

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(5)

O.A./T.A. No. 2398/95

Decided on: 4th June, 1996

Dr. N. Rajgopal AcharyaApplicant(s)
(By Shri Prashant Bhushan Advocate)

Versus

Union of IndiaRespondent(s)
(By Shri B. S. Gupta for Repd No 2 Advocate)
Mrs Avnish Ahlawat for Repdlt 3 & 4

CORAM:

THE HON'BLE SHRI A.V. HARIDASAN, VICE CHAIRMAN (J)
THE HON'BLE SHRI R.K. AHOOJA, MEMBER (A)

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

CENTRAL ADMINISTRATIVE TRIBUNAL:PRINCIPAL BENCH.

O.A. NO. 2398/95

New Delhi this the 4th day of June, 96.

(b)

Hon'ble Shri A.V. Haridasan, Vice Chairman(J).

Hon'ble Shri R.K. Ahooja, Member(A).

Dr. N. Rajagopal Acharya,
K-86, Second Floor,
Lajpat Nagar-II,
New Delhi-24. ..Applicant.

By Advocate Shri Prashant Bhushan.

Versus

1. Union of India,
through the Secretary (Health),
Department of Health,
Ministry of Health & Family Welfare,
Nirman Bhawan,
New Delhi.
2. Government of National Capital
Territory of Delhi,
through Secretary (Medical),
5, Shamnath Marg,
Delhi.
3. Dr. S.K. Khanna,
Director,
G.B. Pant Hospital,
Jawaharlal Nehru Marg,
New Delhi.
4. Dr. D.K. Srivastava,
Acting Medical Superintendent,
and Head of Bio Chemistry Department,
G.B. Pant Hospital,
Delhi. .. Respondents.

None for Respondent No.1.

Shri B.S. Gupta, counsel for Respondent No.2.

Mrs Avnish Ahlawat, counsel for Respondent No.3
and 4.

O R D E R

Hon'ble Shri R.K. Ahooja, Member(A).

The applicant, who is an officer of Specialist Grade-II of the Teaching Specialist Sub-Cadre of the Central Health Service, has challenged the order

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of his transfer from G.B. Pant Hospital, New Delhi to Guru Teg Bahadur Hospital, Shahdara, Delhi, issued by Respondent No.2, Government of NCT Delhi, dated the 24th November, 1995 as well as the order of the Medical Superintendent, G.B. Pant Hospital, New Delhi, relieving him with effect from the 27th November, 1995. The aforesaid orders have been challenged mainly on the ground that the Respondent No.2, Government of NCT Delhi, did not have the competency or jurisdiction to issue such an order, as the applicant being a Member of the Central Health Service, it is only the Ministry of Health and Family Welfare, Government of India, which is the concerned cadre controlling authority. The applicant has also made allegations that the transfer orders are the result of mala fide and extraneous reasons on the part of the Respondent No.2 and is an attempt to victimise him for his honest and sincere efforts in preventing large scale financial irregularities in purchase of equipment and material at G.B. Pant Hospital.

2. No reply has been filed by the Respondent No.1, The Secretary (Health), Department of Health, Ministry of Health and Family Welfare, New Delhi. Respondent No.2, namely, NCT Delhi, has, however, contested the claims and allegations of the applicant. They stated that the powers of transfer of Members of Central Health Service from one institution to another have been delegated to the Government of NCT Delhi by Respondent No.1 and this entitled them to issue

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the impugned order. In one of the additional affidavits filed by the Respondent No.2, it has also been claimed that similar powers have been exercised by them in respect of two other officers of the Central Health Service with the knowledge of Ministry of Health and Family Welfare.

3. In his application, the applicant has made detailed references to an enquiry being conducted in the hospital on the basis of certain audit objections regarding irregularities committed in the purchase of sophisticated machinery worth crores of rupees which has also been a subject matter of a case before the Delhi High Court in Civil Writ No. 3032 of 1994, Peoples Union of Civil Liberties (Delhi) and Anr. Vs. State of Delhi & Ors. in order to show the animus of the Respondent No.2 due to his refusal to assist in the cover up of the scandal. This has been denied by the Respondent No.2. After perusing the material on record and hearing the counsel on either side, we are of the opinion that the main question involved is of the competence and jurisdiction of the Respondent No.2 in issuing the impugned order of transfer and it is not necessary for us to go into the question of any alleged animus or mala fide on the part of the Respondent No. 2 till this basic question of competence is decided.

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4. We have heard the learned counsel on both sides. Shri Prashant Bhushan, learned counsel for the applicant, submitted that the applicant is a Member of the Central Health Service which is one of the Central Services and according to the CCS(CCA) Rules which are statutory in nature, only the President can pass an order of transfer with regard to a Member of the Central Health Service. In the present case, the order of transfer of the applicant could only be issued in the name of the President by the concerned Ministry, i.e. Ministry of Health and Family Welfare, Department of Health, which is the cadre controlling authority of the applicant. He argued that the promulgation of the Govt. of NCT of Delhi Act, 1992 has ^{way} in no ^{way} changed this position ^{and} since no order, notification or statutory instructions have been issued delegating this power from the Ministry of Health and Family Welfare to the Govt. of NCT Delhi, the latter was incompetent to pass the impugned order of transfer. He further submitted that this legal position has been affirmed by the Ministry of Health and Family Welfare in an affidavit filed on its behalf in the earlier mentioned Civil Writ No. 3032/94 in the High Court of Delhi. As regards the claim of the Respondent No. 2 that the Ministry of Health and Family Welfare had agreed to delegate its powers to transfer the teaching staff from one institution to other, the learned counsel submitted that even if it was so, it could not supersede the statutory provisions as embodied

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in the CCS (CCA) Rules unless the same were amended. In this regard, he relied on a decision of the Hon'ble Supreme Court, reported in 1952 SCR 110, Harla Vs. The State of Rajasthan, in which it was held that natural justice requires that before a law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or, at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. He pointed out that in the present case, no notification indicating that the cadre controlling authority of the applicant had been changed from Respondent No. 1 to Respondent No. 2, was promulgated or published.

5. Shri B.S. Gupta, learned counsel for Respondent No.2, stated that the position of Central Health Service Officers appointed to the post, under the Govt. of Delhi had changed with the passing of the NCT Act, 1992. In this connection, the Respondent No.2 had written to the Respondent No.1 through its Chief Secretary, on 10.1.1994 proposing that it should be left to the Govt. of Delhi to decide the postings of the Central Health Service Officers to the posts under their administrative control. This was followed by another letter dated 13.3.1994. In response, the Secretary, Department of Health had conveyed his desire to discuss the matter with

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the Chief Secretary of Delhi Government, vide letter dated 25.3.1994. Pursuant to the same, a meeting was held on 17.6.1994 in the office of Union Health Secretary, where it was decided to accept the proposal of the NCT Delhi. The powers having thus been delegated to Respondent No.2, it was argued that there was no infirmity or lack of jurisdiction or competence on the part of the Govt. of NCT Delhi in issuing the order of transfer which has been challenged by the applicant. He cited the case of Shilpi Bose (Mrs) and Ors. Vs. State of Bihar and Ors., 1991 Supp (2) SCC 659, in which it was held by the Hon'ble Supreme Court that a government servant holding a transferable post has no vested right to remain posted at one place or the other and he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. The Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the same is made in violation of any mandatory statutory rule or on the ground of mala fide.

6. We have given careful consideration to the arguments advanced by the learned counsel on either side. We have also gone through the records of the case. Certain uncontroverted facts may first be taken note of. The applicant is a Member of

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the Central Health Service, his appointment to that service having been made by the President of India. Central Health Service is a Group 'A' Central Civil Services in terms of Rule 4 of the CCS(CCA) Rules. In other words, this is a service under the Union. Under Rule 8 of the CCS(CCA) Rules, all appointments to Central Civil Services, Class I and Central Civil Posts, Class I, shall be made by the President, unless the President by a general or a special order and subject to such conditions as he may specify in such order, delegate to any other authority the power to make such appointments. Under the allocation of business rules, Central Health Service falls within the area of responsibility of Ministry of Health and Family Welfare. Thus, all appointments, postings, transfers, promotions as well as all disciplinary matters have to be dealt with by the Department of Health under the Ministry of Health and Family Welfare unless these powers are delegated to any other authority. The question, therefore, for consideration is whether the President had delegated any authority regarding posting and transfer of the Central Health Service Officers to the Govt. of NCT Delhi, Respondent No. 2 in this case.

7. The Respondent No.2 has, in its reply, stated that a reference was made ^{for} such delegation of powers by the Chief Secretary of Govt. of NCT Delhi, on 10.1.1994 followed by a reminder dated 13.3.1994. Copies of these letters have also been annexed at Annexure R-1. The letter dated 10.1.1994 from the

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o Chief Secretary to the Secretary to Govt. of India, Ministry of Health and Family Welfare, is reproduced as follows:

"Shri I. Chaudhuri, under his d.o. letter No. A.24011/1/93-CHS.III dated 26th November, 1993 has informed that Govt. of Delhi should not transfer Doctors from one hospital to another.

I am directed to request that this direction needs to be reviewed in the context of the new constitutional and administrative set up in Delhi.

Almost all posts of Doctors in Govt. of Delhi are manned by the members of the Central Health Service. While it is obviously and certainly open to the Central Government to decide which members of the CHS are to be placed at the disposal of Govt. of Delhi, it should be left to the Govt. of Delhi to decide their postings to posts under our administrative control".

The letter dated 13.3.1994 reads as follows:

"Since a new constitutional and administrative set up has come up in Delhi, we had taken a view that it should be left to the Govt. of Delhi to decide postings of members of CHS in various hospitals under our administrative control. No doubt, it would be open to the Central Govt. to decide which member of the CHS is to be placed at our disposal.

As we have not heard anything as yet from your Ministry, I would be grateful if you could look into the matter personally and issue suitable directions".

The extract of the note of the then Secretary (Medical) dated the 17th June, 1994 has also been reproduced which reads as under:

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"152. A meeting was held today in the room of Union Health Secretary to discuss our proposal as at 225/C. The meeting was attended by the Chief Secretary and the undersigned.

153. The Ministry of Health & F.W. has agreed to our proposal. In other words, even in respect of teaching staff, Govt. of Delhi would decide whether to post them in MAMC or GTB Hospital/UCMS. Till now specific postings were done by Ministry of Health. We would also be at liberty to transfer teaching staff from one institution to other".

8. Two facts emerge from a reading of the extract of the note. Firstly, the Ministry of Health had informed vide their letter dated the 26th November, 1993 quoted in Chief Secretary's letter of 10.1.1994, that Govt. of Delhi should not transfer Doctors from one hospital to another. No letter thereafter was written by the Ministry of Health changing the stand and there is only a note on the file dated 17.6.1994 by the Secretary (Medical) of NCT Delhi, which has been quoted above, observing that the Ministry of Health and Family Welfare had agreed to the proposal of NCT Delhi with liberty to even transfer teaching staff from one institution to other. We are not inclined to agree with the argument of the learned counsel for the Respondent No.2 that the note of the Secretary (Medical), Govt. of NCT Delhi dated 17.6.1994, which has not been followed by any circular, formal order or notification either by the delegating authority or by the so called delegatee, can take the place of the statutory

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provisions. It is only the cadre controlling authority, namely, the Ministry of Health and Family Welfare which have been delegated powers of appointment, postings and transfers of the Members of the Central Health Service to which the applicant belongs. The applicant has also annexed a copy of the Additional Affidavit filed on behalf of the Ministry of Health and Family Welfare before the High Court in the case of Peoples Union of Civil Liberties & Ors. (Supra). The said affidavit filed by one Shri N.M. Perumal, Deputy Secretary, Central Health Service and Vigilance, in the Ministry of Health and Family Welfare, N.Delhi, stated in paragraph 6 that the President has not delegated his power of ~~Appointment~~ / Disciplinary Authority under Central Civil Services (Classification, Control and Appeal) Rules to any subordinate authority in so far as the Central Health Service is concerned. The said affidavit has been filed on 7.4.1995. On the other hand, the meeting to which the note of Secretary (Medical), Govt. of NCT Delhi refers is dated 17.6.1994. It is, therefore, clear that the note of the Secretary (Medical), Govt. of NCT Delhi which has been quoted by Respondent No.2, could not find the approval and concurrence of Respondent No. 1 since there are not even any agreed minutes of the meeting in question and the Respondent No. 1 continued to claim in its affidavit before the Delhi High Court that it did not delegate the authority to any one.

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9. The ld. counsel for the Respondent No.2 in this connection drew our attention to an order of the Ministry of Health and Family Welfare dated 4.1.1996 (Annexure R-2) regarding selection to the Specialist Grade II post of Assistant Professor of Bio-Chemistry. This letter states that one Dr. Pramod Lali who was selected by the UPSC for appointment to the Specialist Grade II post of Assistant Professor of Bio-Chemistry, may be allowed to join the post of Assistant Professor of Bio-Chemistry under the Govt. of NCT Delhi. The learned counsel further submitted that there is no mention in this order where Dr. Lali had been appointed and this was done only by the subsequent order No.51/738/96-M&PH issued by Joint Secretary (Medical) of Govt. of NCT Delhi whereby Dr. Lali was posted to Maulana Azad Medical College, New Delhi. The ld. counsel submitted that this shows that the Ministry of Health had left it to the Govt. of NCT Delhi to post all the Central Health Service Doctors where they wanted and this case would corroborate the decision taken in the meeting held on 17.6.1994. However, we are unable to agree with this reasoning. So far as the applicant is concerned, his order of posting No.A.22012/10/89-CHS.III dated 28.7.1989 (Annexure 'D') issued by the Ministry of Health and Family Welfare was specific as regards his transfer from Maulana Azad Medical College, New Delhi to G.B. Pant Hospital, New Delhi. The

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applicant having been specifically appointed to G.B. Pant Hospital by the Ministry of Health and Family Welfare, which is his cadre controlling authority, he could / be transferred by the same authority unless it could be shown by reference to any order or notification delegating this power to the Govt. of NCT Delhi that the Govt. of NCT Delhi was his cadre controlling authority while working on a post under the Govt. of NCT Delhi.

10. On the basis of the above discussion, we have no hesitation in holding that the impugned order of transfer and consequently the order relieving him from duty from G.B. Pant Hospital, was issued without competence and jurisdiction by the Respondent No.2. We, therefore, quash the impugned orders. The Respondent No. 2 is directed to allow the applicant to rejoin his duties as Professor of Bio-Chemistry in the G.B. Pant Hospital and to pay him all arrears of pay, etc. to which he would have been entitled had he not been relieved from that post. The applicant would also be entitled to the cost of Rs.1000/-.

~~R.K. Ahooja~~
(R.K. Ahooja)
Member(A)

~~A.V. Haridasan~~
(A.V. Haridasan)
Vice Chairman(J)

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