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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA No. 1737 of 1995

New Delhi, this the 13th day of October, 1995.

Hakim Syed Ahmed
working as Medical Officer (Adhoc)
under C.G.H.S. Unani, presently posted in
CGHS Unani Dispensary, Naraina Vihar,
New Delhi R/O 84/4, Hauz Rani, Malviya Nagar,
New Delhi. Applicant.

(through Mr S.S. Tewari, Advocate).

vs.

1. Union of India, through
Secretary Ministry of Health and
Family Welfare, Nirman Bhavan,
New Delhi.
2. Director General Health Services,
Ministry of Health & Family Welfare,
Nirman Bhawan, New Delhi.
3. Director Central Govt. Health Scheme,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi. Respondents.

(through Mr M.K. Gupta, Advocate).

ORDER

(delivered by Hon'ble Mr B.K. Singh, M(A))

This O.A. No. 1737/95 is made against
the order of transfer from Delhi to Calcutta
by the respondents.

The facts of the case are that the
applicant was recruited as a Unani Physician on monthly
wage basis under C.G.H.S. by Memorandum dated
26.12.1986 and joined service in pursuance thereof
on 1.1.1987. Subsequently, by an order dated
28.6.1989, the applicant was taken over on the
strength of CGHS, Delhi on adhoc basis w.a.f. 1.1.1987
in the pay scale of Rs. 2200-400. This is annexure-C
of the Paper Book.

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He is still working on adhoc basis as Medical Officer (Unani) and his services have not yet been regularised and his name does not find place in the seniority list of Medical Officers(Unani) issued on 31.3.1994. This is Annexure D of the Paper-Book. The reliefs prayed for in the Original Application are to set aside and quash the impugned transfer order dated 4.9.1995 by which the applicant has been transferred from Delhi to Calcutta.

Heard the learned counsel for the parties and perused the record of the case.

The transfer is an inherent administrative power, which is exercised by a competent authority in the exigencies of public service. It is well-settled that a judicial review of transfer order either on administrative grounds or in view of the exigencies of public service is impermissible. Who will be transferred and where is not for the Courts to look into as has been held by the Hon'ble Supreme Court in the case of S.L.Abbas (Supra). It is within the jurisdiction of the competent authority to transfer a person from one place to the other. This case is not covered by various judgments of the Hon'ble Supreme Court since the applicant is not a regular incumbent and was recruited on 26.12.1986 as Daily Wage Earner under CHS, Delhi. This is Annexure B of the Paper Book. It also gives the terms and conditions of service. His daily wage service was for 30 days initially and was extended from time to time. He was appointed in the pay-scale of Rs.650/- p.m. with allowances i.e., HRA/CCA/DA etc. etc. His engagement order

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further stipulates that he will not be entitled to any kind of leave and it is further mentioned that this expenditure will be met out of the contingencies only. The order dated 28.3.1989 (Annexure-C) clearly states that the applicant alongwith three others" has ^{been} taken over on the strength of CGHS Delhi on ad-hoc basis with effect from the dates shown against their names in the scale of Rs.2200-4000 w.e.f.1.1.1987". This order is not a presidential order. This has been issued by Dr.J.D.Gupta, Deputy Director(CGHS). The Seniority list placed at Annexure D does not show the name of the applicant. It was vehemently argued by the learned counsel for the applicant that orders at Annexure E of the Paper Book though issued have not yet been implemented and that they are similarly placed as the applicant. The applicant has been filing representation after representation for regularising him and for bringing his name in the seniority list, but the same has not met with any success. In the counter-reply, the learned counsel has admitted that another OA No.2999/92 filed by Hakim Syed Ahmed in the Hon'ble CAT for ^{is pending with CAT P.B.} regularising his adhoc service. It has also been admitted that he was originally appointed on daily wage basis and subsequently taken on adhoc basis on the strength of CGHS, Delhi. There is ^{not an} iota of evidence to show that such an adhoc employee who has been recruited for ^{all India} CGHS Unit Delhi has the transfer liability. It is only the regular holders of civil posts in



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the grade of Rs. 2200-4000 who have All India transfer liability. Where the appointment itself is made by Deputy Director on adhoc basis for CGHS Delhi Unit no presidential order can be issued for his transfer from Delhi to Calcutta. The President has to first appoint these people and make them holders of civil posts with all India transfer liability before he exercises the power to transfer them from one Unit to the other. It is also well-settled that various C.G.H.S. Units functioning in the country are different entities and a CGHS Card valid for Delhi is not valid for other places. In case of adhoc employees recruited for particular Units and not brought on the regular list, there is no All India Transfer liability. The President has not been pleased to appoint them even on adhoc basis and as such he cannot exercise the power of transfer since he is not the appointing authority. If the appointing authority is Dy. Director and no presidential order is available regarding the appointment of the applicant by the President on adhoc basis there is no question of the President exercising the power in regard to the transfer of such a Medical Officer from Delhi to Calcutta. *The applicant is neither a Presidential appointee nor a member of staff.* The transfer order is patently illegal and cannot be sustained in the eyes of law *the application succeeds and is allowed* and is quashed, leaving the parties to bear their own costs.

/sds/

(B.K. Singh)
Member (A)