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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2123 of 1989
T.A. No.

DATE OF DECISION 27.10.1989

K.M. Singh Applicant (s)

Shri A.K. Behera, Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri P.P. Khurana Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Shri K.M. Singh, Pharmacist in-charge of stores at the Gole Market CGHS Dispensary, against his transfer orders dated 14.9.89 transferring him from the Gole Market Dispensary to the Headquarters Office at Nirman Bhavan.

2. The case of the applicant is that from the beginning of his service career, he has been raising his voice against corruption and misuse of power indulged in by the doctors and other staff members of the CGHS and has, therefore, earned the wrath of many doctors and other officers. He has filed copies of complaints against such malpractices by various persons. As a result of his complaints, he earned the wrath of higher authorities who enjoy considerable influence in the administration of CGHS. Initially his transfer order was conveyed by the Medical Officer, Dr. Mrs. Kalra, on 8.9.89 and he was directed to hand over^{charge} but no order of transfer was given to the applicant. Only on his making a request to give in^{under} writing, a copy of the impugned order has been given to him. This transfer order is from the Medical Officer Incharge of

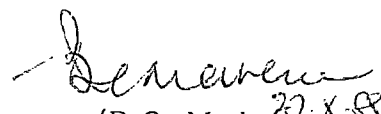
the Gole Market CGHS dispensary who is not the competent authority to issue transfer orders.

3. Shri P.P. Khurana, appearing for the respondents, produced the relevant files dealing with the applicant's case, including his transfer. On one of the complaints of the applicant, the Joint Secretary incharge in the Ministry of Health, had asked for a full examination and the note recorded mentions that an Inquiry Officer has been appointed to make preliminary enquiries against the charges made by the applicant against the Medical Officers in CGHS Dispensary, Gole Market. It has been stated that the applicant was transferred from North Zone to Central Zone in December, 1987 and posted to CGHS Dispensary Chitragupta Road. While he was working there, the Chief Medical Officer of that dispensary had asked for his immediate transfer and now that the Gole Market Dispensary has also made a similar request, it was thought fit to surrender him to the Establishment (NG) Section as it was not possible to adjust him in any dispensary under the Central Zone. At the instance of the CGHS Pharmacist Association and also on receiving an apology ^{from the applicant} the applicant was retained under the Central Zone vide orders dated 18.7.88. The note says that the applicant is in the habit of leaving the dispensary without prior permission or intimation to the CMO and has also been found loitering in the corridors of the Nirman Bhavan without entry pass and for which he was verbally warned. The note also refers to two complaints made against the applicant by one L.D.C. and the Safaiwala of the Gole Market Dispensary. In view of his alleged habit of making baseless complaints, not only against the staff members, but also against the doctors without routing the same through the C.M.O., it was considered that it would be better to transfer him from the dispensary. The orders of transfer have been issued by the Administrative Officer, CGHS, Nirman Bhavan. It is stated by the learned counsel for the respondents that these orders have been approved by the Deputy Director, CGHS, and conveyed to the Medical Officer of the Gole Market Dispensary, who is the Administrative Officer.

4. The case of the applicant is that the transfer order is mala fide in the sense that he has been making allegations of corruption against the Chief Medical Officer in-charge CGHS Dispensary as well

as the Deputy Director, CGHS, Dr. Kalra and Dr. Gupta respectively. It is noticed that an Inquiry Officer is being appointed to examine these complaints. As such, the malafide has still to be established. The case of the respondents is that the applicant quarrels with the doctors and staff in the various dispensaries and no dispensary is willing to accept him and as such, he has been posted to the Headquarters Office. The learned counsel for the applicant stated that although the applicant does not suffer directly by this Tribunal, the transfer itself is void being based on malafide and is a colourable exercise of power by the competent authority.

5. I have gone through the pleadings of the applicant and the records produced by the respondents and have given careful consideration to the arguments on both sides. This is a transfer within New Delhi itself and normally the courts may not interfere in administrative matters unless it can be established that there has been a malafide and also it is to be considered whether this results in any disability or harm to the applicant. The Supreme Court in two recent judgments - Union of India and Others Vs. N. Kirtania (Judgments Today 1989(3) S.C. 131) and Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani (Judgments Today 1989 (3) S.C. 20) - has held that a Central Government officer on a transferable post can be transferred by the authorities and that the employee has no right to resist the transfer except making a representation against the transfer. I do not think this is a fit case to interfere in the transfer order, but it will be useful if the authorities examine the complaints made by the applicant thoroughly and take necessary action. With these remarks the application is dismissed. There will be no orders as to cost.


(B.C. Mathur)
Vice- Chairman