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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 2196/89
with MP 2809/89 and MP 31/90

Date of decision: 12.02.1990.

Dr. G.K. Vishwakarma

....Applicant

Vs.

Union of India

....Respondents

For the Applicant

....Miss Vijaya Lakshmi
Menon and Shri Naveen
Prakash with Shri P.P.
Rao, Counsel for the
applicant.

For the Respondents

....Shri P.H. Ramchandani
and Shri R. Srinivasan
with Shri Gopal
Subramanian, Counsel
for the respondents.

For the Intervenors

....Shri S.K. Gambhir,
Counsel for the Inter-
venor in MP No.2809/89.

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant has challenged in this application filed under Section 19 of the Administrative Tribunals Act, 1985, the order of the Appointments Committee of the Cabinet to "shift" him from the post of Director General, Health Services in the Directorate General of Health Services, Ministry of Health and Family Welfare, Government of India to the post of Consultant in the Planning Commission in the same rank and pay with effect from 23rd October, 1989 and the order dated 24.10.1989 issued by the Ministry of Health and Family Welfare to the effect that consequent on his appointment as Consultant, he "stands relieved" of the charge

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of the post of Director General of Health Services with effect from the forenoon of 24.10.1989. According to him, the impugned orders in substance and effect amounts to removal and/or reduction in status and that it has been made with ulterior reasons.

2. On 31.10.1989, the application was admitted and an interim order was passed restraining the respondents from filling the post of DGHS on regular basis and the same has been continued until further orders.

3. The applicant has not joined the post of Consultant in the Planning Commission. He has gone on long leave with effect from 8.7.1989 and he still continues to be on leave.

4. The Central Health Service Officers Association through its Honorary Secretary has filed MP No.2809/89 for intervention on behalf of the said Association on the ground that the decision of this Tribunal in the instant case will vitally affect all members of the Association and their conditions of service. We allowed Shri S.K. Gambhir, learned counsel to make his presentation on behalf of the said Association.

5. The post of Director General of Health Services carries the pay scale of Rs.8,000/- fixed and it is the top most post in the Central Health Service constituted under the Central Health Service Rules, 1982. The applicant was appointed to the said post on 29th October, 1986. He is presently aged about 55 Years.

6. The applicant has worked in various capacities in several Hospitals in Delhi since 1963. He is a well-known Orthopaedic Surgeon.

7. In May, 1989, the Junior Doctors in the Central Health Services and autonomous bodies went on strike for pressing their demands. In 1986 also, there was a similar strike by the Doctors, Nurses and Class IV employees. The applicant was then associated

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with the settlement of their grievances. He was also associated with the settlement of the grievances of the Junior Doctors in 1989. He, however, feels that the senior officers of the Departments of Health, Finance and Personnel headed by the then Cabinet Secretary were not happy with his endeavours to reach an amicable settlement with the striking Doctors. According to him, the then Health Minister advised him to proceed on leave on 8.7.1989 on personal grounds. On 13th July, 1989, a news item appeared in the Indian Express under the caption "Health Services Chief likely to be shifted". According to the News Paper report, he was proposed to be shifted in view of his "soft approach" towards the striking Junior Doctors.

8. On the receipt of the impugned order dated 24.10.1989, the applicant submitted a representation to the respondents stating that his appointment as Consultant in the Planning Commission was done unilaterally and without giving him an opportunity to show cause, that it was in breach of the rules of Central Health Service, that it was motivated and guided solely by extraneous considerations, and in the facts and circumstances, it was penal in character and amounted to demoting/removing him from the highest position in the Central Health Service. He also contended that there was no equivalent post in the Planning Commission to the post of DGHS.

9. Thus the contention of the applicant is that the impugned order has been passed with an ulterior motive and on extraneous considerations and in colourable exercise of power and that it amounts to reduction in his status and to lowering his prestige in the public eye.

10. The case of the respondents is that a post of Chief Consultant exists in the Planning Commission carrying a fixed pay of Rs.8,000/- per month which is the same as that attached to the post of Director General, Health Services. In the past, this post has been held by senior Technocrats/Management Specialists/Educationists to assist in the overall planning work for the country. No Recruitment Rules have been framed for this post and flexibility has been an important element in

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filling up this position.

11. The respondents have denied the allegation of ulterior motives made by the applicant. As regards the strike of Junior Doctors in 1989, the respondents have admitted that he was also associated with the settlement. They have, however, denied the allegation that senior officers of the Government were dissatisfied with the part played by him to resolve the strike.

12. We have heard the counsel of both parties and have gone through the records of the case carefully. The main questions for consideration are (i) whether the respondents are within their right to shift the applicant from the post of DGHS to that of Consultant in the Planning Commission and (ii) if the answer to the above question is in the affirmative, whether the manner in which he was so shifted suffers from any illegality.

13. With regard to the first question, Shri P.P. Rao, learned counsel for the applicant relied upon some rulings and contended that they constitute binding precedents*. In our opinion, these rulings are distinguishable and do not apply to the facts and circumstances of the instant case. In the instant case, the issue raised relates to the validity of transfer of a head of the Department from his parent department to a post outside that department which did not arise in the rulings cited by him. The question is one of interpretation of the provisions of the Central Health Service Rules, 1982. There is no specific provision in the said Rules stipulating that a member of the Service cannot be transferred outside the Service. Rule 12 of the said rules dealing with liability for Service states that officers appointed to the Service shall be liable to serve anywhere in India. Any person appointed to the Service shall, if so required, be liable to serve in any Defence Service or post

*Cases cited by the learned counsel are: 1973(2) SLR 659, 1977(1) SLR 176; 1979(3) SLR 805; 1984(1) SLJ 61; 1975(2) SLR 704; and 1986(3) SCC 7.

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connected with the Defence of India, for a period not less than four years including the period spent on training, if any. It is, however, clarified in the proviso to Sub-Rule(2) of Rule 12 that such person shall not be required to serve as aforesaid after the expiry of 10 years from the date of his appointment and that he shall not ordinarily be required to serve as aforesaid after attaining the age of 45 years. Rule 12 is not relevant to the applicant who has crossed the age of 55 years. The Planning Commission is not a Defence Service or the post of Consultant in the Planning Commission is not one connected with the Defence of India. Rule 15 deals with leave, pension and other conditions of service. Sub-Rule(3) of Rule 15 provides that the other conditions of Service of the members of the Central Health Service in respect of matters not expressly provided for in these Rules shall, mutatis-mutandis and subject to any special orders issued by the Government in respect of the Service, be the same as those applicable to officers of the Central Civil Services in General.

14. As there is no provision for transfer of the Director General of Health Services outside the parent department, the conditions of service applicable to the officers of the Central Civil Services would apply to the instant case. The relevant provisions of the Fundamental Rules applicable to the officers of the Central Civil Services in general are FR 11 and FR 15 which are as under:-

"FR 11 'Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Govt. which pays him and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a body incorporated or not, which is wholly or substantially owned or controlled by the Government'.

FR 15(a) 'The President may transfer a Government servant from one post to another; provided that except
(1) On account of inefficiency or misbehaviour, or
(2) On his written request,
a Government servant shall not be transferred substantively to, or, except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the permanent post on which he holds a lien, or would hold a lien had his lien not been suspended under Rule 14'.' *av*

15. According to the Ministry of Home Affairs memorandum 75/55-Ests.(A) dated 24th March, 1955, a Government servant may be transferred to any post within or outside the parent department or Service and also that the appointment to the new post may be of any description e.g. temporary, officiating, substantive etc. The only restriction laid down is that save in the circumstances specified in the rule, the transfer shall not be made to a post carrying less pay than the pay of the permanent post on which the Government servant holds an actual or suspended lien. The relevant extracts from the said memorandum are as under:-

"2. Fundamental Rule 11 declares that unless in any case it is otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Govt. which pays him and he may be employed in any manner required by proper authority without claim for additional remuneration whether the services required of him are such as would ordinarily be remunerated from the Consolidate Fund, or from a Local Fund. Under F.R. 110, a Government servant's transfer to "foreign service" cannot be effected against his will. That restriction does not, however, apply to transfer of a Government servant from one post under Govt. to another which is permissible under FR 15. This rule clearly contemplates that transfers may be to any post within or outside the parent department or service and also that the appointment to the new post may be of any description, e.g. temporary, officiating, substantive, etc. The only restriction laid down is that save in the circumstances specified in the rule, the transfer shall not be made to post carrying less pay than the pay of the permanent post on which the Government servant holds an actual or suspended lien".

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" It is evidently in the public interest that in order to bring all round national development, Government should be free to utilise the available man-power to the best advantage".

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"3. On the other hand, though the power to make such transfer is available, it should be exercised in the public interest and with due care. The following general consideration would have to borne in mind:-

(i) The best utilisation of available man-power does not necessarily require permanent transfers. But even if services of an officer are needed in a post outside the permanent service or department it is usually sufficient to arrange for his deputation for a limited period.

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- (ii) Organised separate services for dealing with the needs of different branches of administration provide a steady supply of officers with specialised training and graduated experience who have a sense of departmental loyalty and reasonable assured prospects. Compulsory permanent transfer to and from such services should only be made in cases of proved necessity.
- (iii) Other things being equal, the State will get better service from a willing servant than from one who is compelled to carry out the duties of a post against his wishes. So long as the reluctance of an officer is not based on unreasonable or unworthy consideration, public interest would generally be better served by taking some one who is not so reluctant.
- (iv) While the public interest is served, the legitimate claims and expectations of individual employees should not be ignored. It is necessary to make sure, not only, that there is no loss of pay but also that the employee's reasonable expectations in the original service or department are preserved, or equal prospects are provided in the service or department to which the employee is transferred. At the same time, the interest of members of the service or Department to which the transfers are made should also be considered.
- (v) A transfer to a distant place involves movement not only of the officer concerned but also his dependents. This may well be a serious hardship, especially to the low paid employees".

16. In view of the forgoing, the appointment of the applicant as Consultant in the Planning Commission cannot, in our opinion, be faulted on the ground that the Rules do not permit the same.

17. It is true that as a consequence of his being shifted from the post of DGHS to that of Consultant in the Planning Commission, the applicant would be placed in a comparatively innocuous post, the nature and responsibilities of which having been left undefined. It is true that the duties and responsibilities of the Director General of Health Services is of a very wide magnitude, involving administration and Management of Medical Education and Medical Services in India. The duties and responsibilities also involve working as ex-officio Chairman/ Member of various functional committees attached to autonomous bodies like Medical Council of India, National Board of Examinations, Indian Council of Medical Research etc. These duties

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and responsibilities ^{are} attached to the post of DGHS and the same cannot be claimed after the incumbent is transferred from the post. The fact that the applicant may lose administrative powers of controlling the entire Health Services and that he will be deprived of membership of various bodies after his being shifted from the post of DGHS would not amount to reduction in rank and punishment, provided that the shifting is not arbitrary and it is in accordance with the relevant rules and instructions. Thus, the power of the Government to transfer even the DGHS outside his parent department in public interest cannot be called in question.

18. The second question relates to the manner of exercise of power of the Government to shift the applicant from the post of DGHS to that of Consultant in the Planning Commission

19. In this context, learned counsel for the applicant, stated that the applicant is not alleging mala fides on the part of the Ministers who were Members of the Appointments Committee of the Cabinet, or of the officers who may have processed his case. His grievance is that he was shifted from the post of DGHS to that of Consultant in the Planning Commission arbitrarily and for ulterior considerations and consequently the impugned order is untenable in law.

20. As against the above, Shri Gopal Subramaniam, learned counsel for the respondents, contended that there was no arbitrariness on the part of the respondents, as alleged. He stated that a post of Chief Consultant which exists in the Planning Commission, had formerly been occupied by eminent persons like Prof. Yash Pal and Dr. ^{or} Vardarajan. The facts and circumstances in which they were appointed in the post of Consultant are not, however, before us.

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21. The applicant has worked in the Directorate General of Health Service for over three years. According to the learned counsel of the applicant, he had risen from the ranks to occupy the topmost post of DGHS in 1986. In 1985, the Government awarded 'Padma Shree' to him. He is a professional occupying the top level post in the Central Health Service as distinguished from a generalist like an officer of All India Service who is rotated from post to post. He has about three years more of service in the Government. In view of this, the manner of shifting him outside the Service as proposed, has relevance to determine the validity of the impugned action. The dividing line between impropriety and illegality, while dealing with the holder of a top-level post like the applicant, is indeed very thin. The learned counsel of the applicant argued that the expression "shifting" used in the impugned orders is unknown to legal parlance. There is no judicial authority indicating the precise meaning of that expression. According to him, it appeared to be ^a bureaucratic expression to refer to "transfer" or "posting". The expression "stands relieved" occurring in the impugned order dated 24.10.1989 indicates that the shifting was to be implemented with speed and unilaterally, without waiting for the normal procedure of handing over of the charge. He contended that it would be inappropriate to use such expressions, specially in relation to a professional occupying the highest position in his field in Government service. The language in which the impugned orders have been couched, coupled with the surrounding circumstances indicate that the transfer of the applicant was sought to be implemented without any administrative good sense. The question arises whether in the facts and circumstances of the case, it would be reasonable to hold that the impugned action was arbitrary and hence illegal, as contended on behalf of the applicant.

22. Conceptually, arbitrariness is the antithesis of fairness.

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The expression 'arbitrary' has been defined in Black's Law Dictionary, Fifth Edition at page 96 as follows:-

"Arbitrary. Means in an "arbitrary" manner, as fixed or done capriciously or at pleasure. Without adequate determining principle; not founded in the nature of things; nonrational; not done or acting according to reason or judgment; depending on the will alone; absolutely in power; capriciously; tyrannical; despotic; Corneil Vs. Swisher County, Tex. Civ. App; 78 S.W. 2nd 1072, 1074. Without fair, solid, and substantial cause; that is, without cause based upon the law, U.S. Vs. Lotempio, D.C.N.Y., 58 F.2d 358, 359; not governed by any fixed rules or standard. Ordinarily, "arbitrary" is synonymous with bad faith or failure to exercise honest judgment and an arbitrary act would be one performed without adequate determination of principle and one not founded in nature of things. Huey Vs. Davic, Tex. Civ. App., 556 S.W. 2d 860, 865."

23. A brief mention may be made to the judicial pronouncements of the apex Court on the subject. In Shalini Soni Vs. Union of India, 1980 (4) SCC 544 at 549, the Supreme Court observed as follows:-

"It is an unwritten rule of the law, constitutional and administrative, that whenever a decision-making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote".

24. The aforesaid view was relied upon in C.I.T. Vs. Mahendra & Mahindra Ltd., 1983(4) SCC, 392 at 402, wherein it was observed as follows:-

"Indisputably, it is ^a settled position that if the action or decision is perverse or is such that no reasonable body of persons properly informed, could come to or has been arrived at by the authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same".

25. In Sant Raj & Another Vs. O.P. Singla & Another, 1985(2) SCC 349 at 352, the Supreme Court observed as follows:-

"Whenever it is said that something has to be done within the discretion of the authority, then that something has to be done according to the rules of reason and justice and not according to private opinion, according to law and not humour. It is to be not arbitrary, vague and fanciful, but legal and regular and it must be exercised within the limit to which an honest man to the discharge of his office ought to find himself".

26. In Ram and Shyam Company Vs. State of Haryana & Others,

1985(3) SCC 267 at 282, the Supreme Court, referring to its earlier decision in Fertilizer Corp. Kamgar Union (Regd.) Vs. Union of India, 1981(1) SCC 568, observed as follows:-

"The Court cannot usurp or abdicate and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the Court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration".

27. In K.I. Shephard Vs. Union of India, 1987(4) SCC 431 at 447, the Supreme Court observed that even when a State agency acts administratively, rules of natural justice would apply, and that "natural justice has various facets and acting fairly is one of them".

28. We may consider the question whether the respondents acted fairly in dealing with the case of the applicant. The strike of the Doctors in the CGHS in May-June, 1989 was settled after protracted negotiations by an agreement signed on 1.7.1989. The applicant was associated with the negotiations. The contention on behalf of the applicant was that as the head of the Department of the Central Health Service, it was the duty and responsibility of the applicant to keep up the morale of the members of his Service, who had gone on strike. Apparently, he did so in the best traditions of the head of a Department. The decision of the Association of the Central Health Service Officers to intervene in the present proceedings is mainly with a view to demonstrate their solidarity and appreciation for the part played by him during the strike period. On 8.7.1989, he submitted his leave application to the Minister of Health & Family Welfare in his own hand-writing and the sanction of leave was accorded on the margin of the said letter by the Minister on the same date (vide Annexure 'J', p.92 of the paper-book). Normally, when an officer of the rank and status of the applicant intends to proceed on leave, he sends an office note duly diarised and through his Personal Section. There is no indication that his leave application was transmitted in the usual manner. Apparently,

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he was then in a disturbed state of mind. Five days later, on 13.7.1989, the news item appeared in the Indian Express under the caption "Health Services Chief likely to be shifted" in which the correspondent, quoting Health Ministry sources stated that the cause of his shifting was due to his "soft approach" towards the striking Doctors. The Ministry of Health & Family Welfare chose not to issue any denial or contradiction of the newspaper report.

29. The applicant had at no point of time any inkling that he was being eased out from the post of DGHS, except, perhaps, through the newspaper reports. The Appointments Committee of the Cabinet (ACC) took the decision without a requisition for his service from the Planning Commission.

30. The applicant has filed MP 31/90 requesting for a direction to the respondents to produce files and/or documents and correspondence in regard to the following matters:-

1. Requisition of the Planning Commission for the post of Consultant.
2. Notification by the Planning Commission or by the Ministry of Health & Family Welfare stating that the post of Consultant has been encadred in the C.H.S. (Central Health Services).
3. Correspondence between the Ministry of Health and Family Welfare and the Planning Commission before or after the issue of the shifting order dated 23.10.1989, 24.10.1989 and thereafter.
4. Opinion of the Ministry of Law obtained by the Ministry of Health and Family Welfare on the shifting order and on the representation of the Director General of Health Services dated 24.10.1989.
5. The proceedings of the Appointments Committee of the Cabinet on shifting of Director General of Health Services to the post of Consultant in the Planning Commission.
6. Letter written by the Hon'ble Health Minister

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Shri Rafiq Alam addressed to Hon'ble Prime Minister and a copy endorsed to Home Minister to the effect that the Director General of Health Services has been shifted without consultation with him.

31. The above application was made in view of the contention of the applicant that there was no proposal at all from the Planning Commission asking for the post of Consultant to be occupied by a person with the applicant's knowledge, experience, and expertise. Adverting to the aforesaid application, the learned counsel for the respondents stated at the Bar that there was no requisition from the Planning Commission for the post of Consultant. There was no notification by the Planning Commission or by the Ministry of Health & Family Welfare stating that the post of Consultant has been encadred in the CGHS (Central Health Services). He, however, stated that such a notification could be issued, if necessary. There was no correspondence between the Ministry of Health and Family Welfare and the Planning Commission before or after the impugned order was issued. As regards the opinion of the Law Ministry, the learned counsel for the applicant did not press for its production. The learned counsel for the respondents clarified that there is nothing on record in the Ministry of Health and Family Welfare that the then Minister, Shri Rafiq Alam, addressed ^{a letter} to the then Hon'ble Prime Minister with a copy endorsed to the then Home Minister to the effect that the Director General of Health Services has been shifted without consultation with him.

32. With regard to the proceedings of the Appointments Committee of the Cabinet on shifting of the applicant to the post of Consultant in the Planning Commission, the respondents have filed an affidavit of Shri M. Dandapani, Secretary, Deptt. of Personnel & Training, claiming privilege and the applicant his affidavit in reply.

33. There was argument at length at the Bar about the validity of the affidavit filed by the Secretary, Department of Personnel

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& Training, the learned counsel for the respondents contending that the same is in accordance with law and the learned counsel for the applicant refuting it. In this context, they cited before us numerous rulings on the subject.*

In the affidavit filed by the Secretary, Department of Personnel & Training, it has been stated that privilege has been claimed from production of the documents in question in view of the provisions of Sections 123 and 124 of the Indian Evidence Act, 1972 and Article 74(2) of the Constitution of India. He has stated that privilege is not being claimed on the ground of expediency, or to avoid embarrassing or inconvenient situation, or because it is apprehended that the file, if produced, would defeat the case of the State. The learned counsel for the applicant argued that the affidavit filed by the respondents is of a routine nature without disclosing the material on the basis of which the applicant was shifted by the impugned order. According to him, the respondents have withheld the relevant material and in the circumstances, the Tribunal should either direct the production of the original papers in respect of which privilege has been claimed, or draw adverse inference against the respondents.

35. The learned counsel for the respondents stated that though the original papers had not been brought to the Court on the date of the hearing, he undertook to produce the same, if so directed by the Tribunal for satisfying itself that the record of proceedings of the A.C.C. ^{are} ~~are~~ are entitled to privilege.

36. By the time the application came up for hearing, the complexion of the Appointments Committee of the Cabinet had under-

*Rulings cited by the learned counsel for the applicant:

Dr.(Miss) Anandita Mandal Vs. Secy., Ministry of Health & Family Welfare & Others, ATR 1988(1) CAT 479, in which this Tribunal discussed the relevant rulings of the Supreme Court and of this Tribunal.

Cases cited by the learned counsel for the respondents:

S.P. Gupta Vs. Union of India, 1981 Supp.SCC 87; and Doypack Systems Ltd., Vs. Union of India, ATR 1988, SC 782.

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gone a change. Neither the present Cabinet Secretary nor the present Secretary, Department of Personnel & Training was on the scene when the impugned action was taken by the respondents. At any rate, for the purpose of disposal of the present application, we do not consider it necessary to probe the matter further by calling for the original record of the Appointments Committee of the Cabinet, or by drawing an adverse inference against the respondents on account of its non-production. In our view, there is sufficient material on record to indicate that the surrounding circumstances in which the applicant was shifted by the impugned order smack of arbitrariness and on that score, it cannot be sustained in law. It also displays disregard of grace and dignity, at this level of responsibility. The applicant was sought to be shifted in an unceremonious manner. In reply to his representation dated 24th October, 1989, the respondents stated in their letter dated 31.10.1989 that his appointment in the Planning Commission was neither a penalty nor demotion, nor removal from Central Health Service, that he stood relieved from the duties of DGHS and that he might apply for leave to the Planning Commission. The respondents did not tell him then that he was being posted to the Planning Commission as the Govt. have found him to be suitable to occupy such a position of prestige and eminence. In the counter-affidavit, there are numerous references to the crucial importance of the post of Consultant and the suitability of the applicant for the said post indicating that he was chosen to occupy a position of eminence. If the post in the Planning Commission is of "a very high status", or the Government's thinking was that he was being shifted there "in the overall interest of the public" as his services can be utilised by framing policies for promoting the health of the country, as claimed in the counter affidavit, it

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was normally to be expected that the applicant would have been informed in advance about such an attractive assignment for which he was being tipped. This was not done. It is inconceivable that an eminent professional occupying the highest position in the Central Health Service was not kept in the picture when he was being **drafted** for such a challenging job of framing policies for promoting the health at the national level.

37. The material on record discussed above is sufficient to indicate that the version now put forward by the respondents in their counter-affidavit could be an afterthought or a 'window-dressing' as alleged in the rejoinder-affidavit filed by the applicant.

38. To a query from the Tribunal whether or not in the instant case, the Government has lost confidence in the applicant for holding the post of DGHS, the learned counsel of the respondents replied in the negative. To our mind, the facts and circumstances of the case appear to indicate that the Government had lost confidence in him and, therefore, they would have thought it better to relieve him from the post of DGHS. The post of Director General, Health Services being the highest post in the Central Health Service, it is for them to decide as to who should hold that post. In our opinion, it will not be appropriate to issue a direction to the respondents to allow the applicant to continue in the post of DGHS - till his normal date of superannuation. It would also not be appropriate to pass an order that no one else should be appointed in his place till he attains the age of superannuation. In public interest, such a senior post cannot be kept vacant indefinitely.

39. At the same time, we are unable to uphold the validity of the impugned order passed by the respondents in the instant case on the ground that it is tainted with arbitrariness. It is also devoid of grace in administrative action. There may be exceptional cases in which the Government may have lost

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confidence in a senior officer of the rank and status of the applicant. In such a case, he is politely asked to go on leave awaiting a suitable posting. Such period of leave is reckoned as leave awaiting for posting and the officer is given full pay and allowances and other facilities applicable to a Government servant of his rank and status. This, of course, normally applies to a generalist officer. In the instant case, in the interest of justice and fair play, we feel that the Government should have a fresh look into the case of the applicant in the light of the observations contained in this judgment. In case they still decide that it will not be in the larger public interest to retain him in the post of DGHS, we are of the opinion that he should be given reasonable compensation, having regard to the fact that he is at the pinnacle of his career. In our opinion, he deserves to be paid his salary and allowances for the period from 8.7.1989 when he proceeded on leave till the date on which he would have retired on attaining the age of superannuation, had the impugned orders not been passed. He would also be entitled to count this period for the purpose of his retirement benefits.

40. In view of our conclusions mentioned above, we do not consider it necessary to examine the various other contentions advanced by Shri P.P. Rao including that no formal order has ever been issued in the name of the President of India appointing the applicant as Consultant in the Planning Commission.

41. In the light of the above, we partly allow the application with the following findings, orders and directions:-

(i) We hold that the respondents have the right to post a member of the Central Health Service outside the Service in view of the provisions of Fundamental Rules 11 & 15 and the administrative instructions made thereunder. The validity

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of such a transfer would, however, depend on the facts and circumstances of each case. In the instant case, there is sufficient material on record to indicate that the impugned orders dated 23.10.1989 and 24.10.1989 were issued in an arbitrary manner, without fairness in administrative action and in disregard of the dignity of the individual.

(ii) The impugned orders dated 23.10.1989 and 24.10.1989 whereby the applicant has been sought to be shifted from the post of DGHS to that of Consultant in the Planning Commission are set aside and quashed. We do not, however, issue any direction to the respondents to reinstate him as Director General of Health Services. The Government will be at liberty to appoint a suitable person as Director General of Health Services in accordance with the rules.

(iii) In the interest of justice and fairplay and having regard to the peculiar facts and circumstances of the case, we direct the Government to have a fresh look into the case of the applicant in the light of the observations contained in the judgment. In case they still decide that it will not be in the larger public interest to retain him in the post of DGHS, he should be paid full pay and allowances from 8.7.1989 to the date on which he would have attained the age of superannuation of 58 years, had not the impugned orders been passed. The respondents shall release to him the entire amount payable on this account within a period of three months from the date of communication of this order.

(iv) His pension, gratuity and other retirement benefits should be calculated on the same basis as in (iii) above, treating the period from 8.7.89 to the date of his age of normal superannuation as qualifying service for the purpose of pension. The pension, gratuity and other retirement benefits should be released to him on his attaining the age of superannuation. In addition, he would also be entitled to encashment of earned leave standing in his credit upto 8.7.1989.

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(v) He should be allowed to continue in the Government accommodation in his occupation, if any, on payment of normal licence fee under the rules for a further period of six months from the date of communication of this order.

(vi) The interim order passed on 31.10.1989 and continued thereafter is hereby vacated.

(vii) MP 2809/89 filed by the Intervenor is allowed. We do not wish to pass any order on MP 31/90 for the production of documents filed by the applicant. We also leave open the question of privilege in regard to the production of the records of the Appointments Committee of the Cabinet as we have found that the applicant is otherwise entitled to the above mentioned reliefs on the basis of the material on record.

(viii) We make it clear that the directions given above shall not constitute a precedent.

(ix) The parties will bear their own costs.

Declarant
(D.K. CHAKRAVORTY)

ADMINISTRATIVE MEMBER

12/2/1990

Onward
12/2/1990
(P.K. KARTHA)

VICE CHAIRMAN(J)