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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A./XXXXNo. 1745/1996

Decided on: 26.5.92

Dr. Jyoti Thandani

....Applicant(s)

(By Shri S.K. Gupta

Advocate)

Versus

Govt. of N.C.T. Delhi & Others ....Respondent(s)

(By Shri Amresh Mathur

Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, Member (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not? 75

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1745 of 1996

New Delhi this the <sup>u</sup>26 day of May, 1997

**HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)**

DR. Jyoti Thandani  
W/o Shri Kishor Thandani,  
R/o C-30/Y-4, Dilshad Garden,  
Delhi-110 095.

...Applicant

By Advocate Shri S.K. Gupta

Versus

1. Government of N.C.T. of Delhi  
Through Chief Secretary,  
5, Sham Nath Marg,  
New Delhi.
2. Director,  
Directorate of Health Service,  
E-Block, Saraswati Bhawan,  
Connaught Place,  
New Delhi.
3. Officer on Special Duty,  
Department of Medical & Public Health,  
Govt. of N.C.T. of Delhi,  
5, Sham Nath Marg,  
Delhi-110 054.
4. Medical Superintendent,  
Civil Hospital,  
Raj Pur Road,  
Delhi.

...Respondents

By Advocate Shri Amresh Mathur

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant is a Dental Surgeon in the Civil Hospital of the respondents. By the impugned order dated 13.8.1996 she was transferred to work in the same capacity in the DHS and in her

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place one Dr. Alok, Dental Surgeon, who was in DHS was transferred. By an interim order, the respondents were directed to maintain status quo in respect of the applicant.

2. The applicant's grievance is that the aforesaid transfer has not been in public interest but has been ordered in an arbitrary manner. She alleges that the respondents have taken a prejudicial action against her by way of transfer her simply because there was a complaint from one Dental Hygienist working in the same hospital and it was alleged in the complaint that he was subjected to mental torture and harassment at the hands of the applicant. She was asked to offer her comments and the matter was enquired into by a Committee. She also appeared before the Committee and she had said that she has never made any complaint against the complainant and she denied the allegations of the Dental Hygienist. Thereafter, the matter was under the consideration of the Committee and when there was no basis for the complaint and when there was no adverse report against her by the Committee, the respondents had by the colourable exercise of power, ordered her transfer quite arbitrarily and this transfer was made on extraneous consideration rather than in public interest. The applicant has also taken the plea that the impugned order was not passed by the competent authority as the order was issued

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by an officer on Special Duty and not by the Secretary (Medical).

3. The respondents in their counter-reply have stated that the transfer of the applicant alongwith certain other doctors have been ordered on administrative grounds and, therefore, the order is no prejudicial or biased in any manner. They also deny that this transfer order had to do anything with the investigation done by the Committee on the complaint made against the applicant. They have averred that it is for the competent authority to take a decision in regard to the transfer of the individual keeping in view his/her working capacity, educational qualification and experience for the smooth functioning of the hospital. Therefore, they submit that the grounds taken by the applicant are not tenable. They have also stated that the services of all the doctors and Dental Surgeons are transferable within the Hospitals/Medical Institutions under the respondents and, therefore, this is not an exceptional order. In the light of this, they contend that this application is liable to be dismissed.

4. During the hearing, the respondents filed an additional affidavit pointing out that the Civil Hospital was elevated from 40-bed to 100-bed hospital and it was felt that the dental wing had to be headed by a Senior Dental Surgeon and in view of this, Dr. Alok, who was

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senior to the applicant was taken to the Civil Hospital and the applicant was transferred to DHS and there was no other reasoning behind this transfer. The applicant contests this position and maintains that there has been no change in regard to the upgradation of the hospital in any manner whatsoever and there has been no increase in the bed strength or the status of the hospital to necessitate any change. The transfer, according to the applicant, has been made purely on extraneous considerations and the applicant was promoted to the post of Junior Staff Surgeon on 25.2.1990 whereas Dr. Alok was promoted in January, 1991 after completion of his study leave. As far as the qualifications for the post, the applicant as well as Dr. Alok had the same qualification and, therefore, the fact that he had acquired subsequently additional qualification / should, not give rise to any weightage for any preferential posting to the disadvantage of the applicant. She maintains that both Dr. Alok and she were recruited by the Common Selection Committee in 1985 and she had been working in the Civil Hospital since 1986. The respondents had simply picked up her and transferred her out arbitrarily, because of the complaint without giving her any opportunity to be heard.

5. I have heard the learned counsel for the parties and have also perused the departmental record.

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6. From the impugned order passed by the officer on Special Duty, it is seen that 7 doctors have been transferred out of which only Dr. Thandani and Dr. Alok belong to the category of Dental Surgeons. So it cannot be said that the transfer of the applicant is a part of chain of transfers in the Dental Departments of the various hospitals under the respondents. This transfer also provides for the applicant being replaced by Dr. Alok and vice-a-versa. Although ordinarily transfers are in public interest, from the averments made in the application and pleadings of the respondents, it is clear that the transfer does not appear to be a transfer simpliciter on administrative grounds. The transfer follows the complaint against the applicant which was entrusted to an internal committee for an enquiry. The respondents submitted the concerned transfer file in which there is no indication that this transfer has been <sup>made</sup> on account of exigencies of administrative requirement. Secondly from the Committee's report submitted by the respondents, it is seen that it has come to a conclusion that in the absence of conclusive evidence it was not possible to verify the authenticity of the complaint and there was no proof against the allegations. The Committee was also of the view that the problems in the department have been caused by personality conflicts

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between Dr. Thandani and Dr. Sharma and they have made certain recommendations in order to streamline the working of Dental Department. The impugned transfer order seems to have been made in the wake of the complaints which were under investigation by the Committee as the Committee was set up in July, 1996 itself. Therefore, I am of the considered view that this transfer is not wholly based on any administrative exigencies. In any case, the official records do not indicate that the transfer order has been necessitated on account of any administrative exigency or purpose. Besides, the respondents have not shown that this transfer is made in accordance with any guidelines for transfers or with proper justification.

7. It is also clear that the applicant has been singled out to be replaced among all the dental doctors in the hospitals of the Delhi Administration without any ostensible administrative purpose. In the light of this, I have no hesitation to conclude that the impugned transfer order has been made in colourable exercise of power and is quite arbitrary. The impugned order cannot, therefore, be sustained and is accordingly set aside. There shall be no order as to costs.

  
(K. MUTHUKUMAR)  
MEMBER (A)

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