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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1927/2001

New Delhi, this 2nd day of March, 2002

Hon'ble Shri Govindan S. Tampli, Member(A)

P.L. Kapur
1027, Sector 8
R.K. Puram, New Delhi .. Applicant

(By Shri K.L. Bhandula, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
New Delhi
2. Director General of Health Services
Nirman Bhavan, New Delhi
3. Secretary
Dept. of Personnel & Training
North Block, New Delhi .. Respondents

(By Shri N.K. Aggarwal, Advocate)

ORDER

Order No.A.21020/8/99-PH/Ettt.I dated 14.10.99
posting the applicant to National Institute of
Communicable Diseases (NICD) is under challenge in this
OA.

2. Heard S/Shri K.L. Bhandula and N.K. Aggarwal,
learned counsel for the applicant and the respondents
respectively.

3. Briefly stated the facts are that the applicant
working in the Ministry of Health & Family Welfare, as
Under Secretary. Since November, 1991, ~~became~~ a Deputy
Secretary, against the upgraded post on personal basis on
9.8.99. On 14.10.99, he was posted as Director (Admn) in
NICD to a subordinate and non-CSS cadre office under
DGHS, without any reason and was relieved on the same
day. The applicant who was to draw salary from the

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source where he was getting the salary, made representations against the move in November, 1999 and December, 1999 but to no avail. NICD had also indicated the present arrangement to be an inconvenient one. Applicant being a heart patient was finding it difficult to undertake daily journeys over 40 KM and was unhappy that he has been subjected to inconvenience by posting him to a non-cadre establishment without his consent, that too without any deputation allowance, thereby causing him considerable loss. Hence this OA.

4. In the grounds raised in the application, duly reiterated by Shri Bhandula, learned counsel for the applicant, it is pointed out that his transfer to a non-cadre, nonexistent post was totally irregular and against public interest; that it was malafide and arbitrary, that it was issued to wreak vengeance on him; that the order of movement was only meant to harass him and that the order had been made without any deputation pay/allowance in spite of his poor health conditions. This OA should be allowed with full relief and consequential benefits to him, argues Shri Bhandula.

5. Reply presented on behalf of the respondents and argued by Shri N.K. Aggarwal, Sr. Counsel, points out that the above transfer has been ordered in public interest. It was not on deputation basis as he continued to be held ~~as~~ ⁱⁿ the combined cadre of the Ministry of Health & Family Welfare including DGHS organisation. The applicant continues to draw his pay and allowances from Medical Stores Organisation, his previous office. The decision to post the applicant to NICD was an administrative decision by the competent authority at the

appropriate level and the same cannot be assailed. It is also indicated that no request for transfer of a Deputy Secretary level post has been made by the NICD, as alleged by the applicant. According to the learned sr. counsel for the respondents, points raised in this case were squarely covered by the decision of the Hon'ble Supreme Court in the case of National Hydro Electric Power Corp. Vs. Shri Bhagwan/Shiv Prakash [(2001) 8 SCC 574] wherein it was held that unless transfers are malafide in nature and/or against statutory provisions, they should not be interfered with. And malafide had to be established and mere accusation would not be sufficient. Shri Aggarwal also points out that the applicant was already receiving Rs.800/- a month as transport allowance for commuting from his place of residence to his place of work. Nothing more was due to be given and the OA merits dismissal, according to the learned counsel for the respondents. Shri Aggarwal also produced before me the relevant files from which the applicant's transfer was ordered and his representations were examined.

6. I have carefully considered the rival contentions and perused the relevant papers. In this case, the applicant's transfer from the Ministry of Health & Family Welfare, where the officer was functioning as Director(Admn) in NICD is under challenge, as according to him he has been posted without his consent to a non-CSS cadre office against a non-existent post. On the other hand, as correctly pointed out by the learned counsel for the respondents, and as seen from the files placed before me, his transfer by the competent authority as he was "reported to be a competent officer and

therefore should be able to handle the administrative work of NICD hqrs. effectively". Since this is a decision taken on administrative exigency and public interest and at the appropriate level, it would not be correct for the Tribunal to interfere with this transfer, which had become effective more than two years ago. There is also no indication that the order is malafide and the case would be covered by the ratio of the Hon'ble Supreme Court in the case of Shri Bhagwan & Shiv Prakash (supra) applicant's request for transfer should fail on merit. At the same time, the respondents had avoided responding to the applicant's plea that the above transfer has been from a cadre post to non-cadre and non-existing post, obviously as it represents fact NICD is not a part of Ministry of Health Services cadre and therefore posting from one to the other has to be only on deputation. Any averment to the contrary is wrong and cannot be endorsed. Further the fact that the applicant is continuing to draw the salary from the Medical Stores Organisation also shows that the same is a non-existent post. Respondents reply that the applicant draws Rs.800/- plus as transport allowance is no answer, as the same is allowed to all in general and not to the applicant in particular. He has therefore to be compensated by grant of deputation allowance for the period he has been working with NICD as Director(Admn.).

7. In the result, the application succeeds partially only and is accordingly disposed of. While upholding the validity of the respondents impugned order No.Z.21020/8/99-PH/Estt.I dated 14.10.99 and rejecting the claim of the applicant for cancelling the above transfer order, I direct the respondents to consider

grant of deputation allowance to the applicant from the date he has been working as Director(Admn), NICD an ex-cadre office i.e. from 19.10.97 till ⁶ date, at the rates permitted for deputationists within the same city. This may be done within three months from the date of receipt of a copy of this order. This order also would not act as any bar to encadreing the post of Director(Admn) in NICD in CSS cadre of the Ministry of Health and Family Welfare. No costs.

(Govindan SP Tampi)
Member(A)

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