

(2022) 06 CAT CK 0021

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00554 Of 2020

K. K

APPELLANT

Vs

Central Plantation Crops Research Institute, Kasaragod &
Others

RESPONDENT

Date of Decision : 07-06-2022

Acts Referred:

Rights Of Persons With Disabilities Act, 2016 — Section 8(3)(c)
General Financial Rules, 2017 — Rule 284, 285, 286, 286(1), 286(2)
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14

Citation : (2022) 06 CAT CK 0021

Hon'ble Judges : K.V. Eapen, Member A

Bench : Single Bench

Advocate : V. T. Madhavanunni, P. Santhoshkumar

Final Decision : Dismissed

Judgement

K. V. Eapen, Member A

1. The applicant in this O.A is an Assistant Finance & Accounts Officer at the Central Plantation Crops Research Institute (CPCRI), Regional Station, Vittal, Karnataka. He is physically handicapped having 45% permanent Locomotor Disability. He is under medical treatment in the KMC Hospital, Mangaluru, which, it is submitted, is about 40 kilometers away from Vittal. Though he submits that he was selected in a general vacancy in the capacity of a physically handicapped person, it appears from what has been furnished by respondents in their reply statement that he was appointed to the post of Assistant Finance & Accounts Officer as unreserved candidate against an unreserved vacancy and not in the vacancy of physically handicapped. Service conditions like transfer, appointment, etc., of employees of CPCRI are being managed by the Headquarters of the CPCRI at Kudlu P.O in Kasaragod in Kerala. The applicant is aggrieved by the office order dated 12.11.2020, produced as the impugned order at Annexure A11, by which the Competent Authority, CPCRI, Kasaragod has transferred him

to CPCRI Regional Station, Kayamkulam "with immediate effect, on public interest and pending disciplinary proceedings". It has also been indicated in the order that the applicant stands relieved with immediate effect.

2. The applicant submits that he has been suffering from recurrent bone fractures in both his legs and had undergone several surgeries in 2013. He had also suffered from brain hemorrhage and had undergone a craniotomy in 2013. Kidney stones were also detected in both kidneys for which stenting was done in 2017. He submits that he is still under regular treatment at KMC Hospital for his bone disorders and fractures. He has produced two medical certificates; one issued on 20.06.2017 (Annexure A7) by the HOD of Ortho Department of the KMC Hospital where it is stated that he requires attention with respect to his disability and he may need one and a half year treatment for restoration to normal health. Another certificate has been produced at Annexure A8 dated 20.11.2018 by the same HOD of the Ortho Department to the effect that he suffers from Osteoporosis and is under continuous treatment with Teriparatide (injection) for strengthening the fractured part of bone from November 2018 and it would require at least 2 to 3 years for the completion for enabling the patient to walk without support.

3. The applicant submits that, after his joining at CPCRI as AFAO on 01.06.2010, he continued there in the same capacity until the 2nd respondent (Acting Director of the CPCRI, Kasaragod) issued a transfer order on 13.06.2017 transferring him from Vittal to Kayamkulam. This order was challenged by him in O.A No. 180/512/2017 (Annexure A10). The application was allowed on 31.10.2017 by a Division Bench of this Tribunal quashing the transfer order after considering that he is entitled to the benefits of Chapter VIII of the Persons with Disability (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995 under which non-discrimination in Government employment in the matter of disability is assured. The fact that the applicant also appeared to be a 'whistle blower' in a matter of high Electricity Charges in the said Vittal Regional Station, which became high on account of the use of electricity by the CPWD contractor as well as in various other issues also convinced this Tribunal at that time that there was nothing to show that the transfer of the applicant was absolutely essential on administrative grounds. It was recorded at paragraph 15 of the Order dated 31.10.2017 at Annexure A10 that "this Tribunal feels that something other than the administrative grounds has been the driving force for the official respondents to slap an order of transfer on the applicant". In the light of these factors and in light of various decisions of the Hon'ble Apex Court as well as Hon'ble Kerala High Court in the cases referred to in the order, the transfer order qua the applicant was quashed and set aside.

4. The applicant submits that once an earlier transfer order was quashed by the Order of this Tribunal on various grounds it is surprising that the order at Annexure A11 dated 12.11.2020 has been issued by the respondent no. 3 (Administrative Officer, CPCRI, Kasaragod) transferring him again from Vittal to

Kayamkulam. The applicant submits that the reason stated in the transfer order at Annexure A11 is "public interest and pending disciplinary proceedings". However, it is submitted that there is no public interest in this matter and this is another malafide order as was done earlier in 2017. Further, no disciplinary proceedings have been initiated against him and not even a memo of allegations has been given to him. At the same time, he submits that he is continuing his crusade against corruption and pointing out financial irregularities. As he is the Assistant Finance and Accounts Officer (AFAO), it is his duty to check and verify excess expenditures and various financial misdeeds affecting the Institution, which he is doing. He submits that, on 09.06.2020 he had pointed out in writing large scale irregularities in the sale of Cocoa Pods by one Scientist in the year 2019-20 to the respondent no. 5, who is the Head of the Regional Station of CPCRI, Vittal. A copy of the report given by him has been produced at Annexure A12. Further, he had sent the email produced at Annexure A13 to the aforesaid respondent no. 5 in which he had informed regarding the differences in gross wages and contribution to Employees State Insurance (ESI) and Employees Provident Fund (EPF) which needed to be enquired into. It has been indicated at the Annexure A13 e-mail that the number of working days recorded in Muster roll and corresponding working days reflected in ESI ECR is different from the working days recorded in Muster Roll. The signature that had appeared in the SIC Diary Unit is that of a lady scientist called Dr. Priya U.K. It is his submission that these irregularities or misappropriations stated in the Annexure A12 and A13 report/email are very serious and that since he has pointed them out those responsible will have to face 'serious consequences'. Hence, at that point of time, some authorities in CPCRI wanted to axe and silence him. He submits that, in addition, three other Original Applications have been filed by him before this Tribunal:- O.A 638/2018 (regarding New Pension Scheme), O.A No. 43/2018 (for refund of New Pension Scheme contribution) and O.A No. 448/2020 (regarding reimbursement of medical claim). It is submitted that it is due to his stand against corruption and also for approaching this Tribunal that the respondents are hostile towards him.

5. Further, he submits that his two children are students at a school near Vittal and a transfer will cause dislocation in their studies. It is submitted that he himself, his elder sister and brother are suffering from a genetic disorder, for which they are undergoing treatment from the same KMC Hospital. At Kayamkulam, he will not get such medical care as the Ernakulam Hospitals are more than 100 kms away and the treatment at Ernakulam will not be equivalent to that of KMC Mangaluru. In addition, convenient and disabled friendly quarters are not available for him at Kayamkulam and there is no hospital at Kayamkulam or in nearby areas where expert treatment can be obtained. Thus, the Annexure A11 order is termed as malafide, illegal and whimsical and issued without considering transfer guidelines. It is also submitted that physically handicapped persons should be given special treatment in the matter of transfer as provided under Section 8 (3) (c) of the Right of Persons With Disabilities Act. The

Government of India had issued an Office Memorandum dated 31.03.2014, produced at Annexure A14, in which certain guidelines for providing facilities for disabled employees are provided. In paragraph H of the guidelines at Annexure A14, it has been indicated as follows:

"As far as possible, the persons with disabilities may be exempted from the rotational transfer policy/transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer/promotion may be given to the persons with disability subject to the administrative constraints.

The practice of considering choice of place of posting in case of person with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilised."

6. Thus, in view of the above, the applicant seeks the following reliefs:

"(a) To quash Annexure A11 transfer order issued by the respondent no. 3 with respect to the transfer of the applicant from Vittal to Kayamkulam.

(b) To direct the respondents to permit the applicant to continue at Vittal.

(c) Grant any other further relief or order as this Tribunal may deem fit and proper to meet the ends of justice.

(d) Grant the costs of this Original Application."

After the O.A was filed when the matter came up before this Tribunal on 07.04.2021 Counsel for the applicant Mr. V. T. Madhavanunni submitted that another inquiry of the Internal Complaints Committee (ICC) against the applicant was over and the applicant was on leave in the same station. The counsel for applicant thus sought an interim order of status quo against the transfer order since the complaint given by the lady scientist had not been proceeded with. This Tribunal, in an interim order on 07.04.2021, directed the respondents to maintain the status quo and not to relieve the applicant from the present station until the next posting date. The interim relief so granted has been continued at each hearing date. Counsel for the respondents, Mr. P. Santhosh Kumar then filed an M.A 703/2021 for vacating the interim relief granted. As no hearing on vacating the interim status quo order could take place, the Miscellaneous Application : 703/2021 is disposed along with this Order.

7. The applicant later moved a number of M.As for receiving various documents to establish malafide in his transfer through them and to establish that the action taken by him in combating corruption in the CPCRI is the main reason for his transfer. On 25.11.2020 the applicant filed an M.A for producing copy of the Rules that deal with the procedure to be followed in cases of Transfer of Charge of Finance and Accounts Officials like him. He has contended that a report of transfer in his case has to be duly made in Form GFR16, signed both by the relieved and the relieving officers, and the same will need to be sent to the Head

of the Department except in exceptional cases. He submitted that his matter does not fall under any of the exceptions stated in Rule 286 (1) of the General Financial Rules 2017. A copy of the General Financial Rules 2017 containing Rule 284 to 286 was produced at Annexure A15 along with the GFR 16 – Certificate of Transfer of Charge in Annexure A16. The applicant submits that, in his case as he is an AFAO, there is the matter of assuming responsibility for Cash, stores, cheques, receipt books, accounts, etc., for such special procedures are to be followed as prescribed in Rule 286 (2) of the said Rules. Therefore he contends that his charge cannot be given to a Scientist as this is against the instructions of ICAR to appoint Scientists to perform administrative works.

8. The respondents have filed a reply statement in which they submit that the CPCRI is a constituent unit of the Indian Council of Agricultural Research (ICAR). The rules and regulations framed by Government of India, as amended from time to time are applicable, *mutatis mutandis*, to ICAR until such time the ICAR frames and enforces its own rules and regulations in any particular matter. The applicant in the O.A had been appointed to a vacancy earmarked for unreserved candidates and was selected against the unreserved category and not in the capacity of a physically handicapped person. Being a AFAO, he is a Group B Officer who is having an all India transfer liability. While it is accepted that there are guidelines for posting and transferring physically handicapped persons in places near their residences, as far as possible, it is also submitted that there are no prohibitions, *per se*, in transfer of physically handicapped persons. It is submitted that transfer is a incidence of service and as per clause 4 of the offer of appointment (Annexure A2), the applicant's headquarters were to be at CPCRI Regional Station, Vittal for the present, even though he will be liable to serve in any Institute and/or office of the ICAR located anywhere in India. The applicant had accepted all these terms and conditions when he first reported for duty as AFAO at CPCRI Regional Station, Vittal on 16.06.2010. It is submitted that his health conditions are not disputed by the respondents. However, making an extrapolation from this to the effect that his health conditions prevent him from being transferred to any other place other than Vittal, which itself is a remote place, is not correct. It is submitted that treatment for the applicant is not only available at Vittal, but that, equally good hospitals are available in many parts of the country, including at his place of posting on transfer, i.e., Kayamkulam. The respondents also submit that, before coming into service in the ICAR, the applicant had been working in Kerala Agricultural University, Thrissur and under the Government of Kerala in various capacities in various departments in various places and had rendered not less than 15 years of service. He had, before joining at Vittal, applied for at least 15 positions outside Vittal, including for posts located at Kolkata, Chennai, Chandigarh, New Delhi, Goa, Bangalore etc. Thus, it is submitted that his health conditions may not be taken to cause inconvenience or complications in treatment if posted outside Vittal, as these conditions had not deterred him from applying for posts located outside the State of Karnataka and very far from Vittal.

9. It is submitted by the respondents that long after his posting at the Regional Station Vittal on 16.06.2010, after 7 years, he was transferred to Kayamkulam in place of one S. B. Baburaj, AFAO. It is submitted that as per the transfer policy adopted by the ICAR, persons holding sensitive posts for more than five years need to be shifted to other places or other sections in view of the Central Vigilance Commission (CVC) guidelines. It is submitted that if such rotational transfers are not effected in an organization, overstay and continuous postings afford scope for indulging in corrupt practices, developing vested interests, etc., which are not in the interest of the organization. The CVC had, therefore, emphasised periodical rotation of officials holding sensitive posts/jobs. However, when the CPCRI in exercise of these guidelines ordered an inter-institutional transfer vide the Office Order dated 13.06.2017, the applicant approached this Tribunal in O.A 180/512/2017 to officially set aside the transfer order. Later, the CPCRI implemented the Tribunal's order as at Annexure A10. It is also to be noted that the complaint of unauthorised consumption of electricity by a CPWD contractor, which was referred to in the Tribunal's Order, was followed up with a departmental proceeding against the technical officer at the CPCRI Vittal. The Inquiry Officer after conducting a detailed inquiry in the matter held that no financial loss was incurred to the CPCRI and the charges levied against the accused were also not proved. The finding was also accepted by Disciplinary Authority.

10. It is submitted by the respondents that the applicant has been relieved from Vittal by the impugned order at Annexure A11 with effect from 12.11.2020 and that there is no malafide in the impugned transfer order. It is further submitted that the transfer order issued earlier in 2017 and the impugned transfer order issued on 12.11.2020 are materially different. In the present case the applicant has been transferred in 'public interest and pending disciplinary proceedings'. It is also submitted that his contention that, so far, no disciplinary proceedings have been initiated against him is not true. As a first step for the initiation of disciplinary proceedings, the Director CPCRI had ordered a preliminary inquiry for examining the allegations leveled against him. The respondents have later filed an M.A giving a reply to M.A 702/2021 (filed in March 2022 by the applicant where they have enclosed a true copy as Annexure MR(1) of the charge sheet dated 14.10.2021 issued by the Adhoc Disciplinary Authority on the applicant under Rule 14 of CCS (CCA) Rules, 1965 as extended to the employees of ICAR). In addition to this, the respondents submit that an allegation had been received from an unmarried young lady scientist that the applicant had harassed and outraged her modesty. This was referred to Internal Complaint Committee constituted under the provisions of Prevention of Harassment of Women at Workplace Act for inquiry. A copy of the complaint dated 05.11.2020 has been produced by the respondents at Annexure R2(a).

11. It is further submitted that the CPCRI Headquarters had been receiving several complaints against the applicant regarding his involvement in corrupt practices, harassing employees on service and personnel matters and about his

offensive behaviour. Since they were either anonymous or pseudonymous, no disciplinary action had been taken against the applicant. However, because of the steady flow of complaints, the Director CPCRI, the Head of Administration and Head of Finance had visited the CPCRI Regional Station on 20.02.2019. They had conducted a staff meeting, after which, directions were given to the applicant to follow the rules strictly, provide proper and honest advice to the Head in financial matters and to not unnecessarily harass the employees. Since the situation did not improve, the Head of the Station later requested the Director CPCRI, the Head of the Administration and the Head of the Finance of CPCRI to once again revisit the regional station. It is submitted that there are many complaints [in addition to the sexual harassment complaint at Annexure R2(a)] including an allegation that the applicant himself had concurred his family's medical bills when his father was not dependent on him and drawing a pension of Rs. 18,100/- per month. He had drawn approximately Rs. 10,35,000/- against the Rules abusing his position as the finance officer of the Regional Station. This matter it is submitted is under investigation and is also the subject matter of the O.A No. 448/2020 filed by the applicant before this Tribunal. On 07.11.2020, the Director CPCRI, the Head of the Administration, the Head of the Finance and the senior most Head of the Scientific Divisions of CPCRI again visited the Vittal Regional Station. A meeting of scientists of the Regional Station was conducted at that time followed by a staff meeting. The proceedings of the same have been produced at Annexure R2(b). It is submitted that all the scientists who had participated in the meeting had made complaints against the applicant, some of them major and others minor. Dr. Priya U.K, Scientist, reiterated her written complaint against the applicant about her harassment in the open meeting. In the subsequent staff meeting too some technical officers complained against him. Consequently, the CPCRI had constituted a committee for conducting a preliminary enquiry regarding these complaints raised against the applicant in the interactive meeting, as per Annexure R2(c) dated 16.11.2020.

12. It is submitted by the respondents that there had been a complaint by the applicant that he had been locked inside the office by a pensioner which was submitted to the Head of Station on 30.01.2017. This complaint had been inquired into and both the applicant and the pensioner were advised by the Head of the Station. This it is submitted shows that there had been some high-handedness with other employees and pensioners. Even his allegation relating to irregularities in selling of Cocoa Pods was investigated by the Head of the Division. The report submitted could not reveal anything but some erroneous entries which have since been set right. The issue of EPF and ESI was one of the matters raised at Annexure R2(b) and the same has been referred to the Preliminary Inquiry Committee referred to in Annexure R2(c). It is submitted that the action of the applicant in sending the email dated 10.11.2010 was an attempt to influence the inquiry. It is also submitted that since the applicant is holding a senior and crucial post in the Regional Station, he has the potential for tampering with the evidence against him and influencing the witness(es). It is

submitted that he had made such attempts within the intervening period between the interactive meeting and his transfer order. This indicates that a fair and impartial inquiry is not possible if he continues to hold the post of the Finance Officer at the Vittal Station. Further, with reference to Annexure A13 it is submitted that if lapses are noticed in the contractor's bill, payment to the contractor will be made only after setting it right. It is also submitted that the applicant has hidden the fact that his ailing parents and two unmarried sisters who are supposedly availing the treatment from KMC Mangalore are actually residing at his native place, Eravakkad, Chittissery P.O, Thrissur.

13. In consideration of all the above factors, it had been decided by the respondents that retaining the applicant in the office he held in Vittal would be detrimental for the inquiry and thus, he was transferred to the Regional Station, Kayamkulam. The respondents also submit that, considering his health conditions as it would put heavy burden on him, suspension was not resorted to in his case. Since there was no post of AFAO available at CPCRI Kasaragod at the Headquarters he could not be adjusted there. After due consideration was given to his health conditions as well as the serious nature of allegations against him, it was decided to transfer him to Kayamkulam. It is submitted that the applicant will not suffer any undue physical hardship there as the medical facilities in and around the Kayamkulam station are much better than that in Vittal or Kasaragod. He can avail treatment for himself and his parents in Kayamkulam as there are very good specialiy hospitals in Ernakulam, Kollam or Pathanamthitta Districts. Further, it is submitted that Kayamkulam is much nearer to his hometown in Thrissur District than Vittal. It is also submitted that the O.M dated 31.03.2014, issued by DoPT relied upon by the applicant is to be considered at the time of normal transfers or while implementing the rotational transfer policy. Even within that order it is noted that a transfer of a physically handicapped person is prohibited. As per the DoPT directions a physically handicapped person can be transferred to a place near his residence. The place of residence of the applicant is in Thrissur District and Kayamkulam is nearer to Thrissur. Besides, there are only two places where he can be posted. Finally, his transfer was not just a routine or rotational transfer but a transfer pending inquiry based on a sexual harassment complaint and other considerations and would not come under the purview of the guidelines in the above memorandum. Thus, he was transferred in public interest and pending Disciplinary Proceedings and he has been relieved with effect from 12.11.2020.

14. The applicant then submitted a detailed rejoinder to the above reply statement. He submitted that as regards the treatment available at Kaymkulam, while there may be hospitals available there, he is getting specialised treatment at the Kasturba Medical College (KMC) Hospital, Mangaluru. The same quality of treatment may not be received elsewhere especially at Kayamkulam where specialised medical care is not available. All the places that he had applied for jobs earlier outside Vittal are all major cities where similar or better treatment facilities are available and that cannot be held against him. Further, he submits

that the post of AFAO is not a sensitive one as the AFAO has no discretionary powers nor is he capable of taking any policy decisions. There is no impediment in him continuing at Vittal for more than 5 years. As per the office memorandum dated 31.03.2014 issued by the Government of India, it is specified that persons with disabilities may be exempted from rotational transfer policy. This was also reiterated in the order of this Tribunal produced at Annexure A10. The Disciplinary Proceedings initiated as a result of the issue raised by him on the theft of electricity had not been taken up seriously by the respondents; though, it was only his strong stand that compelled the respondents to initiate disciplinary action. He being a Treasury Officer finance charges are to be handed over to the successor. Cash, Cheques, valuables, etc., are to be assessed and entrusted to the new incumbent as shown by him in the documents produced at Annexure A15 and A16. Other than this the applicant submits that the said scientist Dr. Priya U. K. had been called up for a serious lapse relating to passing a bill of a contractor for which he had asked for clarification. It is the reason why various allegations were made against him. His transfer has been ordered with the object of covering up these illegal transactions. Also, the Annexure R2(a) complaint submitted by Dr. Priya U. K is in question as Internal Complaints Committee has dropped the complaint against him by the scientist, as per the report of the ICC produced at Annexure A23. [The respondents have later submitted that this had been done mainly because of the delay by the complainant to submit the application to ICC and thus the justification in filing the complaint was not found satisfactory. It is thus submitted that the Committee did not go into the merits of the case.]

15. In addition to the above, the applicant has contested the issues raised by the respondents. He has brought to notice that his APARs' show that he is sincere and hard working. Even in the case where there was some problem with the APAR, he has produced Annexure A35 relating to the period 2019-2021 where the Appellate Authority has expunged the adverse remarks made by the Reviewing Officer in the APAR and has ordered that a copy of the order communicating the expunging of the adverse remarks and placing the same in the APAR of the relevant year would be sufficient to safeguard the interest of the concerned employee. It is submitted that the appellate authority had expunged adverse remarks in the APAR and hence the numerical grading given by the Reviewing Authority, i.e., 6.54 would stand. In short, the applicant submits that there are no allegations of corruption against him and that he never harassed any employees. He was strictly following the rules and it is his duty to keep vigilance over financial dealings. This has provoked objections from certain quarters who wished to do things according to their whims. As a result of this, the meeting was convened on 20.02.2019; but no lapses from his side were pointed out by anyone and not even a memo was issued to him on any issue. The allegation that he had himself concurred his family's medical bills is not correct. The medical bills were sanctioned by the respondent no. 5, after which the amount was received by the applicant as his dependents are also entitled for

medical assistance. In any case, the reimbursement of medical bills are under consideration of this Tribunal in O.A No. 448/2020. Thus, it is not correct to say that all the scientists made complaints against him. It is submitted that only one scientist had made some complaints, which was totally false. She might have also prompted technical officials working under her to complain against him but there was no truth or force in such complaints.

16. It is also submitted that the applicant never showed any high handedness to other employees or pensioners. The applicant himself being a disabled person cannot be expected to exhibit such high-handedness. It is also not correct to submit, as has been done in the matter of sale of Cocoa Pods, that they were mere erroneous entries; it is a case of misappropriation of lakhs of rupees. It is submitted that it is for covering up such embezzlements that he has been removed from Vittal. In addition, there had been serious issues relating to contribution paid by the contractor of workers employed under scientist Dr. Priya U. K. It is submitted that the ESI Department had traced serious forgeries and, thus, by removing the applicant from the present post, the respondents are trying to cover up these irregularities. Further, it is submitted that if he is transferred to Kayamkulam, there will be many hardships for him. From Vittal to Mangalore the distance is only 42 kms but from Kayamkulam to Ernakulam the distance is more than 100 kms. At Kollam and Pathanamthutta, there are no hospitals which can provide the same quality of medical care he and his family got in Mangalore. Also, his salary has not been disbursed since

12. 11.2020 and he is being harassed by all means like creating the false case of sexual harassment and denying salary. In any case, the ICC has dropped the complaint against him after due process and he has joined the office after the interim order passed by this Tribunal.

17. I have considered all the above aspects and have heard the learned counsel for the applicant as well as the standing counsel for the respondents. It is clear from the details brought out above that the applicant has been on a collision course with the officials at CPCRI for a very long time. However, there is no avoiding the basic fact that he has been posted at the CPCRI, Vittal almost continuously for a period of more than 10 years and even the one transfer order that was issued on him earlier was interfered with by this Tribunal. This transfer order at Annexure A11 was issued in public interest and pending disciplinary proceedings, which have since been initiated against him on 04.10.2021, as evidenced by the memorandum issued by the Disciplinary Authority produced at Annexure MR (1). On going through the charges in the proceedings it is seen that they relate to improper maintenance of main cash book of CPCRI Regional Station, Vittal and reconciliation of the Bank Scroll for the year 2019-20, failure to maintain GPF ledger and GPF Board sheets properly which appear the basic duties for a finance and accounts officer. In addition, there are charges relating to misbehaviour with many of his colleagues and also receipt of medical reimbursement in respect of his mother and unmarried sister, for a long time,

even though his father was alive and is a pensioner, earning more than Rs. 9,000/- per month as pension. Of course these charges are to be inquired into and a conclusion provided to the disciplinary proceedings. Further, it does appear that there had been constant complaints relating to his misbehaviour. The proceedings of the meeting of the scientists held on 07.11.2020 produced at Annexure R2(b) are fairly revealing in terms of the difficulties that various scientists working in the Regional Station Vittal have been facing from him.

18. Whatever be the actual situation, all the above issues are largely of an administrative nature better known and settled by the officials handling them. The question that is before this Bench is only whether the order of transfer of the applicant was malafide, illegal or beyond the scope of the authorities and has interfered with his natural justice. It has also to be considered whether as a person with disability, the applicant deserves special consideration for retention at Vittal. I am guided by pronouncements of the Hon'ble Apex Court and various High Courts in this connection. It is clear that no Government servant who has an all India transfer liability like the applicant, has any vested legal right to be posted at any particular place, particularly, when his recommended tenure of 5 years was over a long time back. It is also a fact that people who hold posts involving handling of finance and accounts and the passing of bills, are recommended to be rotated from their post. This has also been indicated in the guidelines issued by the Central Vigilance Commission. Thus, the transfer of such an employee in the normal course would be taken as nothing more than an incidence of service as it also appears that all the posts in ICAR/CPCRI have an all India transfer liability. It is further submitted that there are only two posts that the applicant can hold, one being at Vittal and the other being at Kayamkulam.

19. Thus, given the above, a transfer in public interest is the prerogative of the appropriate competent authority. There are sufficient grounds provided by the respondents in the context of the details of the case that appears to justify the move of the applicant from Vittal to Kayamkulam in the interest of administrative exigencies after a long period of 11 years. Further, while it is true that his disability requires treatment, the certificates produced by him; first at Annexure A7 and then Annexure A8 shows that the Head of the Department of KMC Hospital at Mangalore has given varying dates at different points of time relating to when his disability would improve. In Annexure A7 dated 20.06.2017, it is indicated that he needed medical attention for about one and a half years for restoration in normal health, whereas in Annexure A8 issued on 20.11.2018 which is after one and a half year, it is written that he would require 2 to 3 years for enabling him to walk without support. Such medical certificates issued at different points of time by a private hospital even if renowned cannot be taken at face value especially if they are apparently contradictory. Whatever be the case, it does not appear from the facts provided that the applicant's disabilities are of a nature that he cannot work in other places, as long as there are adequate medical facilities for his treatment nearby. It is not the case that Kayamkulam is

bereft of such facilities and, indeed, as pointed out by the respondents it perhaps has even better medical facilities than either the Headquarters at Kasaragod or even near the station at Vittal. The area around Kayamkulam is also said to have, as per the respondents, sufficient specialty hospitals where he can get treatment including at Kollam, Pathanamthitta, etc. In any case, in this era of tele-medicine, unless there is an emergent serious life threatening procedure, it does not appear that sufficient grounds have been provided for retaining the applicant at Vittal for medical reasons or on grounds of his disability. The guidelines of the Government, which have been produced at Annexure A14 only state that as far as possible persons with disability should be exempted from transfer and given preference in the place of posting. In this case, he has been given a preference for place of posting (as well as no transfer) for more than 10 years. It cannot be stated, therefore, that the proposed transfer is against the guidelines or any instructions relating to persons with disabilities.

20. There is also the question of serious allegations against the applicant. Even the complaint of sexual harassment was only dropped because the complainant failed to follow it up with the competent authority within stipulated period. This does not belie the fact that there have been complaints against him for harassment of pensioners as well as other employees as evidenced in the reply statement in the proceedings. He may have his own version regarding the financial and other issues but there are to be decided only at the level of the respondents. Overall it appears that the applicant had been given a long rope in the past, and was also supported by this Tribunal by its orders passed in O.A 512/2017 dated 31.10.2017. The orders passed by this Tribunal were only in the context of issues prevailing at that time and cannot be taken as a reason for permanent interference with further orders relating to his transfer for all time to come. The context and the reasons for the transfer at this point of time are different and, unlike the last time, I do not find that issues of malafide or unequal treatment or natural justice being affected are established. On the other hand, it appears that the respondents had given a sufficient leeway, treating him with caution, giving him advice to improve his functioning, but may not got the proper response. Further, as there is a disciplinary proceeding pending, it would be suitable for the applicant to be kept away from his previous office during the time of hearing of proceedings.

21. For all the above reasons, it is not found necessary to interfere with the order of transfer. The O.A is therefore dismissed and the M.A No. 703/2021 to vacate the interim order is also closed in the light of these orders. No order as to costs.