

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

W.P. (C) No. 440 of 2019

Shri Gaipuichung Kamei, aged about 46 years, S/o Anjana Kamei of Namdunlong Stadium Road, Imphal East District, P.O. & P.S. Porompat – 795002, presently at Noney Bazar, Nungba Sub-Division, Tamenglong District - 795159

Petitioner

Vs.

1. The Union of India, represented by the Secretary, Ministry of Agriculture, Department of Agricultural Research & Education, New Delhi – 110001.
2. Indian Council of Agriculture Research, represented by its Secretary, Krishi Bhavan, Raisina Road, New Delhi-110001.
3. The Director, Indian Council of Agriculture Research, (Research Complex) for NEH Region, Umroi Road, Umiam-793103, Meghalaya;
4. The Chief Administrative Officer, ICAR (RC) for NEH Region, Umroi Road, Umiam, Meghalaya – 793103.
5. The Joint Director, ICAR Research Complex for NEH Region, Manipur Centre, Imphal – 795004.
6. The Senior Scientist & Head (PC)s, KVK, Tamenglong, Manipur-795141 and
7. The Administrative Officer, ICAR (RC) for NEH Region, Umroi Road, Umiam, Meghalaya-793103.

Respondents

BEFORE
**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH**

For the Petitioner	: Mr. Ng. Jotindra Luwang, Advocate
For Respondent No. 1	: Mr. W. Darakeshwar, Sr. PCCG
For Respondent Nos. 2-7	: Mr. Th. Henba, Advocate
Date of Order	: 16.01.2023

ORDER (ORAL)

Sanjay Kumar (C.J.):

[1] The Central Administrative Tribunal, Guwahati Bench, dismissed OA No. 042/00167/2019 at the admission stage *vide* order dated 28.05.2019. Aggrieved thereby, the applicant in the OA filed this writ petition. By order dated 31.05.2019, this Court suspended the orders dated 21.05.2019 and 22.05.2019, whereby the petitioner, a Subject Matter Specialist, was transferred from Krishi Vigyan Kendra(KVK), Tamenglong, Manipur, to Krishi Vigyan Kendra (KVK), Longleng, Nagaland. This interim order was extended thereafter from time to time and on 06.09.2019, it was directed to be continued until further orders.

[2] Heard Mr. Ng. Jotindra Luwang, learned counsel for the petitioner; Mr. W. Darakeshwar, learned Sr. PCCG, appearing for respondent No. 1; and Mr. Th. Henba, learned counsel, appearing for respondents Nos. 2-7.

[3] The grievance of the petitioner before the Central Administrative Tribunal, Gauhati Bench, in OA No. 042/00167/2019 was that he was illegally transferred under the impugned orders dated 21.05.2019 and 22.05.2019 from KVK, Tamenglong, to KVK, Longleng. The two main grounds of attack urged by him were that the order was punitive in nature but it had been passed without giving him an opportunity of hearing and, secondly, it was not in accordance with the guidelines issued under letter dated 12.09.2018.

[4] Perusal of the Office Order dated 21.05.2019 reflects that certain adverse remarks were recorded therein against the petitioner by the Chief Administrative Officer of the Indian Council of Agricultural Research, Meghalaya, basing on the observations made by a duly constituted committee of senior officials.

In the light of the same, the Chief Administrative Officer upheld the action of the Director of the Institute in transferring the petitioner from KVK, Tamenglong, to KVK, Longleng, in public interest. The representations made by the petitioner and his wife were accordingly rejected. Pursuant thereto, the Administrative Officer of the Indian Council of Agricultural Research, Meghalaya, issued the order dated 22.05.2019 transferring the petitioner from KVK, Tamenglong, to KVK, Longleng.

[5] Admittedly, the petitioner was not given any opportunity of hearing by the duly constituted committee before making adverse observations against him. That apart, the letter dated 12.09.2018 of the Under Secretary (TS), Indian Council of Agricultural Research, New Delhi, addressed to Directors/Project Directors/Zonal Coordinators of ICAR Research Institutes, etc., stipulated the guidelines/instructions regarding inter-institutional transfer of technical service employees of the ICAR. Therein, she stated that the competent authority to approve the transfers against direct recruitment (DR) posts would be the Secretary, ICAR, and not the Director of the Institute. Further, institutes desirous of making recruitment by transfer against DR vacancies were required to send a self-contained proposal to the Technical Services Division of the ICAR for approval of the Secretary, ICAR. This procedure, as per the Under Secretary, was applicable to all technical posts in the KVKs, including the posts of Subject Matter Specialist. It was clearly stipulated by the Under Secretary that transfers could only be made after approval from the Secretary, ICAR. The Under Secretary further noted that some institutes had already filled up posts by transfer without seeking approval of the Council and that such cases should not be reopened. However, she stipulated that where the selected incumbents had not yet been relieved by the lending KVK, the appointment should stand cancelled and all cases of inter-institutional transfers which were in

process and transfers which had not yet been effected would be covered by these guidelines.

[6] Significantly, the Office Order dated 21.05.2019 of the Chief Administrative Officer, ICAR, Meghalaya, recorded the fact that the petitioner, along with 4(four) others, had been transferred from KVKs under the Manipur Centre of the ICAR to other KVKs, vide order dated 05.04.2018 of the Director of the Institute. The Office Order further recorded that upon the petitioner's challenge to the order dated 05.04.2018 before the High Court of Manipur, the same was kept in abeyance till the matter was heard by the Central Administrative Tribunal, Gauhati, in OA No. 042/00420/2018. In terms of the directions of the Tribunal therein, the representations of the petitioner and his wife were directed to be considered and it was pursuant to this direction that the Office Order dated 21.05.2019 came to be issued. In effect, the transfer order dated 05.04.2018 passed before issuance of the guidelines under letter dated 12.09.2018 of the Under Secretary (TS), ICAR, New Delhi, was not given effect to and was therefore covered by the later portion of the said letter dated 12.09.2018, which read to the effect that all cases of transfers which were in process and which had not been effected would be covered by the guidelines stipulated therein.

[7] Mr. Th. Henba, learned counsel, fairly concedes that the approval of the Secretary, ICAR, was never obtained and the transfer of the petitioner was effected at the behest of the Director of the Institute and not the competent authority, in terms of the letter dated 12.09.2018.

[8] This being one aspect of the matter, perusal of the order dated 28.05.2019 passed by the Central Administrative Tribunal, Guwahati Bench, in OA

No. 042/00167/2019 reflects that the adverse observations made against the petitioner in the Office Order dated 21.05.2019 were taken note of by the Tribunal but, surprisingly, the Tribunal opined that the adverse remarks were irrelevant in the current context unless a formal disciplinary proceeding was initiated and expunged the adverse remarks. Having observed so, the Tribunal went on to state that it did not find any reason to interfere with the Office Order dated 21.05.2019 and dismissed the OA at the admission stage itself.

[9] As the very transfer of the petitioner was sustained by the Chief Administrative Officer ICAR, Meghalaya, in the Office Order dated 21.05.2019, on the adverse remarks made against him by the committee of senior officials, it was not open to the Tribunal to expunge the adverse remarks, on the one hand, but uphold the transfer that was made on the strength thereof, on the other.

[10] Thus, on both counts, the Office Order dated 21.05.2019 and the resultant transfer order dated 22.05.2019 were unsustainable in law. The order dated 28.05.2019 passed by the Central Administrative Tribunal, Guwahati Bench, in OA No. 042/00167/2019, holding to the contrary, is therefore set aside.

W.P. (C) No. 440 of 2019 is accordingly allowed. In consequence, the Office Order dated 21.05.2019 and consequential transfer order dated 22.05.2019 are set aside.

In the circumstances, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Sandeep