

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH.

C. A. No. 350/50559 of 2019.

Dr. Samir Kumar Nanda, son of Sri Jagannath Nanda, aged about 59 years, working for gain as Professor and Head of Department of Forensic Medicine and Toxicology, National Institute of Homeopathy, Salt Lake, Kolkata and residing at K-2, Cluster I - 13, Purbachal, Sector- III, Salt Lake, Kolkata- 700 097.

...Applicant.

-Vs-

1. Union of India through the Secretary to the Govt. of India, Ministry of Ayush having office at Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.
2. The Governing Body, NIH, through its President having office at Ayush

Bhawan, B-Block, G.P.O. Complex,
INA, New Delhi- 110023.

3. The President of the Governing Body, " National Institute of Homoeopathy, having office Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.
4. The Secretary, Ministry of Ayush, having office at Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.
5. The Joint Secretary, (NI-Desk), is having office at Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.
6. The Deputy Director General, Ministry of Ayush, having office at Ayush Bhawan, B-Block, G.P.O. Complex, INA, New Delhi- 110023.
7. The National Institute of Homoeopathy through the Director-in-Charge, NIH, having office at

Block-GE, Sector-III, Salt Lake,
Kolkata- 700106.

8. Director-in-Charge, NIH, having
office at Block-GE, Sector-III, Salt
Lake, Kolkata- 700 106.

9. Prof. (Dr.) Abhijit Chottopadhyay,
Director-in-Charge, NIH, having
office at Block-GE, Sector-III, Salt
Lake, Kolkata- 700 106.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A.350/559/2019

Date of Order: 26.05.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member



Dr. Samir Kumar NandaApplicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s): Mr. S.K.Datta, Counsel

For the Respondent(s): Mr. M.K.Ghara & Mr. A.Chakraborty, Counsel

ORDER

Bidisha Banerjee, Member (J):

This application has been preferred to seek the following reliefs:

"a) An order quashing and/or setting aside the impugned communication dated 8th February, 2019 issued by the Research Officer, Govt. of India, Ministry of Ayush, New Delhi.

b) An order quashing and/or setting aside the impugned Office Order dated 11.2.2019.

c) An order quashing and/or setting aside the Para 4.22 and 10.2 of the impugned Memorandum of Association-Bye Laws.

d) An order directing the respondents to allow the applicant to resume his duties at National Institute of Homeopathy, Calcutta after regularizing the period for which applications were submitted by treating the said period as on duty for all purposes with all consequential monetary benefits.

e) An order directing the respondents to produce/cause production of all relevant records.

f) And other order or further order/orders as this Hon'ble Tribunal may seem fit and proper."

2. The case of the applicant in a nutshell is as under:

The applicant joined the National Institute of Homeopathy (NIH in short), an autonomous organization, registered under the Societies Registration Act, 1861 having its only campus in Kolkata, on 24.01.1997 as an Associate Professor in the Department of Forensic Medicine & Toxicology. Subsequently, he was promoted to the post of Professor w.e.f. 01.06.2007 and all along he was the Head of the Department of Forensic Medicine & Toxicology.



Pursuant to an advertisement for the post of Director of NIH, he applied and selected through a regular selection process for a period of 5 years. He successfully completed this tenure as Director.

On a subsequent advertisement when he applied, the trouble began brewing since then. Keeping the selection for the post of Director on a regular basis, the Governing Body started to appoint Director on an ad-hoc basis for a limited period. The situation further worsened when the present Director-in-Charge came in the fray for the post in question.

Upon realizing that so long the applicant is there, he cannot be selected as Director on a regular basis, he orchestrated/designed a move to transfer the applicant, joining hands with the higher authority.

An order of transfer was issued on 11.02.2019 when the applicant was informed under the signature of the present Director-in-Charge that the "competent authority has approved his transfer to North Eastern Institute of Ayurveda and Homeopathy (NEIAH in short), Shilong, Meghalaya on public interest and for smooth functioning of NEIAH (Annexure-A/21).

Initially, a writ petition was preferred before the Hon'ble High Court. Ultimately since the Hon'ble High Court was of the prima facie opinion that since this Tribunal has the jurisdiction, the writ petition was withdrawn and the instant O.A. has been filed.



The applicant has challenged the order of transfer as malafide, without jurisdiction and nullity in the eye of the law apart from the fact that since the applicant's retirement is due with effect from 30.06.2020, no transfer could be made.


Further that, the applicant being an employee of an autonomous organisation cannot be transferred to another autonomous organisation, which has a different juristic entity and transfer from one autonomous organisation to another autonomous organisation is impermissible in law.

It is contended by the applicant that if the transfer is assumed to be on deputation, even then the respondents could not have issued such an order of transfer inasmuch as in case of deputation a prior consent/opinion is mandatorily required to be obtained from the employee/office concerned.

In support of his contention, the applicant is relied upon the decision of the Hon'ble Apex Court in the case of **General Officer Commanding-In-Chief & Anr. Vs. Dr. Subhash Chandra Yadav & Anr.**, reported in (1988) 2 SCC 351, in which the Hon'ble Apex Court has held that "transfer of employees of one autonomous body to another, when services of the employees are neither of centralized nor of State level, is illegal".

3. Per contra, the respondents have submitted that the transfer of the applicant from NIH to NEIAH has been made in public interest.

4. Ld. Counsels were heard and the records were perused.



5. Since the applicant is supposed to superannuate in June, 2020 and it would not be fair to transfer him to a far-away place and to a different organization altogether, at the fag end of his service life, and as no public interest will be served as such, we quash the transfer order and direct the respondents to allow the applicant to continue at NIH in his present capacity and, in accordance with law, till his superannuation.

6. His leave, if any, be adjusted against leave due.

Appropriate order be issued urgently.

7. O.A. accordingly is disposed of. No order as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

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