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W.P.No.26140 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.P.No.26140 of 2021

K.Sathish Kumar

... Petitioner

-vs-

1. Union of India
Rep. By its Director General,
Indian Council of Agricultural Research (ICAR),
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
2. Under Secretary (FS)
Indian Council of Agricultural Research (ICAR),
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
3. The Director
Central Institute of Fisheries Technology (ICAR-CIFT),
Willingdon Island, Matsyapuri, P.O.Cochin,
Kerala-682 029.
4. The Director (P)
Indian Council of Agricultural Research (ICAR),
Krishi Bhavan, Dr.Rajendra Prasad Road,
New Delhi – 110 001.
5. The Director
Central Institute of Brackishwater Aquaculture (ICAR-CIBA)
No.75, Santhome High Road, Raja Annamalai Puram,
Chennai, Tamil Nadu – 600 028.



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6. The Registrar,
Central Administrative Tribunal,
Chennai-600 104.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, calling for the records relating to Order in O.A.No.310/0246/2018 dated 19.12.2019 passed by the 6th Respondent Tribunal and quash the same and direct the respondents to allow the said Original Application as prayed for.

For Petitioner : Ms.Y.Kavitha
For R5 : Mr.S.Yashwanth

ORDER

(By D.Krishnakumar,J.,)

This Writ Petition has been filed, challenging the order of the 6th respondent, in and by which, the mutual transfer request made by the petitioner was rejected, thereby upholding the order of the 2nd respondent. The petitioner also sought a direction to the respondents to accept the request for mutual transfer.

2. It is the case of the petitioner that he was appointed as Agricultural Research Scientist on 01.07.2015 in the Indian Council of Agricultural Research (ICAR) and posted at Cochin. Since his wife has been working as Manager (Engg.) in the Tamil Nadu Co-Operative Milk Producers Federation Limited, Aavin at Transport Unit, Madhavaram, Chennai, the petitioner has submitted a representation dated 19.01.2017



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for his transfer to ICAR-Central Institute of Brackishwater Aquaculture (CIBA), Chennai, where, out of two posts of Scientists (Fish Processing Technology), one post fell vacant. Though the representation dated 19.01.2017 had been forwarded to the 1st respondent, there was no response from the 1st respondent.

3. It is further case of the petitioner that subsequently, he learnt that one Dr.Neethu sought transfer to Cochin on the ground of her husband working as Investment Specialist at ICICI Prudential Life Insurance Company Ltd., located at Cochin, both had agreed to submit representations for transfer on mutual ground. However, the 2nd respondent, by an order dated 08.08.2017, declined to grant mutual transfer, stating that there is no provision for mutual transfer under the transfer guidelines of ICAR, despite the fact that his wife / spouse has been working in Chennai. The petitioner has challenged the rejection order before the 6th respondent Tribunal, which was negated by the Tribunal and aggrieved by the same, the petitioner is before this Court.

4. Learned counsel for the petitioner strongly relied upon the proceedings dated 03.03.2009 in support of her submission that when the mutual transfer of similarly placed Scientists had been accepted in the year 2009, the refusal to extend such



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benefits to the petitioner is discriminatory in nature. She has also drawn the attention of this Court to yet another order dated 12.06.2018, wherein mutual transfer requests of several other employees had been considered. However, the respondents have taken a plea before the Tribunal that there is no provision to grant transfer on mutual basis in the post of Agricultural Scientists and the said plea is unreasonable and arbitrary, besides violative of Articles 14 and 16 of the Indian Constitution. Hence, the order of the Tribunal is liable to be interfered with.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for R5.

6. The reason for rejection of the request of the petitioner on mutual ground was that there is no provision in existence to effect transfer mutually. The 6th Respondent has gone into the facts of the case and rejected the claim of the petitioner. It is not known as to whether the transfer orders in respect of consideration of similar requests of some of the employees on earlier occasions were brought to the attention of the Tribunal or not. When the request for mutual transfer of other employees was considered, declining to grant similar relief, who stands on the same footing amounts to discrimination, which cannot be accepted. But, at the same time, the petitioner cannot demand transfer to the place of his choice as a matter of right in terms of the following



judgments of the Supreme Court:

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i) **Gujarat Electricity Board and another vs. Atmaram Sungomal**

Poshani, reported in **(1989) 2 SCC 602**;

"4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to other is an incident of service. No government servant or employee of public undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification, or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

ii) **Shanti Kumari vs. Regional Deputy Director, Health Services, Patna**

Division, Patna and others, reported in **(1981) 2 SCC 72**;

"2. Having heard learned counsel for the parties, we are of the opinion that the High Court rightly declined to interfere with the impugned order. Transfer of a Government servant may be due to exigencies of service or due to administrative reason. The courts cannot interfere in such matters. Shri Grover, learned Counsel for the appellant, however, contends that the impugned order was in breach of the Government instructions with regard to transfers in the Health Department. If that be so, the authorities will look into the matter and redress the grievance of the appellant."

7. Considering the fact that the respondents had considered the mutual transfer requests of some of the employees in an affirmative manner and the respective transfer proceedings have duly been annexed in the typeset of papers, the petitioner shall



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make a fresh representation for transfer to the respondents within a period of two weeks from the date of receipt of a copy of this order, so as to enable them to consider the request for mutual transfer under General Transfer Policy. If any such request is made, it is open to the Authorities concerned (in particular 2nd Respondent) to consider the request of the petitioner and take appropriate decision thereon on merits as well as in the light of the Transfer Policy prevalent, within a period of four weeks thereafter, bearing in mind the earlier transfer proceedings issued to the similarly placed persons.

8. With the above observations and directions, this Writ Petition is disposed of. No costs.

[D.K.K., J.,]

[K.B., J]

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Index: Yes / No

Internet: Yes / No

Speaking Order/Non Speaking Order

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To:

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Indian Council of Agricultural Research (ICAR),
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