a Ph.D. degree in Chemistry but is pursuing a post Doctorate degree i.e. D.Sc. in the field of Chemistry. It is apparent that he is a highly qualified Scientist. He joined his career on being appointed as a Scientist in the discipline of 'Chemical Engineering' in the Indian Council of Agricultural Research in the year 1998 and was placed in the Senior Scale on June 20, 2002. Against an open selection through the Agricultural Scientists Recruitment Board he was appointed as a Senior Scientist in the discipline of Chemical Engineering on August 25, 2006 and on January 22, 2010 was appointed as a Principal Scientist as a result of an open selection through the Indian

Agricultural Scientists Recruitment Board in the discipline of Chemical Engineering.

5. The post of Principal Scientist at IINRG, Ranchi being vacant and since some time would be taken to fill up the post on regular basis, on September 16, 2011, Sanjeev Kumar Tyagi was transferred from Ludhiana to Ranchi. Aggrieved by the transfer order he filed OA No.3505/2011 before the Central Administrative Tribunal, raising therein various issues, including one pertaining to a transfer policy and another pertaining to he being sent to a post which he could not hold keeping in view the different discipline at Ranchi. The original application was disposed of by the Tribunal by a consent order dated March 02, 2012 requiring the Director General, ICAR to reconsider the transfer of Sanjeev Kumar Tyagi keeping in view the fact that Sanjeev Kumar Tyagi belong to the discipline of Chemical Engineering and the post of Senior Scientist IINRG, Ranchi pertained to the discipline Agricultural Chemicals and additionally for the reason that by then he had not yet completed his D.Sc.

6. Reconsidering the matter the DG (ICAR) opined that nomenclature was irrelevant. Recognizing that at IINRG Ranchi, as a Principal Scientist, Sanjeev Kumar Tyagi would be dealing with the subject of Agricultural Chemicals and that his discipline was Chemical Engineering, the DG (ICAR) took note of the fact that the subject of the Doctorate thesis of Sanjeev Kumar Tyagi was '*removal of phenolic compound by activated carbon and regeneration of activated carbon*' and the subject of his post Doctorate thesis was '*removing colour of mustard oil from the by-product of rice milling industry*', opinion formed was that both subjects primarily related to the field of activity which the laboratory at Ranchi was engaged in. In other words, he opined that in the larger interest

of Agricultural Research in the country, Sanjeev Kumar Tyagi's transfer was in public interest.

7. Sanjeev Kumar Tyagi once again approached the Central Administrative Tribunal under OA No.1605/2012 and prayed that the order dated September 15, 2011 transferring him as well as the order dated May 01, 2012 confirming the same be set aside.

8. Before the Tribunal, Sanjeev Kumar Tyagi pleaded that for the post of Principal Scientist (Agricultural Chemical), the basic qualification was M.Sc. Agricultural/M.Sc Organic Chemistry and the work of a scientist in said discipline was to formulate and analyse pesticide residue, while the basic qualification for Agricultural Chemistry/Soil Science was M.Sc Agriculture/M.Sc Agricultural Chemistry/M.Sc Chemistry. It was his contention that '*Agricultural Chemical*' discipline dealt with Organic Chemistry while '*Agricultural Chemistry*' discipline dealt with soil science. It was also submitted by him that the Masters degree and Ph.D. qualification may have been relevant for the purpose of promotion but were not relevant factors in determining the discipline of Principal Scientist for the purpose of transfer and that there was no vacancy of Principal Scientist (Agricultural Chemistry/Soil Chemistry) at IINRG, Ranchi and that the vacant post available was that of Principal Scientist (Agricultural Chemical). It was also the case of Sanjeev Kumar Tyagi that his transfer was the outcome of a feud between himself and one Dr.Babu.

9. On the other hand, ICAR contended that being a member of the Agricultural Research Service, an All India service, Sanjeev Kumar Tyagi was liable to be transferred to any place in India. It was also urged that while there was no post of Principal Scientist (Agricultural Chemical) at IINRG, Ranchi prior to July 2011, the same was created during course of

cadre revision of all institutes including IINRG and the same was done with the approval of the Competent Authority. ICAR also contended that respondent No.1 was not transferred to different discipline but his transfer as Principal Scientist (Chemical Engineering) as against the vacancy of Principal Scientist (Agricultural Chemical) was in view of the exigencies and priority of research work at the Institute due to the urgent need for product development and that the essential qualification for the post of Principal Scientist (Chemical Engineering) was a Doctoral degree in Chemical Engineering/Chemical Technology/Biochemical Engineering including the relevant basic sciences and respondent No.1 already possessed an M.Tech degree in chemical engineering and a Ph.D. in chemistry and thus the basic discipline was of Chemistry only, the same being the relevant basic science. In a nutshell, it was pleaded that pending recruitment to a post of Principal Scientist created for the first time at Ranchi, Sanjeev Kumar Tyagi was transferred.

10. The Tribunal has observed that the discipline of Sanjeev Kumar Tyagi had not changed and he was required to work as Principal Scientist (Chemical Engineering) as against Principal Scientist (Agricultural Chemical) only due to the exigencies and priority of research work at the Institute and that the core area of work still remained the same. The Tribunal further observed that even though Physical Sciences were included in Group 'A' of the manual of Agricultural Research Service and that Engineering and Technology were included in Group 'B', what had happened in effect was that there had been a conversion of post from one stream to another stream and filling up of a vacancy in a particular grade in one discipline by posting an employee of said grade of another discipline, and that the same was part of the functional requirement of any

organisation. As regards the contention that the transfer was a result of a feud between respondent No.1 and Dr.Babu, the Tribunal observed that Dr.Babu had no control over transfer matters as the same were handled solely by the Director-General, ICAR.

11. After arriving at the aforementioned conclusions, the tribunal disposed of the original application with the directions that respondent No.1 was to be transferred back to CIPHET, Ludhiana as early as possible and that the DG (ICAR) would reconsider the requirement and posting of the Principal Scientist in IINRG, Ranchi from the discipline which best suited the interest of the organisation. The relevant portion of the order reads as under:-

“8. In view of the aforementioned factual and legal position particularly keeping in view the fact that the applicant is posted at IINRG, Ranchi only till the vacant post of Principal Scientist (Agricultural Chemical) is filled up on regular basis or until further orders, the impugned orders are not interfere with. However, respondents are directed to ensure that in view of the spirit of Office Order F.No.1-21/2008/Estt/Vol.I/4750 dated 16.09.2011, i.e. the transfer of applicant in terms of the said order is only a stop gap arrangement, efforts are made to transfer the applicant back to CIPHET, Ludhiana as early as possible. Since review of the withdrawal of advertisement No. 02/2012 for various posts in ICAR published on 15.05.2012, the regular selection process for the post in question may consume considerable time, in the interest of organisation and functioning of IINRG, Ranchi, the transfer committee mentioned in ICAR(ARS) published by Directorate of Information and Publications Of Agriculture, Indian Council Of Agricultural Research, New Delhi in consultation with an expert on the subject would take a decision regarding requirement and posting of a Principal Scientist in IINRG, Ranchi from the discipline that suits best to the interest of the organisation and submit its recommendations to DG(ICAR) at the earliest. In Lieu the DG (ICAR) would take a unanimous

view in the matter. Such exercise should be completed within four months.”

12. Aggrieved, Sanjeev Kumar Tyagi as well as ICAR have challenged the order dated August 16, 2012.

13. As per ICAR the Tribunal had failed to appreciate that the instant case was a matter of temporary transfer of Sanjeev Kumar Tyagi from CIPHET, Ludhiana to IINRG, Ranchi to fill the post of Principal Scientist in public interest, till that time when said post is filled up on regular basis or until further orders, whichever was earlier. The grievance is to the direction that once said post is filled up, Sanjeev Kumar Tyagi should be re-transferred to Ludhiana. Mr.Jagdeep Dhankar, learned senior counsel appearing for ICAR had urged that the Tribunal could not have put fetters on the discretion of ICAR to post Sanjeev Kumar Tyagi at any of its institute where his services could be utilized. Learned senior counsel pointed out that since he joined service in the year 1998, Sanjeev Kumar Tyagi had managed to work at Ludhiana.

14. Conversely, Sanjeev Kumar Tyagi pleads that the Tribunal had failed to consider that transfer of personnel was only possible in an equivalent position in the same discipline. By upholding order dated September 16, 2011, the Tribunal had erred in allowing transfer to the post of Principal Scientist in the discipline of Agricultural Chemistry and not appreciating that since there was no vacancy in the discipline of Agriculture Chemistry at IINRG, Ranchi, it was erroneously argued that both Agriculture Chemistry and Agriculture Chemical are one and the same. Explaining Sanjeev Kumar Tyagi being stationed all throughout at Ludhiana, learned counsel urged that from the career profile of Sanjeev Kumar Tyagi it would emerge that having joined service in the year 1998

under ICAR at Ludhiana his client was selected by open selection to the post of Senior Scientist on August 25, 2006 and once again by open selection to the post of Principal Scientist on January 22, 2010. Thus, learned counsel submitted that there was no question to even allege that Sanjeev Kumar Tyagi had managed to remain at Ludhiana in contravention of the transfer policy which envisages ordinarily a 5 years' tenure at a place of posting.

15. Whereas, if the service is an all India service, the right of the employer to transfer an employee to any place on exigencies of service requirement cannot be denied but it is equally correct to hedge the said right of the employer by denying the employer the right to transfer the employee to a place where the requisite work is not available for the employee.

16. We have noted herein above in paragraph 10 the reasoning of the Tribunal on the subject: Whether the discipline at Ranchi was other than that of Sanjeev Kumar Tyagi, and suffice would it be to state that we concur with the reasoning of the Tribunal keeping in view that the core area of the work remains the same. We find good reasons given by DG (ICAR) to hold that notwithstanding the nomenclature of the disciplines of Chemical Engineering and Agricultural Chemical, keeping in view the expertise of Sanjeev Kumar Tyagi and the work to be performed at Ranchi, it could not be said that he was being transferred to a post where no work was available for him. As noted above in paragraph 6, the DG (ICAR) looked into the subject of the Doctorate thesis of Sanjeev Kumar Tyagi which was '*removal of phenolic compound by activated carbon and regeneration of activated carbon*' as also the subject of his post Doctorate thesis which was '*removing colour of mustard oil from the by-product of rice milling industry*' to form an opinion that both subjects primarily related to 'Agricultural Chemistry'.

It is trite that where an expert on the subject renders an opinion, the same has to be tested on the well-known '*Fry's principles*'. Sanjeev Kumar Tyagi has not even made an attempt to question the opinion with reference to Fry's principles.

17. Thus, we find no error committed by the Tribunal in upholding Sanjeev Kumar Tyagi's transfer to Ranchi as we find the same being in public interest.

18. It is not in dispute that Sanjeev Kumar Tyagi's transfer to Ranchi is temporary till the post of Principal Scientist at Ranchi is filled up by open selection.

19. But, does Sanjeev Kumar Tyagi have a right to be posted back at Ludhiana?

20. Up till now law has recognized that the employer has the unfettered right to post an employee at such position which the employer feels is in the best interest of the organization.

21. But cases pertaining to transfer reaching the Court today evidence, and in particular, in Government service or service under public sector undertakings, that principles of Human Resource Development and Management which have been evolved over the years are being ignored. It is time for us to pen a few words on the subject.

22. The idea that individuals are capable of development is founded on the conviction that people are important and their involvement is necessary for an organization to be effective. Thus, human resources are a company's most valuable and strategic asset. In the hierarchical structure which we find in all organizations, the focused involvement of the top management with the employees down the pyramid has to ensure a healthy work relationship.

23. Way back in 1960, McGregor had opined that conservative managers view that average humans have an inherent dislike for work. (Probably motivated by the Biblical injunction: 'Thou shalt earn the bread through the sweat of thy brow.') On this fundamentally flawed theory, managers exercised close control over the people working in the organization acquiring the status of a supreme authority, synonymous with power. But, the modern philosophy of management is based upon an optimistic view of men and women. They are considered to be potentially creative, trustworthy and co-operative. McGregor himself acknowledged said fact. The modern philosophy believes that motive such as economic gain, social status, personal satisfaction etc. activate employees. The theory believes that an employee becomes highly motivated to work when he derives satisfaction from doing a work himself.

24. We have noted above that Sanjeev Kumar Tyagi is a highly qualified scientist having a Doctorate as well as a post Doctorate degree. We presume that he has chosen the career of being a scientist to satisfy his thirst for knowledge as also to have the satisfaction that his knowledge is beneficial to the society at large. This is reflected from the subject of research which formed the basis of his thesis for the Ph.D. and the D.Sc. degrees which he has obtained.

25. As we are given to understand, he chose the laboratory of ICAR at CIPHET, Ludhiana to dedicate his life because of the research facilities available there.

26. It is in this context we need to highlight that pertaining to scientists, the traditional theory of exigencies of service, which inherently applies to administrative functioning, may strictly not be applicable. It is not a mechanist exercise to see that the post to which a scientist is sent on transfer

is equivalent. The exercise has to primarily focus on the subject expertise of the scientist and whether compatible research facilities are available at the place where the scientist is posted. What use would it be to send a nuclear physicist to a missile centre?

27. Thus, the rigours put by the Tribunal that as and when the post of Senior Scientist is filled up at Ranchi, Sanjeev Kumar Tyagi should be transferred back to Ludhiana thus need to be loosened.

28. Dismissing W.P.(C) No.7366/2012 we dispose of W.P.(C) No.7079/2012 issuing a direction to ICAR to complete the selection process of Principal Scientist at Ranchi within 6 months from today and thereafter consider Sanjeev Kumar Tyagi to be posted, preferably at Ludhiana, but if not, at such laboratory where compatible infrastructure and research facilities, which would include scientists at the base of the pyramidal structure, exist, keeping in view the modern philosophy of Human Resource Development to which we have briefly alluded to in paragraphs 22 and 23 above.

29. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 08, 2013
dk/mm