

Central Administrative Tribunal
Principal Bench

O.A.No.2612/97

Link on 05/12/97
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 5th day of December, 1997

Dr. T.M.Biswas

s/o late Shri L.M.Biswas

r/o 1675, Gulabi Bagh

New Delhi.

... Applicant

(By Shri Rama Krishna, Advocate)

Vs.

1. Govt. of N.C.T. of Delhi
through Chief Secretary
5, Shyam Nath Marg
Delhi.

2. Principal Secretary (Health & Family Welfare)
Govt. of N.C.T. of Delhi
5, Shyam Nath Marg
Delhi.

3. Dr. L.L.Agarwal
Chief Medical Officer
Civil Hospital
(now known as Aruna Asaf Ali Govt. Hospital)
5, Rajpur Road
Delhi.

... Respondents

(By Mrs.Avnish Ahlawat, Advocate)

O R D E R

The applicant has challenged the order of his transfer, Annexure A1 from Aruna Asaf Ali Hospital to the Directorate of Health Services, issued by the Government of N.C.T. of Delhi on 31.10.1997.

2. Briefly the case of the applicant is that he was working on Non Functional Selection Grade (NFSG) in the scale of Rs.4500-5700 as Chief Medical Officer in the Aruna Asaf Ali Hospital when the Medical Superintendent, Dr. A.C.Mallick retired on 31.10.1997. As no regular appointment had been made to the post of Medical Superintendent, Dr.A.C.Mallick handed over the charge of Medical Superintendent to the applicant as the next seniormost officer. However, the respondents on 3.11.1997 ordered one Dr. L.L.Agarwal, Respondent No.3 to hold the

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additional charge of the Medical Superintendent, Aruna Asaf Ali Hospital and also issued the impugned order of transfer to deprive him of his legitimate right to be considered for posting as Medical Superintendent. He has therefore sought the quashing of the impugned order, Annexure A1 with direction to allow him to continue on the post of Medical Superintendent.

3. The main grounds on which the applicant has based his case is that he had taken charge as Medical Superintendent, that he was seniormost doctor in the Aruna Asaf Ali Hospital after retirement of Dr. A.C.Mallick and that Dr.L.L.Aggarwal, Drugs Controller is junior to him. The appointment of Dr.Aggarwal, in additional charge of Medical Superintendent, is according to the applicant nothing but colourable exercise of the powers of Respondent No.2, i.e, Principal Secretary, Health and Family Welfare, Govt. of N.C.T. of Delhi.

4. The respondents in their reply have contended that transfer is an incidence of service. They deny that he was ~~ever~~ asked to take over charge as Medical Superintendent and the decision to hand over the charge to the applicant, in fact, was a joint venture of Dr. Mallick and Dr. Aggarwal. The orders in respect of Dr. Aggarwal were, in fact, issued on 31.10.1997 itself. According to the respondents various considerations are involved in deciding the posting of an officer in an administrative job such as that of Medical Superintendent and the applicant cannot claim the same merely on the basis of his seniority; in fact, the Deputy Medical Superintendent working in the Aruna Asaf Ali Hospital was also junior to the applicant. The applicant has been posted as zonal/nodal incharge and as such he is working against a ~~superior~~ time scale post and ^{his} ~~as such~~ service interest had been fully protected.

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5. I have heard the counsel on both sides. It has been contended vehemently by the learned counsel for the applicant that Dr. Aggarwal was even otherwise not qualified to hold the charge of Medical Superintendent as he had been initially recruited into the Central Health Service after being regularised as ad-hoc appointee. He pointed out that when directions were given by the Hon'ble Supreme Court to regularise such ad-hoc appointees, it was further ordered by the Supreme Court that they will have a separate seniority list and their promotions shall be regulated by such separate seniority and such promotions will only be in supernumerary posts so that interest of direct appointees coming through UPSC are not adversely affected. The post of Medical Superintendent, Aruna Asaf Ali Hospital is not a supernumerary post and Dr. Aggarwal could not thus be posted as such. He also cited certain orders of the Ministry of Health and Family Welfare, according to which, such regularised Central Health Service appointees such as the Dr. Aggarwal could not be assigned any administrative work.

6. I have considered the matter carefully but find no merit in the case of the applicant. No personal malafide has been alleged. There are no orders cited by the applicant wherein he was posted as the Medical Superintendent by the competent authority. Admittedly, the post of Medical Superintendent is a super time scale post and the applicant who is working in the Non Functional Selection Grade as Chief Medical Officer had, in any case, no right to be appointed as a Medical Superintendent. The respondents have also shown that the directions of the Ministry of Health dated 27.6.1997 that only Chief Medical Officer on the regular cadre of GDMOs will be posted as CMO - Incharge of Dispensaries and no CMO promoted against supernumerary post shall be posted as Incharge of any dispensary and that such

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supernumerary posts which are different than the regular post will not carry with them administrative powers, has been superseded by a subsequent order dated 01.07.1997, Annexure A4.

7. The applicant has also been posted in Delhi. Thus there is no change of any station of posting. In the circumstances, it is difficult to conclude that the applicant has been the victim of any malafide action. It is true as contended by the learned counsel for the applicant that malafide in law can be inferred from the facts and circumstances of an action resulting in transfer. Had the applicant shown any transgression of guidelines or Rules, on the part of the respondents, in respect of his transfer then he would have been on stronger ground. However, merely because he could have been given the additional charge of Medical Superintendent and he has been deprived of this opportunity by his transfer cannot be a sufficient basis for any adverse inference. More so, when the applicant was not entitled even otherwise to hold the post of Medical Superintendent on a regular basis.

8. In view of the above discussion, I find no ground to justify interference in the matter. The OA is accordingly dismissed. No costs.

~~R.K. AHOJA~~
(R.K. AHOJA)
MEMBER(A)

/rao/