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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2445 of 2002

New Delhi, this the 22nd day of May, 2003

HON^{BLE} MR. KULDIP SINGH, MEMBER (JUDL)

Vikas Ram Pal
Chief Medical Officer
Sushruta Trauma Centre
S/o Shri C.R. Rampal
aged about 43 years
R/o C-3/106 Phase-II
Ashok Vihar,
Delhi.

-APPLICANT

(By Advocate: Shri Devesh Singh)

Versus

1. Union of India
through its Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan,
New Delhi.
2. Lt. Governor of Delhi,
5, Shayam Nath Marg, Delhi.
3. Secretary,
Health and Family Welfare,
Secretary, Delhi Government,
I.P. Estate,
New Delhi.
4. Director,
Directorate of Health Services,
F-17, Karkarduma,
Delhi.

-RESPONDENTS

(By Advocate: Shri Harvir Singh)

ORDER

By Hon^{ble} Mr. Kuldip Singh, Member (Judl)

PUBLIC INTEREST and ADMINISTRATIVE EXIGENCY are the two main tools available to the executive authorities to defend an action taken by an employee to assail his transfer order. these two phrases are often (mis) used to defend even the action of transfer taken by the executive authorities which may have been actuated with mala fide, malice and extraneous considerations to

transfer a particular employee.

2. The applicant who is a member of Central Health Scheme joined the Central Health Scheme after selection through UPSC in the year 1986 and he was given promotions upto the post of Chief Medical Officer in the year 1996 and he claims to have an excellent service record.

3. The applicant is presently posted at Sushruta Trauma Centre (hereinafter referred to as STC) as a nodal officer to over-see the project of establishment of the centre by order dated 14.7.98. In the STC there are 187 posts but the post of Chief Medical Officer is a single post which is occupied by the applicant. The applicant assails orders Annexure A-1 to A-3. Impugned order Annexure A-3 is the order dated 22.5.2002 vide which the applicant was transferred from STC to Directorate of Health Services with immediate effect. However, no working post was assigned to him. Against that the applicant filed an OA which was registered as OA 1409/2002 but the court granted liberty to the applicant to make a representation to the respondents within a period of two weeks from the date of order, i.e., 9.7.2002 when the order was passed, which shall be considered by the respondents in the light of the contentions of the applicant taken therein as well as the 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. It was further directed that the status quo shall be maintained. The said OA shall be decided on 9.7.2002.

4. Pursuant to that order the applicant made a representation dated 22.7.2002 which has been rejected by the respondent vide Annexure A-1 dated 13.8.2002 which is also now under challenge before this Tribunal.

5. The applicant has alleged in his representation as well as in his OA that on 16.5.2001 while he was working as CMO at 4.20 P.M. one person named Shamshad Ali was brought dead and the applicant enquired from the relatives and persons who accompanied the dead body, it was revealed that the (deceased) patient was first taken to the Sunder Lal Jain Hospital (hereinafter referred to as SLJH) as it was the nearest to the place where the vehicular accident had taken place. Though the patient was advised for being admitted to Intensive Care Unit (ICU) and was administered certain preliminary treatment but the relatives of the applicant have been insisted upon to deposit a sum of Rs.25000/- until then the patient would not be admitted to the ICU. On their failure to deposit the said amount, the relatives were directed to approach SLJH and no ambulance etc. was provided. Even MLC was not prepared in SLJH. After the patient/deceased was brought to SLJH, the applicant recorded the MLC of the deceased and therein he suggested the Investigating Officer to investigate as to why despite the existence of the directives of the Hon'ble Supreme Court adopted/acknowledged by respondent No.1 and

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having apprised to all the private nursing home and private hospitals as to why the patient was not provided treatment for life threatening situation.

6. It is further submitted that the post-mortem was conducted on the body by Dr. K.L. Sharma who also opined that deceased could have been saved had he been provided proper treatment at SLJH as an emergency measure. Consequent upon the post-mortem a case FIR No.311/2001 dated 23.5.2001 was registered by the police and one Dr. Chander Parkash who was the President of the Sunder Lal Jain Charitable Hospital was arrested and remained in judicial custody for about 12 days. The matter was widely deprecated by the media and because of that the respondents exercised their arbitrary power and shifted the applicant from the post of CMO and was replaced by Dr.P.N. Pandey, a junior officer.

7. It is further stated that the Medical Council of India also conducted a pro-anti press cuttings and directed the applicant to offer his comments on the basis of the request made by SLJH for certain derogatory remarks made by the applicant. Another enquiry was conducted by Government of NCTD and the applicant had been served a notice and in pursuance of that applicant made comments vide his letter dated 18.7.2001. Subsequent to that the applicant was directed to appear before the committee failing which it would be deemed as an act of indiscipline and insubordination making him liable for appropriate action. The medical council is also alleged to have instituted an enquiry. However, in pursuance of the investigations conducted by police, a

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charge-sheet was filed against Dr. Chander Parkash in the court of law as per news item as appeared in Hindustan Times.

8. The applicant further submits that while working at STC his work has been commented by several dignitaries including foreign dignitaries as per Annexure A-4.

9. Vide impugned order dated 16.5.2002 two specialists have been transferred to STC and the applicant was transferred from STC to Directorate of Health Services vide order dated 22.5.2002 and the doctors who have been transferred to STC have been transferred back to DHS. The said order was challenged which resulted in an order dated 9.7.2002 whereby the applicant was directed to make a representation.

10. The applicant submits that his rejection of representation is an eye-wash for complying with the directions of this court whereas the respondents have avoided to answer the contentions raised by the applicant in his representation.

11. Applicant now alleges in his ground to challenge the impugned order and submits that the order passed in administrative exigency or in public interest cannot be interfered with but a judicial review can be made by the court if it is actuated with mala fide and is contrary to the rules.

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12. The applicant has also submitted that the CHS rules have various cadres and the post of GDMO is in one of the sub-cadre and the applicant could have been replaced by an officer only of GDMO cadre. Even the promotion of all these cadres are to be made separately for teaching specialist sub-cadre and non-teaching specialist sub-cadre. Thus the appointments of specialists to the post of GDMO as CMO is altogether against the rules.

13. The applicant further alleges that the respondents in their order vide which they had rejected the representation are silent about the exigency involved in this case.

14. The applicant further alleges that when the applicant had filed an earlier OA the respondents had taken the plea that non-specialists officer cannot be retained in STC and specialists are being posted there. But it is submitted that after the applicant's transfer the officers who have been transferred to STC have been put back to their respective places which shows clearly a mala fide and arbitrary exercise of powers by the respondents.

15. It is further submitted that since the power of transfer has not been exercised in conformity with the rules of CHS so the same is liable to be quashed.

16. Respondents are contesting the OA. The respondents have taken their often repeated defence of public exigencies and administrative interest.

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17. As regards the earlier plea of the respondents that a specialist is required and only specialists are replacing the applicant. To that extent the respondents have shifted their stand and have come down with a plea, as stated in para 4 (xiv), that no officer has been posted against the applicant and the suitable officer from GDMO cadre will be posted in due course.

18. Respondents have also taken a plea that the transfer is a general policy and has to be implemented all through the Government department. No government servant shall claim stay at one place as a matter of right.

19. In contesting the grounds taken up by the applicant to assail the transfer order the respondents have also taken a plea that the transfer/posting is not done on administrative exigencies but is done in a routine also for infusing fresh blood/thought in organisation and is usually a routine matter for keeping the work force streamlined and to break the monotony of working in any particular place for a very long period.

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

21. At the outset I may mention that it is well settled principle that courts normally do not interfere with the transfer/posting orders passed by the management because it is the prerogative of the management to see as to how best they can utilise the services of staff under

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their administrative control. However, at the same time courts can exercise their power of judicial review if the courts are of the view that the transfer order is actuated with mala fide and malice or if it is not in conformity with the transfer policy adopted by the department for transfer of its employees.

22. Now examining the case in hand first of all the I have to find out whether the transfer in question has been made in public interest or administrative exigencies.

23. As regards the concept of public interest is concerned, the transfer order passed on 22.5.2002 shows that the applicant has been transferred to Directorate of Health Services with immediate effect and he shall be relieved of his charge without waiting for separate relieving order of hospital concerned and this issues with the approval of the Special Secretary.

SURELY THE ORDER HAS BEEN PASSED WITHOUT ASSIGNING ANY REASON. THE ORDER DOES NOT MENTION THAT THIS HAS BEEN MADE IN PUBLIC INTEREST OR IN PUBLIC EXIGENCIES. THE ORDER IS SILENT.

24. During the course of arguments I have tried to know from the counter filed by the respondents that as to what was the public interest or administrative exigency which has compelled the respondents to pass this order. But the respondents counsel drew blank. Let us find out from the counter-affidavit if there is any case made out for public interest or administrative exigencies.



25. It has been pointed out by the applicant that when he had earlier filed an OA challenging the same order the respondents had pleaded that the applicant is being replaced by specialist as there is a need for specialist in the STC. But when the respondents were confronted with the situation that there is only one post of CMO which is to be manned by a cadre of GDMO and the respondents could not appoint any specialist to that post, the respondents have no answer to that. However, in reply to the present OA they have shifted their stand and now they say that no officer has been posted against the applicant and suitable officer from GDMO cadre will be posted in due course. The public interest would never approve the shifting of stand taken by the respondent and there does not appear to be any administrative exigencies also as the applicant is being transferred to Directorate of Health Services without assigning any functional post and no officer is being posted to replace the applicant. So the element of administrative exigencies and/or public interest at all is missing from this order of transfer which compels the court to draw an inference that this transfer order is actuated purely with mala fide intention.

26. I can also draw a support from the fact that the applicant had levelled allegations against Dr. Chandar Parkash of SLJH and a FIR had been registered against him though various enquiries had been initiated but while disposing of his representation no comments have been given by the respondents on this issue.



27. I cannot resist but to make an observation from the record that the Directorate of Health Services had constituted a fact finding Enquiry Committee under the Chairmanship of the Medical Superintendent, GTB Hospital leading to the cause of death of Shri Shamshad Ali and since an FIR had been recorded by the police on the notings made by the applicant on MLC of the deceased and case had been registered and police are also investigating the case as the applicant has alleged in the OA that the challan has been filed so the applicant has reasons not to appear before the fact finding committee as the case was subjudice before the court of law and the police after investigating the case had reached to a conclusion only then it could become sub-judice as the police must have filed the challan. In these circumstances enquiry by fact finding committee is a futile exercise when the case is pending trial before competent court of law. So instead of appreciating his refusal to assist the enquiry committee as the matter was sub-judice, the department issued memo to him threatening him that his act of refusal to appear before the fact finding committee amounts to an act of indiscipline, insubordination and unbecoming conduct on the part of the public servant making him liable for appropriate action as permissible under the rules.

28. The fact that a fact finding committee had been constituted without waiting for the result of the criminal trial for which an FIR had been registered goes to show that the department wants to pre-empt the cases of the accused therein. Usually whenever a police case

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is registered and the matter goes to the trial then the department does not conduct a fact finding enquiry and normally wait for the result of the trial.

29. It appears that on the basis of the fact finding committee the department wants to justify the transfer of the applicant. As I have already held above that the department is unable to prove that the transfer order has been passed in any public interest or in the administrative exigencies so the only conclusion which can be drawn is that it is actuated with mala fide and malice towards the applicant just because the applicant had mentioned certain remarks in the MLC which seems to have an influential effect on the career of a doctor of a private hospital. The disposal of representation without discussing this act of the applicant shows that the department is on the one hand ignoring the allegations levelled by the applicant against the said hospital whereas on the other hand the department is conducting a fact finding enquiry. So it appears that a person who had rejected the representation of the applicant he is oblivious of the fact that what is in the left hand and what is he doing in the right hand and the approach to reject the representation of the applicant also seems to be tainted with arbitrariness.

30. To support this the learned counsel for the applicant has stated that mere use of 'public interest' and 'administrative exigencies' does not show that order of transfer was issued accordingly, rather the fact remains that even the department was unable to establish any public exigencies. In this regard I may also quote a

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judgment reported in 1995 (1) (CAT) 29 entitled as Naresh Kumar Vs. State and Others where it was held that a bare assertion that the order of transfer has been passed in public interest is not sufficient unless established on record.

31. The respondents have also taken a plea that they want to infuse fresh blood but that plea is altogether not understandable because that the applicant had joined the service in the year 1986 and has reached to the level of CMO, he cannot be replaced by freshers. He can be replaced only by an officer of his standing only so this plea of the respondents has no merits.

32. Examining the pleas of the respondents from all the angles we find that the respondents though had tried to take shelter cover under omnipotent concept of public interest and administrative exigencies. But on piercing the veil, the plea of the applicant with regard to public interest and administrative exigencies, I find ^{that} is only a shallow one and there is nothing on record which may enable the respondents to take the plea of public interest and administrative exigencies. By the impugned order PUBLIC INTEREST and ADMINISTRATIVE EXIGENCY seems to have been subverted. Impugned order does not show the PUBLIC INTEREST and/or ADMINISTRATIVE EXIGENCY at all.

33. Accordingly, the OA has to be allowed. Accordingly the OA is allowed the impugned order dated 22.5.2002 is hereby quashed. No costs.

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(KULDEEP SINGH)
MEMBER (JUDL)