2026 INSC 427

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.9330-9331 OF 2013

SADACHARI SINGH TOMAR **...APPELLANT(S)**

VERSUS

UNION OF INDIA & ORS. **... RESPONDENT(S)**

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. The instant Appeals are directed against the judgment and order of the High Court of Delhi dated 02.02.2012 dismissing Writ Petition (Civil) No. 3792 of 2002 filed by the appellant, as well as the subsequent order dated 02.11.2012 in Review Petition No. 239 of 2012, whereby the High Court declined to review its decision. By way of these impugned orders, the High Court affirmed the order dated 01.04.2002 passed by the Principal Bench of the Central Administrative Tribunal ("**CAT**") at New Delhi in Original Application No. 1276 of 2001, which had upheld the action taken by respondent no. 2, Indian Council of Agricultural Research ("**ICAR**"), *vide* Office Order F. No. 4-2/98-Per. III dated 31.01.2001, of curtailing the tenure of the appellant as Assistant Director General, Agricultural Research Information System ("**ADG-ARIS**") and reverting him to the post of Senior Scientist, Central Institute of Agricultural Engineering ("**CIAE**"), Bhopal, which he held prior to his appointment as ADG-ARIS.

2. The relevant facts, as they emerge from the record, may be summarised briefly. The appellant joined ICAR as a Scientist on 24.08.1978. Subsequently, he rose in service to the post of Senior Scientist at CIAE, Bhopal. On the basis of a selection process conducted by the Agricultural Scientists Recruitment Board ("**ASRB**"), the appellant applied for and was offered the post of ADG-ARIS through Office Order F. No. 2(5)/96-Per. III dated 07.01.1998. He accepted and was subsequently appointed to the post of ADG-ARIS w.e.f. 15.01.1998 "*...for a period of five years or until further orders, whichever is earlier*," in terms of the Office Order F. No. 4(2)/93-Per. III dated 11.02.1998.

3. During his tenure as ADG-ARIS, the appellant claims to have acted as a whistleblower in relation to alleged irregularities in the award of contracts by ICAR for the procurement of computer equipment worth Rs. 200 crores, as well as highlighting anomalies with Rs. 1000 crores sanctioned for the National Agriculture Technology Project ("**NATP**"). He states he raised multiple internal objections and made recommendations regarding the manner in which certain officials of ICAR were purportedly favouring certain private companies in the award of these contracts, and also made complaints to the Central Vigilance Commission and the Central Bureau of Investigation. He further contends that this expose led to displeasure at higher levels and triggered retaliatory action against him in the form of antedated adverse remarks in his Annual Assessment Reports ("**AARs**") and eventually, the premature curtailment of his tenure.

4. In particular, on 27.01.2000, an Office Order F. No. 12(6)/99-NATP was passed by ICAR removing the appellant from four NATP-related committees and further directing that NATP Information System Development files be directly sent to the Deputy Director General ("**DDG**") (Engineering), without being routed through the appellant. On 15.05.2000, a report titled "*Scientist is Shunted Out for Highlighting an ICAR Scam*" appeared in the Indian Express newspaper.

5. Subsequently, the AARs pertaining to the appellant for the assessment years 1997-1998, 1998-1999 and 1999-2000 were communicated to him on 16.05.2000, 19.07.2000 and 07.09.2000, respectively. He, in turn, assailed and sought to expunge the adverse remarks made in each of these AARs through representations dated 13.06.2000, 14.08.2000, and 06.10.2000. The latter two came to be rejected by way of a Memorandum F. No. 4-2/98-Per. III (Pt. II) dated 24.01.2001. Further, on the basis of those two AARs, his tenure was curtailed on 31.01.2001. The appellant challenged this order by filing OA No. 1276/2001 before the CAT on 21.05.2001.

6. Meanwhile, through Office Order dated F. No. 12(13)/Pt.II/99/NATP dated 04.08.2000, the Union Minister of Agriculture (as the *ex-officio* President of the ICAR Society) had authorized the institution of an enquiry against the appellant for his conduct of allegedly approaching the press, as well as any other lapses or misconduct, and appointed Dr. Kiran Singh, then DDG (Animal Sciences), ICAR, as the Enquiry Officer. In compliance therewith, a total of thirty-three charges were framed by Dr. Anwar Alam, DDG (Engineering). Chargesheet was served on

the appellant and the enquiry was conducted. On 21.05.2001, Dr. Singh submitted the Enquiry Report exonerating the appellant of all charges, including that of going to the press, and described them as "*baseless and motivated*" in nature.

7. Subsequently, on 04.01.2002, ICAR *vide* Office Order F. No. 4-2/98-Per. III partially modified its earlier order dated 31.01.2001 and transferred the appellant from CIAE, Bhopal to Indian Agricultural Research Institute ("**IARI**") New Delhi in the same capacity, effective immediately. This was stated therein to be as per his request. On 01.04.2002, the CAT dismissed OA No.1276/2001, and also recorded that the modified order went unchallenged. The appellant submitted his joining report on the same day (01.04.2002), though he denied making any request for transfer.

8. Shortly after, aggrieved by the order of the CAT, the appellant on 28.05.2002 approached the High Court by way of WP (C) No. 3792/2002. The same was dismissed by the Division Bench on 02.02.2012. The appellant thereupon filed RP (C) No. 239/2012, seeking review of the earlier judgment. The said review petition was again dismissed by the Division Bench by order dated 02.11.2012, thereby affirming the original judgment and order in WP (C) No. 3792/2002. The appellant now prefers the instant Appeals before this Court.

ANALYSIS

9. At the very outset, we observe that the appellant has claimed the protection of Article 311 of the Constitution; specifically, that under Article

311(2), he could not have been "*dismissed or removed or reduced in rank*" without an enquiry as contemplated therein. Such a submission is totally unsustainable. Article 311 applies only to civil servants or those who otherwise hold a 'civil post' under the Union or the State. ICAR, the respondent no.2 herein, functions as an autonomous Society which reports to the Department of Agricultural Research and Education, Ministry of Agriculture. Its recruitment, conditions of service, and any matters arising therefrom are governed by the rules and bye-laws of ICAR, including the dispute at hand. Thus, Article 311 is not attracted at all.

10. On the merits of the dispute, the CAT, at the first instance, had correctly observed that the appellant had no "*enforceable right*" to complete the full five-year term. The instant case is not one of the respondents-Authorities cutting short a prescribed minimum tenure having basis in some statute and/or binding judicial direction. Rather, at the time of appointment, the concerned Authority had expressly reserved the power to curtail the tenure at any point before five years by issuing further orders. Of course, this power is not absolute, but the judicial review of its exercise is subject to the well-settled standards governing administrative discretion i.e., review must be narrowly confined to assessing whether the action was arbitrary or irrational, tainted by *mala fides*, or colourable in nature, particularly *vis-à-vis* whether it imposes penal or stigmatic consequences without following the required disciplinary or natural-justice procedures. Our assessment must proceed within this limited framework, and cannot serve as an evaluation of the substance of the action. As a three-Judge

Bench of this Court in ***Deputy General Manager (Appellate Authority) and Ors. vs. Ajai Kumar Srivastava***[1] had expounded:

> *"25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact."*
>
> (emphasis supplied)

11. Now, the Office Order dated 31.01.2001 is not punitive *per se* and only reverts the appellant to the post held by him prior to his appointment as ADG-ARIS. Needless to say, transfer (especially mere reversion or repatriation) is ordinarily an incidence of service and cannot be said to amount to punishment in and of itself. Here, we note that the appellant has vehemently contended that post of ADG-ARIS was a 'Research Management Position', meaning that under Rules 5, 6, 11(6), and 21 of the Agricultural Research Scientists Rules, 1985 ("**ARS Rules**"), he was entitled to be placed in an equivalent position on the same

[1] [2021] 1 SCR 51.

scale and grade. Hence, he contends that his reversion to Senior Scientist at CIAE, Bhopal (two ranks below ADG-ARIS) was punitive in effect, if not in form.

12. This contention has been duly examined and negatived by the Courts below, which had perused and found that the various provisions of the ARS Rules relied upon contemplate only a transfer to a "*matching*" or "*suitable*" position "*in research work*" upon completion of the tenure (as opposed to curtailment, as in the instant case), and that too "*depending on the* [ICAR's] *needs*". As the CAT had rightly observed,

> "***12.*** *…on completion of the tenure, the officer is to return to a matching position in research work. This does not necessarily mean that it has to be a matching position with regard to the post and scale of pay as contended by the learned senior counsel. The applicant's tenure has also been curtailed in the present case and he has not completed the tenure of 5 years. Thereafter, this contention fails.*
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> ***13.*** *…The applicant has nowhere contended or roved that the post on which he has been transferred either earlier by the impugned order dated 31.1.2001 or thereafter by the modification order dated 4.1.2002 as Senior Scientist is not a matching position in research work. The later order has not been challenged. …Thereafter, even if, as contended by the learned senior counsel for the applicant the post of ADG, ARIS is a Research Management position outside the ARS it cannot be held that he has not been given a matching position in research work on his transfer."*
>
> (sic) (emphasis supplied)

13. We shall now examine whether the Office Order dated 31.01.2001 casts stigma on the appellant. To reiterate, the instant case is not one of termination; yet, the appellant contends that the curtailment of his tenure on the basis of the AARs for the years 1998-1999 & 1999-2000, characterizing his performance as 'unsatisfactory' and 'below average' respectively, was inherently stigmatic. In this

regard, we may profitably refer to the following observations of this Court in ***Pavanendra Narayan Verma vs. Sanjay Gandhi P.G.I. of Medical Sciences and Anr.***[2] on the point of what amounts to 'stigmatic' language in an order:

> *"Before considering the facts of the case before us one further, seemingly intractable, area relating to. the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job.*
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> *As was noted in Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences (supra):*
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> > *"At the outset, we may state that in several cases and in particular in State of Orissa v. Ram Narayan Das, AIR (1961) SC 177 it has been held that use of the word "unsatisfactory work and conduct" in the termination order will not amount to a stigma."*
>
> *Returning now to the facts of the case before us. The language used in the order of termination is that the appellant's work and conduct has not been found to be satisfactory. These words are almost exactly those which have been quoted in Dipti Prakash Banerjee's case as clearly falling within the class of non-stigmatic orders of termination. It is, therefore safe to conclude that the impugned Order is not ex facie stigmatic."*
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> (emphasis supplied)

[2] [2001] SUPP. 5 SCR 41 at Pg. 52.

14. We do note that the appellant contends that the AARs relied upon did not reflect his actual performance in those years or his overall service record, and also that he highlights the fact that they were communicated to him belatedly. Yet, as the Courts below have appreciated, the appellant has not been able to demonstrate any real consequential prejudice. The fact remains that the AARs were duly recorded and communicated to him, he was afforded a reasonable opportunity to make representations against them, and these were considered and rejected by the competent authority. It was only thereafter that he was reverted on the basis of these AARs in the following terms:

> *"Whereas performance of Dr. Tomar during the period he worked as ADG (ARIS) at ICAR Headquarters had been adjudged unsatisfactory and below average as reflected in his Annual Assessment Reports for the period 1998-99 and 1999-2000.*
>
> *…*
>
> *Now, therefore, the Competent Authority after taking into consideration the performance of Dr. Tomar as ADG (ARIS) has found that there is sufficient justification to terminate his tenure as ADG (ARIS) with immediate effect."*

On the standard described in ***Pavanendra Narayan Verma*** (*supra*), we do not feel such the above order casts any stigma beyond an unexceptional assessment of unsuitability.

15. The CAT had further noted that the AARs, pertaining to the two immediately preceding years, were relevant and were not drawn from the "*remote past.*"

16. What is borne out of the record, therefore, is a routine exercise of administrative assessment: the concerned respondent-Authority assessed the performance of the appellant, afforded him the required opportunity to respond, and subsequently curtailed his tenure on the basis of its assessment in neutral, non-stigmatic terms. Though the appellant has sought to place considerable reliance on the allegations of large-scale financial irregularities, as made by him, in order to demonstrate that the concerned respondent-Authority's actions culminating in the order dated 31.01.2001 were retaliatory in nature, we reiterate that our remit is limited to examining the legality of the administrative action impugned. Allegations of colourability and/or *mala fides* must be supported by clear, cogent and specific material, and cannot be inferred merely from the sequence of events or surrounding circumstances. Here, we find it highly apposite to quote a seminal decision of this Court on this point *viz.* ***State of U.P. and Ors. vs. Gobardhan Lal***[3]:

> *"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."*

[3] [2004] 3 SCR 337 at Pg. 344.

17. In fact, having gone through the record, including the AARs for the relevant period, it cannot be said that the concerned respondent-Authority's assessment of the appellant's performance and its concomitant actions were totally without basis, let alone meeting the abovementioned threshold of irrationality or perversity warranting interference. We cannot sit in appeal over this process.

18. Finally, adverting to the appellant's remaining contention that the concerned respondent-Authority ought to have awaited and considered the Enquiry Report dated 21.05.2001 before issuing the transfer order, we find that the same is misplaced. The enquiry expressly pertained to specific charges of misconduct against the appellant, and could not stand in the way of the curtailment of his tenure on the basis of the concerned respondent-Authority's assessment of his overall performance.

19. We also acknowledge certain ensuing developments. As discussed above, the appellant was transferred to IARI, Delhi on 04.01.2002. The CAT in its order had recorded that appellant had personally approached the competent authority and had requested and secured this posting; however, despite being advised to join, he neither challenged the order nor complied with it, "…*for reasons best known to him.*" Although he subsequently joined and submitted his joining report the same day, he denied having made the request therein. Moreover, the appellant himself has drawn our attention to the fact that he approached the High Court and obtained interim orders dated 22.07.2002, 30.09.2002, and 07.01.2003 in various writ and contempt proceedings initiated by him against

the concerned respondent-Authority. Eventually, however, by Office Order F.No. 2(3)/2002-AU dated 31.03.2004, ICAR accepted the recommendation of ASRB and promoted the appellant to the post of Principal Scientist with retrospective effect from 22.07.1998. This was done in suppression of an earlier order dated 16.04.2003, wherein ICAR had rejected the recommendation for appellant's promotion on the basis of his AARs for 1998-1999 and 1999-2000.

20. The appellant has since superannuated in July 2013. This Court on 17.10.2013 had directed that his retiral benefits be released to him and the concerned respondent-Authority has submitted that the same has been done.

21. We are satisfied that there is no merit in these Appeals, as also concurrently found by the Courts below. The Appeals are, accordingly, dismissed.

Pending applications, if any, also stand disposed of.

.....J.
(PRASHANT KUMAR MISHRA)

.....J.
(VIPUL M. PANCHOLI)

NEW DELHI;
APRIL 28, 2026.