

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 2602/97.

New Delhi this the 26th day of May, 1998.

Hon'ble Member Shri T.N. Bhat, Member (J)

Hon'ble Member Shri S.P. Biswas, Member (A)

Dr. V.P. Bansal  
S/O Shri H.C. Aggarwal,  
Additional Director General of Health Services,  
Directorate General of Health Services,  
R/O CC-II/26, Tilak Marg,  
New Delhi.

APPLICANT

(By Advocate: Shri B.P. Singh)

Vs

1. Union of India  
Through the Secretary,  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.
2. Shri P.P. Chauhan,  
Secretary (Health),  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.
3. Dr. S.P. Agarwal,  
Director General, Health Services,  
Nirman Bhawan,  
New Delhi.
4. Smt. Shailaja Chandra,  
Additional Secretary (Health),  
Ministry of Health and Family Welfare,  
Nirman Bhawan,  
New Delhi.

RESPONDENTS.

(By Advocate: Shri V.S.R. Krishna.)

O R D E R

(Delivered by Hon'ble Shri T.N. Bhat, Member (J))

In this O.A. the applicant, who was at the relevant time working as Additional Director General, Health Services, has assailed the order dated 24/10/97 issued by Respondent No.1 transferring the applicant to the post of Director, Central Institute, orthopedics, Safdarjung Hospital which

26.5.98.

post, according to the applicant, is only a senior Administrative Grade Post while the applicant was holding a Higher Administrative Grade Post.

2. The matter was earlier heard by the Bench consisting of the then Vice Chairman (Judicial) and one of us (Sh. S.P. Biswas). There was a divergence of views between the two members constituting the Bench, and accordingly, by the following order of that Bench pronounced on 6/2/98 the matter was referred to the Hon'ble Chairman:-

" In view of the disagreement shown by my learned brother, let this file be placed before the Hon'ble Chairman for appropriate orders. In the meantime the interim orders, if any, to stand till final disposal of this case.

Sd/-  
Member (A)

Sd/-  
Vice Chairman (J)"

3. An interim order, staying the operation of the impugned transfer order dated 24/10/1997, had been passed on 30/10/1997 and the same continues to operate even now.

4. Since in the order of reference the points on which there was a difference of opinion were not stated or formulated by the Bench, the Hon'ble Chairman, on the suggestion of the learned counsel for the applicant formulated the following five questions for determination in the reference:-

*Subj*

(i) Whether the impugned transfer order was in public interest?

(ii) Whether it was vitiated by mala fides?

(iii) Whether the transfer was from a higher rank to a lower rank and, therefore, punitive in nature, or in violation of Article 311 (2) of the Constitution?

(iv) Whether the transfer order was bad in the alleged absence of approval from the competent authority?

(v) Whether it was against the provisions of the Central Health Service Rules, 1996, (in short, the CHS Rules 1996)?

5. After hearing the learned counsel for both the parties the Hon'ble Chairman, acting as the "Third Member" held; firstly, that the impugned transfer order was in public interest; secondly, that the transfer order was not vitiated by mala fides; thirdly, that the transfer was not from a higher rank to a lower rank and, accordingly, no question of violation of Article 311(2) of the Constitution arises; fourthly, that as the transfer order was approved by the competent authority, it cannot be said to be bad; and, lastly, that the transfer order was not against any of the provisions of the Central Health service Rules, 1996.

*try/nn*

6. Having answered the said questions as above, the Hon'ble Chairman directed that the "matter be now placed before a Division Bench consisting of any Judicial Member and Shri S.P. Biswas, Administrative Member because Dr. Verghese is no longer with us in the Tribunal, for further hearing, if any, and disposal of the case in accordance with law."

7. When the matter was listed before us on 18/5/1998 the applicant appeared in person and stated that his counsel would be making further submissions, as the matter required "further hearing". At his request we granted a short adjournment and eventually heard the learned counsel for both the parties on 21/5/1998, Shri B.P. Singh for the applicant and Shri V.S.R. Krishna for the respondents.

8. The main refrain of Mr. Singh's argument is that since both the Members constituting the Division Bench were agreed on the point that the concerned Minister was the Competent Authority to give approval to the applicant's transfer and the approval of the Minister had not been obtained, the Third Member, Hon'ble Chairman, could not have expressed a totally different view, holding that the Minister of State was the Competent Authority and his approval had been taken. In this regard the learned counsel lays emphasis on the contention that in question No. (iv) which arose for determination it is assumed that the approval from the Competent Authority had not been taken. According to the learned counsel the only question that was required to be answered was as to whether the absence of approval rendered the transfer order bad. He has further urged before us that the finding recorded by the Hon'ble Chairman on this point is, in all probability, not factually correct, as according to the

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information gathered by the applicant the Minister of State had put her signatures only ~~date~~ on the <sup>note</sup> whereby the matter was referred to the Minister concerned.

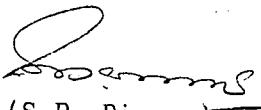
9. We have carefully considered the above contentions and the contentions in reply thereto made by Shri V.S.R. Krishna, and we find ourselves unable to agree with Mr. Singh, mainly for two reasons. Firstly, we are not sitting in appeal to examine the correctness of the findings given by the Third Member. Secondly, we find that the question at issue before the Third Member was not merely as to what would be the affect of absence of approval from the Competent Authority but also whether this was at all a case of absence of approval which would render the transfer order bad. The use of word "alleged" before the words "absence of approval" while formulating question No (iv), fully supports our view. We may further state that the Hon'ble Vice Chairman (Judicial) who constituted the Division Bench with one of ~~us~~ us had held that the Minister concerned (in this case the Prime Minister, holding the charge of the Heath Minister) himself being a delegatee could not sub-delegate any powers to the Minister of State. According to the learned V.C. (as he then was) the fact that the Prime Minister had not signed the proposal was by itself sufficient to invalidate the applicant's transfer. Disagreeing with this view the Administrative Member (one of us, namely, Shri. S.P. Biswas) held that what was more important in such matters was the "Procedural Fairness" which was very much evident in the case. Although it was accepted by the learned Administrative Members that the proposal was not specifically approved by the Minister concerned, but at the same time it was observed that the proposal had been made and signed by the <sup>u</sup>MOS (Minister of State). It was further

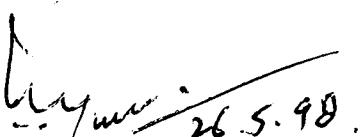
held that even if the Minister concerned had not put his signatures in token of approval this by itself would not invalidate or vitiate the transfer order.

10. In the above circumstances the question that really fell for determination before the Third Member was as to who was the Competent Authority and whether he/she had approved the order. Upon consideration of this question the Hon'ble Chairman (Third Member), disagreeing with the view of the Vice Chairman (Judicial), held that according to the relevant provision in the Allocation of Business Rules matters relating to transfer and postings were not required to be put up to the Prime Minister and could be dealt with at the level of the concerned Minister of State. It has further been specifically held, on a perusal of the official records, that the Minister of State had granted approval to the proposal for applicant's transfer. We are not legally competent to re-open or re-examine this question.

11. In the result, in accordance with the view of the majority, we hereby dismiss the applicant's O.A. as being devoid of merit. We further leave the parties to bear their own costs.

12. Interim order passed in this case is hereby vacated.

  
(S.P. Biswas)  
Member (A)

  
26.5.98  
(T.N. Bhat)  
Member (J)