

Item No.2

C.P.No.27/2002 in  
M.A.No.216/2002  
M.A.No.217/2002  
M.A.No.401/2002  
O.A.No.103/2002

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01.03.2002

Present: Dr. K.S.Chauhan, Id. counsel for applicant.

Mrs. Avnish Ahlawat, Id. counsel for respondents.

Heard both the learned counsel.

2. Learned counsel for the applicant has completed his arguments. During the course of arguments, he referred to the points raised in the OA and more on the points raised in the rejoinder. One of the specific point to which he has raised in the rejoinder relates to the competence of GNCT, for deployment of services of the doctors belonging to CGHS, placed with GNCT, in the various hospitals. He also referred to a decision of the Tribunal in an earlier occasion which he felt, would support his case. He states that the applicant was appointed earlier to the senior grades than the Respondent No.3. According to him, he was the senior holding the post of Consultant/Specialist while Respondent No.3 belonging to the GDMS cadre and a junior. Further, the Hospital to which he has been brought as Superintendent related to a group of Hospitals where the Superintendent was not to be by the non-teaching specialists. Shri Chauhan further avers that it is only for favouring someone, i.e., respondent No.3, who should not have been posted as Medical Superintendent, he had been transferred out of Aruna Asaf Ali Hospital.

3. Contesting the above pleas, Smt. A. Ahlawat, the learned counsel for the respondents states that there are two issues which have been clubbed together by the applicant in relief No.8(b) is relating to the posting of Respondent No.3 as Medical Superintendent of the Aruna Asaf Ali Government Hospital, Govt. of NCT of Delhi and transferring the applicant from Aruna Asaf Ali Govt. Hospital to Deen Dayal Upadhyay Hospital in the same capacity. These two reliefs are being sought together, whereby on account of their being by the same order.

4. As far as the competence of the GNCT with reference to the deployment of the doctors belonging to CGHS, it is stated by the learned counsel for the respondents that they have powers to effect posting and transfers. The Health Ministry is the cadre controlling authority for the purpose of allocations of doctors and as DoPT is in the case of IAS and Home Ministry in the cadre of IPS Officers. The transfers and posting of even such officers once they have been allocated to a particular State are within the administrative competence of the State and the same cannot be questioned. Learned counsel for the respondents also states that the points raised by the learned counsel for the applicant during the oral submissions had not formed part of the OA but have come in the rejoinder. Unless and until she is rightly given an opportunity to explain the position, interest of the respondents would be prejudiced. That

being the case, these two issues can be dealt with separately (i) appointment of Dr. L.L. Aggarwal, Respondent No.3, who has been transferred to Aruna Asaf Ali Government Hospital as Medical Superintendent keeping in view of the administrative competency as he also holding the post of Drug Controller and (ii) the transfer of the applicant.

5. According to Smt. Ahlawat, posting of Dr. Aggarwal, respondent No.3, as Medical Supdt., Aruna Asaf Ali Hospital is only a stop gap and temporary arrangement, which the respondents had all the powers to do. She also undertakes to produce sufficient supporting evidence about the powers vested in the GNCT in respect of CGHS doctors working with GNCT. The learned counsel for the respondents seeks and is given three weeks time to furnish the same by filing an affidavit with a copy to the learned counsel for the applicant.

6. On the other hand, transfer of the applicant from Aruna Asaf Ali's Hospital (supra) to Deen Dayal Hospital (supra) was only a routine one, against which the applicant should not have any grievance. This is part of an exercise undertaken by the administration as they wanted to obviate and remove the nexus and bad effects of any doctor being associated with any hospital for 10 year periods. This was in pursuance of the directions of the Hon'ble Court pronounced in a case relating to the



doctors in the Jail Hospital. That being the case, Tribunal should not interfere in this matter, argues Smt. Ahlawat.

7. With regard to a specific query raised from the Court whether any complaint or allegations against the applicant had led to his transfer, the learned counsel for the respondents declined to respond, as according to her the same was not under issue and the transfer was only a part of exercise where already 44 doctors have been transferred and this is second round of transfers. That being the case, the Tribunal, the learned counsel repeal, at this time, would not intervene and the interim orders already issued should be vacated.

8. We have carefully considered the matter. So far as the vacation or otherwise of the interim stay of the transfer is concerned, the learned counsel for the respondents points out on behalf of the respondents is that as the transfers have been effected in the proper exercise of the administrative function, the Tribunal would not like to interfere with the matter and the same can be given effect to. However, in the facts and circumstances of the case as the transfer of the applicant out of Aruna Asaf Ali's Hospital (supra) and posting of Respondent No.3 as MS of the said Hospital have got inextricably mixed up in the same issue, we feel that it will be necessary to adjudicate both the issues together and till such time, the statusquo has to be maintained. Request for vacation of interim relief is not accepted.

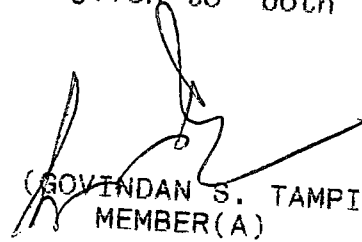
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OA along with other petitions will be taken up  
for <sup>final</sup> decision on 5.4.2002.

The CP will be considered <sup>only</sup> after the final  
decision of the OA.

A copy of this order be given to both the  
parties.

S. Raju  
(SHANKER RAJU)  
MEMBER(J)

  
(GOVINDAN S. TAMPI)  
MEMBER(A)