

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1729 of 2002

New Delhi, this the 15th day of September, 2002

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HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

1. Dr. A.K. Jena
S/o Shri S.C. Jena
Aged about 55 years
R/o 17/125 Sector 8,
Rohini,
Delhi-110 085.

And employed as

Chief Medical Officer,
Rural Health Training
Najafgarh, New Delhi.

2. Dr. K.C. Panda
S/o Shri Gangadhar Panda,
Aged about: 52 years
R/o 8-61, Vijay Park,
Naya Bazar, Najafgarh,
New Delhi-110 043.

And employed as

Chief Medical Officer
(Non-Functional Selection Grade) and
Officer-in-Charge,
Primary Health Centre, Palam
(Under Rural Health Training Centre,
Najafgarh,
New Delhi.

-APPLICANTS

(By Advocate: Shri B.B. Raval)

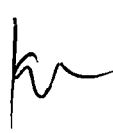
Versus

1. Union of India
Through the Secretary,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhawan, New Delhi.
2. The Director General,
Directorate General of Health Services,
Ministry of Health and Family Welfare,
Government of India,
Nirman Bhavan, New Delhi.
3. Dr. Charan Singh
Officer-in-Charge,
Rural Health Training Centre,
Najafgarh,
New Delhi.

-RESPONDENTS

(By Advocate: Shri S.P. Singh, Counsel for respondent
Nos. 1 and 2)

Shri R.P. Sahi, Counsel for
respondent No.3)



ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)


This is a joint application filed by two applicants whereby they have challenged the orders Annexure A to B. Vide Annexure-A, the Government of India, Ministry of Health and Family Welfare had conveyed the order passed by the competent authority appointing Dr. Charan Singh, a Public Health Sub-Cadre Officer, working at RHTC, Najafgarh will be designated as Officer-in-Charge of RHTC, Najafgarh with immediate effect. Vide Annexure-B both the applicants who were working as CMO, Non Functional Selection Grade (NFCS) of Central Health Service were transferred from Rural Health Training Centre, Najafgarh to Central Government Health Scheme, Delhi immediately in public interest. Vide Annexure 'C' the applicant No.1 was relieved from his duties from RHTC. The applicant No.1 alleges that he was appointed as Medical Officer on probation to Assam Rifles on 30.10.1976 from where he was transferred to Delhi Administration and joined the Delhi Administration on 24.12.1979. Then he was again promoted in the Senior Class I scale of CHS and assumed the charge of the post of Chief Medical Officer on promotion in the scale of Rs.3700-5000. He was also declared permanent vide Gazette Notification dated 17.11.1992. Then he was again transferred to Central Health Education Bureau, Delhi from Delhi Administration vide order dated 3.1.1997 and he was also promoted to the post of Chief Medical Officer (NFSG) w.e.f. 1.1.1997 and on 7.3.2002 he was transferred



from CHEB to RHTC, Najafgarh, Delhi. He has taken over as PHC Incharge, Najafgarh and worked in that capacity till 31.5.2002.

2. The applicant also claims that he had made a representation to the Ministry of Health and Family Welfare requesting for consideration for the post of permanent Officer-in-Charge and apprehending that their junior Dr. Charan Singh is being considered for the post. He has also enclosed an order dated 21.1.1993 issued by the Government of India, Ministry of Health and Family Welfare communicating the decision of the Ministry that the seniormost Chief Medical Officer at Rural Health Training Centre, Najafgarh will be the Officer-in-Charge of the RHTC and on retirement of the earlier Officer-in-Charge the applicant No.1 is the seniormost Chief Medical Officer at RHTC who will be considered for the post of officer-in-charge at RHTC, on retirement of the Chief Medical Officer. However, without replying to the representation dated 30.5.2002, the respondents issued an order on 24.6.2002 designating Dr. Charan Singh as Officer-in-Charge, RHTC, New Delhi. Similar is the case of applicant No.2. So both of them have challenged the order vide which Dr. Charan Singh has been appointed as Officer-in-Charge of RHTC, Najafgarh, New Delhi.

3. In the grounds to challenge the same the applicants pleaded that they are highly qualified for the post of Chief Medical Officers of NFSG and have sufficient length of service as compared to respondent No.3, Dr. Charan Singh who was also appointed only in the year 1995 and he is not only junior but is also in



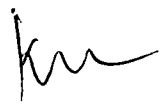
the lower scale of pay and yet he has been made Officer-in-Charge and both the applicants have been transferred illegally against the rules from RHTC to CGHS, New Delhi.

4. It is also submitted that the respondents have not considered the representation of the applicants who have been ignored and very much junior person Dr. Charan Singh who was selected by the UPSC for appointment to the post of Specialist Grade-II of Public Health Specialist had accepted the offer of appointment and has been made incharge whereas he should be allowed to join the post of RHTC, Najafgarh instead of Officer-in-Charge.

5. After the OA had been filed the respondents pleaded that the posting of Dr. Charan Singh as Officer-in-Charge is in consonance with the Notification, Annexure R-I. Thereafter the applicants amended the OA and challenged Annexure A-I and stated that the same is violative of the fundamental rights of applicants as they are far senior with more than 25 years of service against only seven years of respondent No.3 so it is their right to become Officer-in-Charge.

6. The respondents are contesting the OA. The respondents in their reply pleaded that according to the respondents Central Health Service Rules, 1996 of the department of Health, Ministry of Health and Family Welfare, Government of India has following four streams of service:-

(a) General Duty



(b) Public Health

(c) Non-teaching Specialist and

(d) Teaching Specialist

It is submitted that each stream is called as Sub-Cadre. The recruitment, promotion etc. are governed by the statutory provisions relating to each sub-cadre of the CHS Rules, 1996 each sub-cadre has grades and each grade having distinct scale of pay. Both the applicants belong to the sub-cadre of General Duty (Medical Officers Grade) comprising posts of Medical Officer, Senior Medical Officer, Chief Medical Officer and Chief Medical Officer (NMSG) in its hierarchy of the General Duty Medical Officer whereas the respondent No.3 belongs to a different Sub-Cadre, namely, Public Health comprising Specialist Grade-II (Junior Scale), Specialist Grade-II (Senior Scale), Specialist Grade-I and Supertime Grade.

7. It is further pointed out that each officer in the sub-cadre holds the post specified in it and is eligible for promotion to a higher post in that sub-cadre only. However, in exigencies of service the competent authority may make purely temporary ad hoc arrangements in the public interest without disturbing the status of the officer or sub-cadre strength.

8. It is further submitted that the posting in question, i.e., Officer-in-Charge in the Rural Health Training Centre, Najafgarh is in Public Health Sub Cadre

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and is required to be held by respondent No.3 belonging to Public Health Sub-Cadre and not by any other officer who belong to general duty sub-cadre. The relative seniority of officers as already stated is maintained sub-cadre-wise and the claim that the applicants in OA are senior to respondent No.3 is wholly irrelevant for their posting as Officer-in-Charge RHTC.

9. It is further pointed out that the Association of Public Health Specialists made a representation on 20.7.1998 that the post of Officer-in-Charge should be held by officer belonging to their cadre and since this post was earlier being held by officer belonging to the officer of another cadre, Dr. Naik, a general duty sub cadre officer. He had superannuated on 31.5.2002 and the stop gap arrangement thereafter stood terminated. The competent authority rightly in exercise of the powers under the Central Health Service Rules, 1996 designated the respondent No.3 to the post of Officer-in-Charge vide order dated 24.6.2002 and both the applicants were transferred to their respective Sub-Cadre General Duty posts in the CGHS vide order dated 26.6.2002. The applicant No.2 was relieved on 28.6.2002. But it is not in dispute that the applicant belongs to General Duty Sub Cadre and they held the post of CMO, NFSG, thus it is submitted that the posting of respondent No.3 and transferring of both the applicants to their Sub-Cadre is in accordance with the rules and by issuing these orders there is no financial loss or loss in seniority or the like caused to the applicants nor any service condition altered to the prejudice to the applicants.

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10. I have heard the learned counsel for the parties and gone through the records of the case.

11. The short question in this OA is whether the Officer-in-Charge, RHIC can be appointed belonging to different cadre. According to the rules as per Annexure R-I which is a Gazetted Notification dated 8.11.1998 which has been issued in exercise of powers conferred by the proviso to Article 309 of the Constitution of India makes it clear that there are 4 sub-cadres in the Central Health Service Rules, 1996 and 4 cadres have been specifically mentioned in the schedule to the Gazetted Notification. The post under various sub-cadres has also been mentioned under the Heads of different cadres. The post of Officer-in-Charge of the RHIC belongs to the sub-cadre of Public Health. To that effect there is no dispute and that is why after the reply was filed probably applicants in their wisdom have challenged Annexure R-1 on the vague allegations that it violates their fundamental rights. But the fact remains that since the job requirement of Officer-in-Charge of RHIC is a different one and the rules issued under Article 309 have rightly placed this post under Public Health so the applicants who belong to a different sub-cadre cannot have any claim for the post of Officer-in-Charge of RHIC since the said post belongs to Public Health Sub-cadre so the applicants cannot have legitimate grievance against their appointment for being appointed as Officer-in-Charge RHIC and in order to see that these applicants do not suffer the feeling of any humiliation as they are senior as far the length of service is concerned, that is why they had been transferred so that

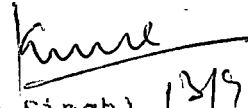
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they may not have to work under the officer where their Office Incharge is having lessor length of service though they belong to different cadres. So in these circumstances I find that the posting of Dr. Charan Singh, respondent No.3 as Officer-Incharge is fully in consonance with the rules framed by the Government of India for the Central Health Service.

12. The next point raised by the applicants with regard to appointment of Dr. Naik is concerned, I may mention that he was appointed to the post of Public Health Service only as a stop-gap arrangement because of exigencies of service. But applicants cannot have any claim with regard to the said post as a matter of right and it is the discretion of the Government to see to it that who has to be appointed on a particular post as a stop gap arrangement if the suitable officer from the concerned sub-cadre is not available. As such applicants cannot have any grievance with regard to their appointment on the said post.

13. No other contention has been raised before me.

14. In view of the above, OA does not call for any interference and the same is dismissed. No costs.


(Kuldeep Singh)
Member (J)

13/9/2002

Rakesh