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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Dated Friday the twentieth day of January, one thousand nine hundred eighty nine.

PRESENT

Hon'ble Shri S.P. Mukerji - Vice Chairman

ORIGINAL APPLICATION NO. 1652/87

Dr. M.P. Solanki .. Applicant

Versus

1. The Union of India, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi-110011 through its Secretary.
2. The Director, Central Government Health Scheme (Delhi), Nirman Bhavan, New Delhi.
3. The Deputy Director, CGHS, CGHS Building, Shankar Road, New Rajinder Nagar, New Delhi-60.
4. M.O. Incharge, CGHS Dispensary(7) Timarpur, Lucknow Road, Delhi-110007. .. Respondents

Counsel for the applicant : Shri G.R. Bhardwaj

Counsel for the respondents : Shri P.H. Ramachandani

ORDER

Hon'ble Shri S.P. Mukerji, Vice Chairman

In this application dated 3.11.1987 Dr. Solanki of the Central Health Service has prayed that the impugned order passed by the respondents dated 1.10.1987 cancelling his retention in the C.G.H.S. Delhi Dispensary, Timarpur be quashed as arbitrary and malafide and the order dated 15.9.87 retaining him at the Timarpur Dispensary be restored. He has also prayed that the order of respondents dated 6.10.87 relieving him from Delhi and directing him to report to R.H.T.C. (Rural Health Training Centre) at Najafgarh, Delhi also be quashed. The brief facts of the case are as follows.

2. The applicant remain^{ed} posted at the T.B. Hospital Sear Sol, West Bengal which is a category 'C' posting

between 26.3.77 and 31.5.79. Thereafter he was posted to the Central Hospital, Kulla at Asansol which is a category 'B' station where he functioned till 30.9.80. Thereafter he was posted at Delhi in the CGHS between 13.10.80 and 9.10.87. On 26.6.87 he was promoted from the junior scale to the senior scale of the CGHS which is a category 'B' scale of the CHS and transferred to RHTC, Najafgarh. ^{station} ^{AF} He represented on 1.7.87 to retain him in Delhi and on his further representation dated 31.8.87 the respondents passed the order dated 15.9.87 indicating that the President was pleased to decide that Dr. Solanki be retained in CGHS Delhi in the senior scale instead of at RHTC, Najafgarh. On 16.9.87 ~~to~~ ⁱⁿ the Director recommended that he should be transferred to Najafgarh and on 1.10.87 the transfer order dated 26.6.87 to Najafgarh was restored. The applicant was relieved on 7.10.87 but applied for leave between 6.10.87 and 17.10.87 but the leave application was rejected on 23.10.87. His representation against his transfer to Najafgarh was also rejected on 15.10.87. According to the applicant his transfer to Najafgarh and the cancellation of the retention order at Delhi were born out of the malafides of respondents 3 & 4. He stated that in January, 1987 he had complained against respondent No.4 who was showing special favour ^a to lady doctor. The applicant has also appended copies

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of the complaints about the mismanagement that he had made to respondent No.4. He has also brought out the fact that inspite of the order of 15.9.87 cancelling the transfer to Najafgarh, respondent Nos. 4 and 3 tried to relieve the applicant on 17.9.87 and tried to dislodge him from the Timarpur Dispensary by sending orders by special messenger as indicated at Annexure 'L'. In his representation dated 22.9.87 addressed to the Secretary, Ministry of Health he complained that respondent No.4 even after receiving ^{reception} the photostat copy of the order of 16.9.87 prevented ^{from} him attending to patients and instructed the staff concerned not to give medicines on his prescriptions.

3. The respondents have stated that his posting from Timarpur to Najafgarh was in line with the applicant's own request to be retained in Delhi as Najafgarh lies ⁱⁿ also within the territory of Delhi. Though in the Counter Affidavit the respondents 1 and 2 have denied the allegation of malafides against respondents 3 and 4 no separate affidavit has been filed by the respondent No.4 countering the allegations of malafide made against him by the applicant. In his rejoinder the applicant has indicated that scores of his seniors have never been shifted from Category 'A' stations while he is being shifted to Category 'C' and 'D' stations.

4. I have heard the arguments of the learned counsel for both the parties and have gone through the

documents carefully. The case does contain certain unusual features which indicate that the applicant was given less than fair treatment. The fact that the applicant had complained against respondent No.4 before his order of transfer to Najafgarh was passed is evident. Even after the order of transfer was passed, he had complained against the mismanagement in the dispensary in August, 1987. Inspite of these complaints his order of transfer to Najafgarh passed on 26.6.87 was cancelled on 15.9.87. Inspite of cancellation of his order of transfer the applicant was not allowed by the respondent No.4 to function in a normal manner and efforts were made to relieve him on 16.9.87 by sending communications to his residence by special messenger. These facts were brought to the notice of the Secretary of the Ministry of Health himself. It is also surprising that when on 15.9.87 order cancelling his transfer to Najafgarh was issued, on 16.9.87 the Director recommended as is evident from the file that the was not acceptable to the C.G.H.S. He was accordingly relieved from Timarpur in Delhi on 7.10.87, went on leave and joined Najafgarh Centre on 18.12.87. It has also come on record on 23.7.88 he was transferred even from Najafgarh to a village Ujwah which is admittedly a category 'D' Station. Shri Bhandari learned counsel for the applicant stated during the course of arguments that while the applicant

alongwith 46 other persons were promoted to the and posted to category 'A' stations senior scale, only the applicant and one Dr. Das were shifted from their original posting and even in case of Dr. Das the transfer order was withdrawn. In case of the applicant also the transfer order to Najafgarh was cancelled on 15.9.87 but the transfer order was again restored on 1.10.87. Thus according to Shri Bhardwaj, Counsel for the applicant, the applicant was the only single person out of 47 promotees, who was singled out to be transferred to a station of lower category. Shri Ramchandani, learned counsel for the respondents could not refute this averment. In a case of transfer the Principal Bench of the Tribunal in K.K. Jindal Vs. G.M. N.Railway^{and another} ATR 1986(1) 304 indicated that in a welfare state fairness and equality of treatment cannot be overlooked and even in the matter of transfer administrative discretion should not be exercised arbitrarily ^{or} with discrimination. In the present case having cancelled the order of transfer to Najafgarh on 15.9.87, restoring the transfer order, ^{unilaterally} within 15 days and that also for no ostensible reason or public interest seems to be arbitrary, discriminatory and to certain extent malafides in view of what has come out on records between the applicant and respondent

No.4 who has not come forward to deny the allegation of malafides. In the circumstances I allow the application, set aside the order of transfer of the applicant to Najafgarh and direct the respondents to post him to any Category 'A' Station. In the circumstances, there will be no order as to costs.

S.P. Mukerji
(S.P. Mukerji)
Vice Chairman
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