

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.: 429/2001

New Delhi this the 30th day of March, 2001.

(A)

Hon'ble Shri M.P. Singh, Member(A)

Hakim Syed Ahmed
S/O Shri H.K. Hussain,
aged about 45 years,
r/o 84/4, Hauz Rani,
New Delhi.
And working as Medical Officer(Unani) in
C.G.H.S., Delhi and presently posted at
Daryaganj Dispensary,
New Delhi.

....Applicant

(By Advocate: Shri S.S.Tiwari)

Versus

1. Union of India through, Secretary, Dept. of ISM & H, IRCS Annex Building, Red Cross Road, New Delhi.	5, Sh. S.R. Yadav, Section Officer Dept. of ISM & H, IRCS Annex Building Red Cross Building, New Delhi.
2. Director General Health Services, 7, the Floor, Mirman Bhawan, New Delhi.	
3. Director (ISM & Homeopathy), M/o Health & Family Welfare, (Department of ISM & H), IRCS Annex Building, Red Cross Road, New Delhi.	
4. Dr(Mrs) Ailya Aman, Deputy Advisor(Unani), Dept. of ISM & H, IRCS Annex Building, Red Cross Road, New Delhi.	

....Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

By Shri M.P. Singh, Member(A)

The applicant has filed this OA challenging the order dated 7th February, 2001 by which he has been transferred from CGHS, Delhi to CGHS, Calcutta.



2. The brief facts of the case are that the applicant joined as Medical Officer(Unani) on monthly basis under CGHS, Delhi on 1.1.87. According to the applicant, his services were not regularised inspite of the fact that there were clear vacancies in CGHS, Delhi and the applicant fulfilled all the requisite qualifications of the said post. The applicant filed a Writ Petition before Hon'ble Delhi High Court and pursuant to the direction of the Hon'ble High Court, the respondents issued an order dated 1.1.2001 whereby ad-hoc service of the applicant in CGHS, Delhi was regularised and he was appointed as Medical Officer(Unani) in CGHS, Delhi on regular basis w.e.f. 19.1.2000. It is alleged by the applicant that he submitted a representation on 11th January, 2001 requesting the respondents to regularise his ad-hoc service w.e.f. 1.1.87 and to give him time bound promotion as Senior Medical Officer(Unani) w.e.f. 1.1.91 and as CMO w.e.f. 1.1.97. In pursuance to the applicant's representation on 11.1.2001, the respondents threatened him to withdraw the said representation or face the consequences. The applicant made another representation on 5th February, 2001 wherein he brought this threat of transfer to the notice of respondent No.1. According to the applicant, the transfer is malafide which has been done with a view to harass him and to accommodate one Dr. A.R. Quazi who is in CGHS, Calcutta and has requested the respondents for his transfer to CGHS, Delhi. Apart from this, one Dr. Pasa was transferred from CGHS, Delhi to CGHS, Calcutta and Dr Salman Z. Lari from CGHS, Lucknow to CGHS, Calcutta vide order dated 23rd November, 1989, however, till date transfer order has not been given effect. The applicant



(5)

has stated that respondent no.4 had earlier transferred the applicant to CGHS, Calcutta in 1995 but the said transfer order was quashed by this Tribunal. Aggrieved by the order dated 7.2.2001 passed by the respondents, he has filed this OA and has sought direction to quash and set aside the aforesaid order.

3. The respondents, in their reply, have stated that the applicant was initially recruited on monthly wage basis w.e.f. 1.1.87. In pursuance of order dated 21st July, 1999 of Hon'ble High Court of Delhi in C.W.P. No.4467/1998(Annexure-I), his ACR dossier was sent to UPSC for regularisation of his ad-hoc services in the post of Medical Officer(Unani). As per the recommendation of the UPSC, his ad-hoc service was regularised w.e.f. 19th January, 2000 on the term and conditions applicable to regularly recruited Medical Officers vide letter dated 1.1.2001. One of the terms and conditions applicable to regularly appointed Medical Officers is to serve in any part of India or outside. As such, he is having All-India Transfer liability. The applicant was transferred from CGHS, Delhi to CGHS, Calcutta vide order dated 7th February, 2001 in the exigency of work and in public interest. The representation of the applicant of 5th February, 2001 stated to have been sent to Respondent no.1 has not been received by them. It is a well settled law laid down by the Hon'ble Supreme Court that who should be transferred and where is a matter for the appropriate authority to decide. The earlier transfer of the applicant in 1995 was also done in public interest but the same was quashed by the Tribunal on the ground that the applicant was



neither a Presidential appointee nor a member of cadre and since there is no All-India Transfer liability for ad-hoc employees not brought on regular list. In view of the aforesaid submissions the application is devoid of merit and deserves to be dismissed.

4. Heard both the learned counsel for rival contesting parties and perused the record.

5. During the course of the arguments, the learned counsel for the applicant stated that the applicant was initially recruited on ad-hoc basis for CGHS, Delhi. The service conditions of the applicant are not at par with the other direct recruit Medical Officers who have transfer liability on All-India basis. The ad-hoc Medical Officers who have now been regularised are to be treated as a separate category even for the purpose of seniority and promotion. Moreover, the applicant has been initially recruited for CGHS, Delhi and hence he does not have transfer liability on All-India basis. On the other hand, learned counsel for the respondents drew my attention to the order dated 1.1.2001 by which the ad-hoc service of the applicant has been regularised. As per this order, he has been appointed on regular basis on terms & conditions applicable to the regularly recruited Medical Officers. Thus the applicant is liable to be transferred to any place outside Delhi.

6. Learned counsel of the applicant also stated that order passed by the respondents is malafide and he has therefore specifically impleaded respondents no. 4 & 5 for this purpose but they have not filed their replies to



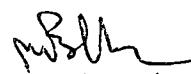

(3)

the OA. He also submitted that vide order dated 23rd November, 1999(Annexure-D) Dr. Syed Asad Pasa & Dr. Salman Z. Lari were transferred from CGHS, Delhi and CGHS, Lucknow respectively to CGHS, Calcutta but have not joined their duties at Calcutta. He further submitted that there are other Medical Officers who have much longer stay in Delhi but have not been transferred out of Delhi whereas the applicant who has been regularised only in January, ²⁰⁰¹ is being transferred to Calcutta with a view to harass him. He submitted that the transfer order issued by the respondents on 7th February does not show the element of public interest as Dr. A.R.Quazi(Sl.No.2) has been transferred from CGHS Calcutta to CGHS Delhi at his own request. The learned counsel for the respondents admitted that A.R.Quazi, Senior Medical Officer(Unani) in CGHS Calcutta is being transferred to Delhi on his own request and he also admitted that there are some other officers who have longer stay in Delhi in comparison to the applicant.

7. After hearing the learned counsel for both parties and perusing the records, I find that the applicant has earlier been transferred from Delhi to Calcutta when he was working on ad-hoc basis. The said transfer could not be effected as the same was set aside by the Tribunal. The applicant has been again transferred from Delhi to Calcutta immediately after his ad-hoc services have been regularised. It is settled law by the Supreme Court that the Tribunal cannot interfere in the matter of transfer except in the case if it is in violation of statutory guidelines or on the ground of malafide. In the present case, there are no guidelines for regulating the transfer.

of Unani Medical Officer as stated by the learned counsel for the respondents. However, I find as a matter of policy, the respondents should transfer first a medical officer who has the longest stay in Delhi. In the present case, the respondents have not followed this policy and have transferred the applicant who has recently been regularised. From the aforesaid fact, it appears that the action taken by the respondents to transfer applicant from Delhi to Calcutta is arbitrary. Moreover, the transfer of the applicant cannot be considered in public interest and in exigency of work as Dr. A.R.Quazi has been transferred from CGHS, Calcutta to CGHS, Delhi at his own request and ~~is~~ hence he is not entitled for any TA/DA.

3. For the reasons stated above, the transfer order dated 7th February, 2001 so far as the applicant is concerned, is arbitrary and hence is not sustainable. The impugned order dated 7th February, 2001 so far as it relates to the applicant, therefore, is quashed and set aside. No costs.


(M.P.Singh)
Member(A)

/gtv/