

2

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1409/2002

New Delhi this the 9th day of July, 2002.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Dr. Vikas Ram Pal,
Chief Medical Officer,
Sushruta Trauma Centre,
S/o Sh. C.R. Rampal,
R/o C-3/103, Phase-II,
Ashok Vihar,
Delhi.

-Applicant

(By Advocate Shri Sachin Chauhan)

-Versus-

1. Union of India,
through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.

2. Secretary Health and Family Welfare,
Government of N.C.T. of Delhi,
Secretary Delhi Govt. I.P. Estate,
New Delhi.

-Respondents

(By Advocate Shri Ajesh Luthra)

ORDER

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' action in transferring him from Sushruta Trauma Centre (STC, for short) to Directorate of Health Service (DHS, for short). Although the order was not annexed, but later on the same was furnished by the applicant, wherein by an order dated 22.5.2002 applicant working in the GDMO cadre as Chief Medical Officer (CMO) in STC has been transferred to DHS and was simultaneously relieved of his charge without a separate relieving order. He has sought production of record and setting aside of the order as well as directions to the respondents to keep him at STC as CMO.

2. Applicant through UPSC joined as a Junior Scale Class-I Officer in Central Health Scheme on 18.7.76 and

was promoted as Senior Medical Officer and CMO in the year 1990 and 1996 respectively.

3. Applicant was initially deputed to LNJP Hospital and thereafter to DHS of Delhi Government and again deputed to LNJP Hospital.

4. In the year 1998 on a decision to establish a Trauma Centre (TC) applicant was deputed as a nodal officer to oversee the project and thereafter Lieutenant Governor of Delhi created 187 posts for the Centre. Applicant was posted as CMO.

5. On 16.5.2001 while working as CMO, an injured named Shamshad Ali was brought dead. On enquiries it was found that the patient was first taken to Sunder Lal Jain hospital but as the relatives have failed to deposit the money demanded, patient was sent to TC. MLC of the deceased was prepared and subsequently on post-mortem by Dr. K.L. Sharma a case FIR No.311/2001 dated 23.5.2001 was registered by the Police under Section 304/IPC against Dr. Chander Prakash who was the President of Sunder Lal Jain Hospital. In pursuance thereof he remained in judicial custody. Consequent upon the registration of FIR on the basis of press cutting Medical Council of India sought comments from the applicant as well as a similar enquiry was conducted by the Government of NCT of Delhi. A chargesheet was finalised against Dr. Chander Prakash.

6. Applicant approached the Tribunal earlier in OA-2066/01 against his apprehended transfer on malafide. By an order dated 5.10.2001 as the respondents have stated that there

was no move to transfer the applicant, OA was disposed of as infructuous, with liberty to the applicant to pursue his remedy as and when cause of action arises.

7. Applicant has now approached this Tribunal without receiving the transfer order and on an apprehension that he has been transferred to DHS not in administrative exigencies but by way of a punitive action and malafide intention.

8. Learned counsel appearing for applicant Sh. Sachin Chauhan assails the order on the following grounds:

i) by referring to the transfer order it is stated that the same has not been passed by a competent authority. It is stated that being appointed in CHS Government of NCT of Delhi has no jurisdiction to issue an order of transfer as there is no delegation of the power of transfer from CHS to Govt. of NCT of Delhi and having not notified in the gazette the delegation is not valid.

ii) It is contended that the impugned order is punitive and is not sustainable as vitiated by personal as well as legal malafides, as the applicant who was instrumental in making some observation in the MLC regarding the way the deceased was treated at Sunder Lal Jain hospital which after the post-mortem on the report of Dr. K.L. Sharma ultimately culminated into a FIR registered against Dr. Chander Prakash who has used his influence in getting the applicant transferred.

iii) It is stated that apparently no transfer guidelines have been issued by the Government, yet the transfer is neither in the exigencies of service being an incident of service nor is in public interest. Rather taken as a measure of punishment as the applicant had been performing his duties with utmost devotion and sincerity and has not made any derogatory remarks or commented against any of the colleagues. He has acted in consonance with the directions of the Apex Court in Permanand Kataria's case where the road accident victims are to be administered medical attention even in the nearest private hospitals or nursing homes. As Shamshad Ali was not administered emergency treatment but was sent in a serious condition to TC having failed to pay the requisite amount applicant being a prosecution witness in the investigation Dr. Chander Prakash used his influence to get the applicant transferred. It is stated that a malice in law is established as before transferring the applicant he has not been accorded an opportunity to explain his case.

iv) It is contended that as the applicant has put in only three years in the TC and was performing his job with sincerity and his individual efforts has made the Centre most acclaimed for treatment of emergency and road accident cases the abrupt transfer of the applicant without any administrative exigencies is certainly a stigma upon the applicant. Placing reliance on a decision of the Lucknow Bench of this Tribunal in Bhagwati Prasad Verma v. Union of India, 2001 (1) ATJ 133, it is contended that if the authorities fail to satisfy the court about the administrative exigencies and public interest involved the transfer order cannot be sustained. He further placed

reliance on a decision of another coordinate Bench in D.R. Senegal v. Chief Postmaster General & Ors., 1991 (1) ATJ 243. and contended that transfer order would be bad if no justifiable reasons are forthcoming.

9. The learned counsel Shri Ajesh Luthra appearing for the respondents denied the contentions of the applicant and contended that the OA is filed without annexing a copy of the transfer order. While referring to the competence of NCT Delhi it is stated that in the meeting held on 6.1.97 it has been decided by the Government of India to delegate the power of transfer in respect of CHS officer to the Government of Delhi and thereafter a decision has been taken through a letter dated 30.9.97, which authorises Govt. of NCT of Delhi to pass such order. By referring to the memorandum of appointment it is stated that the applicant was appointed as Medical Officer of the grade of CHS and against the post in Delhi Administration with all India transfer liability. It is stated that on 31.7.86 he was also posted to LNJP Hospital by an order issued by the Delhi Administration. In this view of the matter it is stated that the Govt. of NCT of Delhi is competent to issue transfer orders of the applicant. It is stated that if the applicant is posted outside Delhi only then the competence of cadre controlling authority come into play. As such the orders passed are within the jurisdiction.

10. As regards cognizance of newspaper cutting is concerned, it is stated that the same cannot be taken not of and in a death when a patient has not been treated well

and administered emergency treatment Government owes duty to act against Sunder Lal Jain Hospital for which enquiries have been started.

11. As far as malafides against Dr. Chander Prakash is concerned, it is stated that FIR was lodged not at the behest of the applicant but on account of post-mortem report of Dr. K.L. Sharma and Dr. Chander Prakash has no influence over the Government, which has to act independently and apart from MLC other independent material was also available on which FIR was lodged. It is stated that the contention of the applicant is a mere apprehension and malafides have to be established by strong evidence conclusively pointing out towards the person against whom the malafides are alleged. It is stated that no material has been produced by the applicant to indicate as to how the Government has been influenced by Dr. Chander Prakash.

12. It is objected that against the transfer order the applicant has not made any representation.

13. As regards the contention of last come first go, it is stated that the TC is part of LNJP Hospital and this principle is not applicable as a routine transfer it is in administrative exigencies and applicant has no right to remain posted at a place of his choice. It is stated that no show cause notice or reasonable opportunity is to be afforded before a routine transfer.

14. It is stated that the respondents have not infringed the rule of inter-changeability of sub cadres and the CMO post is kept vacant and would be filled up by a suitable officer.

15. In a nutshell it is contended that the transfer is in administrative exigencies and cannot be interfered with by this court in the absence of any malafide or violation of the statutory rules. As his services are not essentially required in TC, being a non-specialist Medical Officer his attempt to continue in TC is not permissible.

16. In the rejoinder the applicant has raised the issue of inter-changeability of cadre and stated that various officers of GDMO sub cadre have been retained and the applicant has been singled out for the reasons best known to the respondents. As the applicant was appointed as CMO in GDMO cadre against a sanctioned post in TC, he cannot be replaced by a different cadre officer, though it is open for the respondents to post any number of specialists against their strength and sanctioned posts but in this manner rights of the applicant cannot be encroached upon.

17. I have carefully considered the rival contentions of the parties and perused the material on record. From the perusal of the record I find that the applicant has assailed an apprehended transfer, which though later on effected by an order dated 22.5.2002 the aforesaid transfer order has not been incorporated in the pleadings by the applicant.

18. Moreover, I find that the applicant in his rejoinder has referred to CHS Rules, 1996 and agitated the issue of inter-changeability of GDMO and specialist cadre. Applicant has also stated that the reasons assigned for transfer that the applicant being a GDMO officer with only MBBS degree without any specialisation whereas in TC which requires services of the specialists has been posted and his further contention that GDMO cadre officer can only be posted against the post of CMO and not a specialist, and above all, the statement of the respondents' counsel that CMO post is kept vacant and some other persons would be posted, the resort of the applicant that no justifiable reasons have been accorded by the respondents to explain the exigencies of service in transferring the applicant, I find that against the transfer order applicant has not preferred any representation. He has resorted to the OA, which cannot be countenanced, in view of Section 20 of the Administrative Tribunals Act, 1985.

19. In the result, without expressing any opinion on the merits of the case and in view of the decision of the Apex Court in Union of India v. S.L. Abbas, 1993 (2) SLR 585 where the following observations have been made:

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same places. The said

(9)

guidelines however does not confer upon the government employee a legally enforceable right.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matter. This is evident from a perusal of Article 323-A of the Constitution."

I dispose of the present OA giving liberty to the applicant to make a representation to the respondents within a period of two weeks from today, which shall be considered by the respondents in the light of the contentions of the applicant taken therein as well as with regard to the exigencies of administration and to pass a detailed and speaking order thereafter within a period of two weeks from the date of receipt of a copy of the representation. Till then the status quo shall be maintained. No costs.

S. Raju
(Shanker Raju)
Member (J)

"San."