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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No. 682 of 1987

Dr.(Miss) Neena Diwan Vs. Union of India

CORAM : The Hon'ble Mr. Justice J.D. Jain, VC

The Hon'ble Mr. Birbal Nath, AM

PRESENT : Mr. S.C. Gupta, Advocate, Counsel for the  
Petitioner.

Mrs. Raj Kumari Chopra, Advocate, Counsel  
for the Respondents.

DATED : October 1, 1987.

JUDGMENT

( Delivered by Hon'ble Mr. Justice J.D. Jain, VC)

Vide this application under Section 19 of the Central Administrative Tribunals Act, 1985 (hereinafter called as the Act ), the petitioner, who was working as an Associate Professor of Microbiology in the Maulana Azad Medical College, New Delhi, seeks to challenge the order dated April 6, 1987 of the President transferring her to the All India Institute of Hygiene and Public Health, Calcutta in the same capacity with immediate effect in public interest. She has also challenged the order dated April 8, 1987 passed by Shri D.S. Aggarwal, Dean of Maulana Azad Medical College, New Delhi - Respondent No.2, relieving her from the duties from the college on the very afternoon

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of 8th April, 1987 with the direction that she should report to the Director, All India Institute of Hygiene and Public Health, Calcutta in the same capacity in pursuance of order dated 6th of April, 1987 of the Government of India ~~adverted~~ to above.

2. The facts giving rise to the present application succinctly are that the petitioner was promoted as Assistant Professor of Microbiology vide order passed in December 1984 with retrospective effect from 1-1-1983 and posted as such in Maulana Azad Medical College, New Delhi. According to her she had no problem of any kind and was peacefully performing her duties upto the end of 1986. However, in the first week of December, 1986, she had some difference of opinion with the Dean ( Respondent No.2 ) on account of which she felt annoyed with her and started issuing to her memorandum after memorandum making all kinds of allegations and subjecting her to continuous mental agony and harassment. The first communication of the said nature was issued to her by Respondent No.2 on 4-12-1986 ( Copy Annexure A-1 ); another on 23-12-1986 ( Copy Annexure A-3 ) and still another dated 23-2-1987 ( Copy Annexure A-8 ). She submitted her explanations in due course denying the correctness of allegations and insuations contained in the memorandums, the last of her explanation being dated 8-4-1987 ( Copy Annexure A-15 ). However, according to the averments made in the petition, on the same date she learnt from some of her colleagues that she had been relieved from the said post in pursuance of order of her transfer with immediate effect, although neither any

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order of transfer nor the order relieving her was ever served on her. On coming to know of it, she applied for leave w.e.f. 9th of April, 1987. She also made a representation to the Secretary, Ministry of Health and Family Welfare ( Copy Annexure A-17 ) on 10th of April, 1987 and sent one copy to the Dean of the College for onward transmission to the Secretary. Of course, one copy of the representation was sent direct to the Secretary. However, the latter never gave any reply and even the Dean of the College did not forward the same to the Secretary and filed it with the remarks " Considered and filed ". The Dean also refused to sanction of her leave saying that she having been already relieved from her present post, she should apply for leave through the Director, All India Institute of Hygiene and Public Health, Calcutta where she should report for duty in compliance with the transfer order. She wrote another letter dated 29th of April, 1987 to the Respondent No.2 stating that no copy of the order dated 6th April, 1987 had been enclosed with his letter dated 20th April, 1987 as falsely alleged therein. She further contended that all actions taken by him were malafide and she cannot be deemed to have been relieved of her existing assignment. Eventually, she filed this application for quashing her transfer orders on 14-5-1987.

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3. The respondents contest this application contending that transfer of the petitioner has been made purely in public interest and exigencies of service. They deny that the impugned order has been passed mala fide or for extraneous considerations. They contend that the impugned order of transfer is not punitive in nature and <sup>it</sup> being a routine transfer should not be interfered with by the Court. They <sup>have</sup> pointed out that the petitioner belongs to the All India Service and as such, she is liable to be transferred anywhere in India in public interest where the teaching institutions of the Central Health Services are located. She has no right whatsoever to ask for being stationed at a particular place. Respondent No. 2 <sup>having</sup> has denied any difference of opinion with the applicant or that he ever felt annoyed with the petitioner. He explained that all the memorandums dated 4-12-1986, 23-12-1986 and 23-2-1987 were issued to her on the basis of reports received from her Head of the Department that she was not performing her duties properly, effectively and devotedly. Further, the Memos dated 18-1-1987 and 22-1-1987 were issued to her as reminders for tendering her explanation early. Likewise, the Head of Department of Microbiology issued her Memo dated 11-3-1987 keeping in view the fact that the teaching work and test of samples received from the Hospital was being hampered. They deny that any Memo was issued with a view to insult or cause any injury to the reputation of the petitioner.

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rather they were issued in order to maintain decorum and discipline in the department. The respondents have further denied that order dated 6-4-1987 or for that matter order dated 8-4-1987, relieving the petitioner with immediate effect was not served on her. On the contrary, according to them, both the orders were duly tendered to her by the office Peon on the 8th of April, 1987 itself but she returned the same after perusing them. The peon again went to effect service on her but she was not available in the afternoon. She was not available even on 9th of April, 1987 from which date she stopped attending the college and as such the orders of transfer and of relief were sent to her by registered A.D. post on 9th of April, 1987 but the same were returned with the Postman's remarks that on several visits i.e. 11-4-1987, 13-4-1987, 14-4-1987 and 15-4-1987, the addressee was not available despite information having been given on her address. The respondents explained that the handing over charge follows relieving orders and, therefore, the order relieving the applicant was issued on 8-4-1987 and she was relieved in the afternoon of 8th of April, 1987 itself. So the petitioner was required to relinquish the charge of the post formally thereafter.

4. Before embarking upon an examination and discussion of the evidence on record which is in the form of <sup>an</sup> affidavit and counter affidavit etc. we may state the legal position on the subject of transfer as crystalized from the decisions of the

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Supreme Court and various High Courts.

- i) Transfer is always understood and construed as an incident of service and transfer of a Government servant who is appointed to a particular cadre of transferable post from one place to another is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. In other words, a Government servant is liable to transfer to <sup>a</sup> similar post in the same cadre. It being a normal feature and incident of Government service, no Government servant can claim to remain in a particular place <sup>in</sup> or <sup>a</sup> particular post unless, of course, his appointment itself is to a specified non-transferable post. In E.P.Royappa Vs. State of Tamil Nadu A.I.R. 1974 SC 555, a Constitution Bench of the Supreme Court had an occasion to deal with the subject of transfer of a Government servant. The Hon'ble Mr. Justice P.N.Bhagwati, J, as His Lordship ~~t h e n~~ was speaking for the majority observed that:-

"Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They

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require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality.

Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant

but is extraneous and outside the area of permissible considerations, it would

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/ that is hit by Articles 14 and 16 Mala fide exercise of power and

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amount to malafide exercise of power and / arbitrariness are different lethal radiations emanating from the same vice; in fact the latter comprehends the former. Both are inhibited by Arts. 14 and 16.....

What was the operative reason for such transfer; was it the exigencies of public administration or extra administrative considerations having no relevance to the question of transfer?"

- ii) Reference in this context be also made to the recent decision of the Supreme Court in B. Varadha Rao, Vs. State of Karnataka and others AIR 1986 SC 1955. In this case, their Lordships inter-alia observed -

"One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm

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to a Government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardships and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the Government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."

iii) In-P. Pushpakaran Vs. The Chairman, Coir Board, Cochin and another 1979(1) SLR 309  
~~xxx~~ Hon'ble Mr. Justice V. Khaild, J. as His Lordship then was, had an occasion to consider the transfer of an activist of the trade union viz Coir Board Staff Association, from Cochin to Bombay on the pretext of a leave vacancy available there for 45 days. His Lordship observed that -

"The right to transfer an employee is a powerful weapon in the hands of the



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employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

iv) Almost to the same effect are the observations of a Division Bench of Madras High Court in C.Ramanathan Vs. Acting Zonal Manager, Food Corporation of India, Madras and others 1980(1) S.L.R. 309 wherein <sup>Hon'ble</sup> Mr. T. Ramaprasada Rao, CJ observed that

"Courts are chary to interfere with an order of transfer made for administrative reasons. An innocuous order of transfer, which not only on the face of it appears to be one made in order to further the administrative interest of an organisation, but which even on a deeper scrutiny does not pose any irregular or mala fide exercise

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of power by the concerned authority, is generally upheld by Civil Courts, as Courts cannot substitute their own opinion and interfere with ordinary orders of transfer of employees of established organisations. But, if in a given case, an order of transfer appears to be a deliberate attempt to by pass all disciplinary machinery and offend the well-known principle of *addi alteram partem* if *ex-facie* it is clear that the order of transfer was not made for administrative reasons, but was made to achieve a collateral purpose, then it is open to the Court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the real purpose behind the order of transfer. No doubt, a normal order of transfer can, under no circumstances, be misunderstood as a punitive measure. But, if the circumstances surrounding such an order leads to a reasonable inference by a well-instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant considerations, then the arm of the court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design

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and motive of circumventing disciplinary action and, particularly when a Civil servant is involved to avoid the stringent but mandatory procedure prescribed in Article 311(2) of the Constitution of India

v) Similar view was expressed by Court No.1 of this Bench in Shri K.K.Jindal Vs. General Manager, Northern Railway A.T.R. 1986(1) CAT 304. In that case, transfer order was held to be punitive for the reason that even though the order of transfer was innocuous, transfer was made not merely on complaints but on certain conclusions arrived at by the respondents with regard to the conduct of the applicant behind his back.

5. In view of the above legal position, we have to see whether the impugned order of transfer has been made purely in public interest and exigencies of service or whether <sup>it</sup> is malafide, or for extraneous considerations or in order to by-pass or circumvent the ordinary machinery of disciplinary proceedings and constitute a colourable exercise <sup>of power</sup> with a view to punish the petitioner.

6. In a letter dated 4-12-1986, written by Respondent No.2 to the applicant (Annexure A-1), she was required to explain the reasons to him in writing within two days with

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respect to the following matter :-

"It has been brought to my notice that you are not signing the attendance register inspite of the fact that all faculty members are supposed to sign the attendance register daily"

In her reply dated 6-12-1987, she retorted -

"As directed by you to explain, I am unable to understand why such an explanation is demanded of me, when I have been regularly signing the attendance register. I would request you to kindly verify the marking of attendance for the days mentioned by the Head of the Deptt.

I await your kind verification."

7. The contention of the Petitioner is that Respondent No.2 did not give any reply to her communication and not even a single date was conveyed or mentioned to the Petitioner on which she had not signed the attendance register.

8. In the second memorandum dated 23-12-1986 ( Annexure A-3 ) issued to her, the following allegations were made against her :-

- i) That B.D.S. Class scheduled for 21st October, 1986 was postponed to 28th Of October, 1986 but the Petitioner did not take the class on the said date despite the fact that Dr. K.Parkash had informed her about the change of the date. So all the students had to leave. She was required to inform her superiors well in advance if she did not wish to take the class so

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that some alternative arrangement could have been made. Such irresponsible behaviour was not expected from <sup>3</sup>senior faculty member. ( Emphasis ours ).

- ii. That being an Associate Professor in Microbiology Department, she was supposed to be Incharge of Anaerobic Lab. There were four Jars in the department which were under her charge. However, she gave only one Jar to Dr. Amit Bhargava - a 1st Year Post-graduate student who needed two of the above Jars for his thesis on Campylocacter despite his repeated requests. Even the intervention of the Head of the Department did not prove fruitful and as a senior faculty member, it was her earnest duty to guide the students and to help them to become promising citizens.
- iii) That she was extremely impolite, rude and arrogant while dealing with her senior and junior colleagues instead of being courteous and respectfully.
- iv) That she failed to discharge responsibility to look after the attendance and the day-to-day duties and postings of Class-III and Class-IV employees. Even though, the services of a Technical Assistant had been placed at her disposal by the Head of the Department. On account of failure on her part to check the attendance register etc. utter confusion used to prevail upon the diagnostic benches. When any such matter was brought to her notice by the Senior

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Officers, she used to be quite rude instead of sorting out the problem. The result was that the people from the Microbiology Deptt. refrained from going to her for any problem of the department because of her rude and arrogant behaviour. On random checking, it was found one day that the urine seat had no technician with the result that a technician from faeces seat had to be deputed by the Head of the Department. When this matter was brought to her notice by the Head of the Department, she was infuriated and raised her voice and spoke to the Head of the Department of Microbiology in a very sarcastic and rude manner.

- v) That one Dr. Balbinder Singh, a 3rd Year Post Graduate student of Microbiology Deptt. was to work under the Petitioner as Supervisor for his thesis during one year of his Post-graduate Course. The said Dr. Balbinder Singh complained that besides day-to-day psychological torture he was asked to do some manipulation of the data and raise the percentage of isolation. This is highly unethical and reflects on the total unreliability of the work produced and reported by the Microbiology Deptt.

Some more allegations were made and she was called upon to submit her explanation for the above acts of omission and commission including her indifferent behaviour towards her senior as well as junior colleagues.

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9. Though she was required to submit her explanation within three days, she asked for some more time on the ground that the college was closing for winter break and eventually, she submitted her explanation on 21st of January, 1987 ( Copy Annexure A-7). In the meanwhile, she received a couple of reminders from the Dean i.e. Respondent No.2. She contended that all the allegations made against her were false, baseless and were totally denied. She asserted that her conduct and behaviour as a Senior Class-I Gazetted Officer was always good. She rather blamed the Head of the Department for not preparing a schedule for holding classes in consultation with the teacher concerned and contended that an un-dated copy of the schedule was left on her table which indicated <sup>lecture</sup> a retrospective/ date. So she asserted that the Head of the Department did not discharge the responsibility for providing the schedule in time. As for her being Incharge of Anaerobic Lab., she retorted that "Am I to believe that neither HOD nor yourself as previous HOD know for sure the history of this lab? In case I was assumed incharge of this lab. all its facilities and working procedures should be controlled by me. If not, has any higher authority ever prescribed the rules and regulations as to how a laboratory incharge should discharge his/her duties?"

As regards incident of Jars required by Dr. A.Bhargava, she blamed squarely ~~xx~~ the Head of the Deptt. Dr. Varghese whose student he was ~~xxx~~ and contended that with years of effort, she had created and built the

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said facility of diagnosing anaerobic infections in the Department and the Jars formed an essential equipment for carrying out anaerobic work. However, the act of Dr. Bhargava in taking Jars from the Laboratory without her knowledge was a gross irregularity on his part. She complained that there had been instances when Jars had been taken out under instructions of the Head of the Department. She further asserted that in the said case, Dr. Verghese did not discuss with her the extent to which her student - Dr. Bhargava, would be using the Jars nor did she make any attempt to establish if the requirement of her student could affect adversely the needs of patients, which obviously were of paramount importance. The Petitioner also asserted that the Head of the Department had failed to discharge her own responsibility <sup>clearly spelling out the</sup> in delegation of power and resorted to blaming the Petitioner for reasons best known to her. She strongly protested <sup>against the</sup> making of false and baseless allegations and casting aspersion on the integrity and professional ethics of a Senior Officer of the rank of Associate Professor with such a long professional standing as she was. She called in question the motive of the Head of the Department in making baseless allegations without ascertaining the facts. She asserted that the Memos were meant for personal harassment rather than improving the working conditions in the department and it was in bad taste.

10. Vide Memo dated 25th Feb., 1987 ( Copy Annexure A-8), the Dean invited her attention to the fact that the Antibiotic Sensitivity plates had to be shown to the students on 27-1-1987 by Dr. K. Parkash at the time of



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tutorials practicals and Dr. Prakash sent Mr. S.K. Aggarwal, Technical Assistant, Incharge of the Class to the Petitioner to bring three antibiotic sensitivity plates which were to be discarded after the results were read. However, the Petitioner refused to give plates and retorted <sup>to</sup> ~~Mr. S.~~ Aggarwal that Dr. Prakash should send the requisition for plates in writing. Thereafter, Dr. Prakash sent Dr. Amit Bhargava to the routine laboratory with the chit for the Petitioner but the Petitioner was nowhere to be seen and the Technical Incharge of Antibiotic Sensitivity Test Mr. Magge Ram informed that the plates had been discarded. According to the allegation contained in the said Memo, the Petitioner knew that the plates were required for the BDS Class but she did not ensure that the plates were sent to the class or at least preserved for the BDS students. So he accused her of not ~~xxxxx~~ giving the antibiotic plates to Mr. Agarwal deliberately, although as an Associate Professor, it was her duty to ensure that departmental activities during the teaching classes go on smoothly.

11. In her reply to the said Memo dated 8-4-87 she stated (copy Annexure A-15) /that the said complaint was nothing but repetition of earlier complaint contained in Memo dated 23rd December, 1986, She asserted that being previous Head of the Department, she, i.e. Dean, must be aware that she had put in 20 years as a teacher and, therefore, she must be conversant with all the teaching methods. She reiterated that under the present circumstances, clear

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instructions be provided to her with respect to her teaching and other responsibilities and authority and in the absence of such guidance, it would be futile for her to reply again and again to baseless and false allegations. She raised an accusing figure even on the Dean saying that the sequence of issuing memorandums on one pretext or the other either by her i.e. Head of the Department or by him i.e. Dean, convinced her that she was being subjected to harassment perhaps with his tacit approval.

12. On 11th of March, 1987, Dr. A. Verghese, Professor and Head of the Department of Microbiology addressed a letter to the Petitioner ( copy Annexure A-10 ) directing her to handover all the materials pertaining to the antibiotic sensitivity testing viz. sensitivity recording registers, standard bacterial strains, pure antibiotic powders, antibiotic solutions, antibiotic discs, punching machine, filter paper etc. etc. lying in her possession to her i.e. Dr. Mrs. A. Varghese immediately. The contention of the Petitioner is that even prior to the serving of the said Memo, the Head of the Department had circulated a notice dated 11-3-1987 in the department to the effect that the antibiotic sensitivity seat had been de-centralized and just before circulating the said notice, she had taken away the recording registers without informing her, although she was at that time Incharge of the said seat. So she sent a protest notice on the same date ( Copy Annexure A-11 ) followed by another note dated 12-3-1987 ( Copy Annexure A-12 ), in which she lodged a strong protest against the action

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of the Head of the Department in withdrawing the antibiotic sensitivity seat from her as it prevented her from discharging her responsibilities. She sent another reply dated 14-3-1987 ( Copy Annexure A-13) which is almost to the same effect. She also complained of this unwarranted action on the part of the Head of the Department to the Dean vide letter dated 4-4-87. ( Copy Annexure A-14 ). She emphasised that the prime duty of trained and experienced medical microbiologist posted in a medical college attached to a hospital is to aid in diagnosis and treatment of the sick patients but by such ad hoc and peremptory action, the Head of the Department was not only preventing the benefit of the expertise available in the department, gained through years of devoted hard work from reaching the patient but also discouraging serious and devoted research whose stability and continuity are basic pre-requisites. She posed a question if the Head of the Department, as senior among equals, <sup>could be</sup> permitted to obstruct her rightful pursuit of discharging her basic duty towards patients?.

13. As already stated, this exchange of correspondence between the Dean and the Petitioner on the one hand and the Head of the Department and the Petitioner on the other, culminated in the order of transfer of the Petitioner dated 6th April, 1987 issued by the Ministry of Health and Family Welfare, Govt. of India and her relief order dated 8th April, 1987 issued by the Dean himself.

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14. The foregoing chronology of events brings to the surface the real bone of contention between the Petitioner and the Head of the Department. Obviously, she was not happy with the working of the Petitioner as Incharge of antibiotic sensitivity seat and anaerobic laboratory etc. etc. Consequently, she brought all these facts to the knowledge of Dean who in turn passed on the same ~~xxxxxxx~~ to the Petitioner for eliciting clarification/ explanation with regard to the various acts of omission and commission alleged by the Head of the Department. However, while denying the allegations as baseless and false, the petitioner adopted a belligerent posture and hit back the Head of the Department by accusing her of malafides. She even questioned her motive as being purely to harass her. Not only that, she laid the entire blame for mal-functioning of the Microbiology Department on the shoulders of the Head of the Department and absence of clear cut line of demarcation as regards her duties and responsibilities. She even accused the Dean of being conniving with the Head of the Department although he knew her working well being himself previous Head of the Department.

15. It is not for this Tribunal to go into the merits of the allegations and counter-allegations in this application because probe if any into the same, was to be made by the concerned department or the Dean who is admittedly the Head of the institution. However, the question is ~~xxxx~~ whether under these circumstances, the

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transfer of the petitioner to a far off place like Calcutta, although in the equivalent post, can be said to be vitiated by the vice of malafides or colourable exercise of power or being punitive in nature. On bestowing our careful thought and consideration to the facts and circumstances of the case, we are of the considered view that transfer of the Petitioner was made with a desire to ensure <sup>smooth and</sup> efficient working of the Department of Microbiology rather than by any ill-will or malice or extraneous considerations, for instance, out of desire to punish her or out of vindictiveness as is sought to be made out by the Petitioner. Confronted with the situation that the two senior medical Officers, one Head of the Department and the other her next junior Associate Professor in the same department who fortunately or unfortunately belong to the fair sex, were at logger-heads and that the day-to-day working of the department was suffering immensely, the concerned authorities apparently thought it expedient in the exigencies of service to transfer one of them from Maulana Azad Medical College, New Delhi. Perhaps discretion was considered to be <sup>a</sup> better part of valour and no useful purpose would have been served in holding a regular inquiry into the allegations made against the petitioner as that was likely to take a long time while a situation had arisen which demanded swift action to put the department back on rails and to safeguard the interests of the students <sup>and the patients</sup> who were bound to suffer in the unrelenting controversy between the two giants in the Microbiology Department. It is

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significant to note that Respondent No.2 was formerly Head of the Department of Microbiology and the Petitioner had an occasion to serve under him. However, we have looked in vain to find out any insinuation of malafides against him either during the said period or during the course of memos issued by him and the replies given by the Petitioner excepting, of course, towards the end when she accused him of giving tacit support to the Head of the Department. So, it was neither necessary nor perhaps expedient on the part of the concerned authorities to hold a regular inquiry into the matter as that might have done more harm than good to the institution itself. Exigencies of service, therefore, required prompt action and as such we are satisfied that the operative reason for the transfer of the petitioner was purely public interest rather than a colourable exercise of power stemming from ill-will or malice. We also notice that Respondent No.2 was fair enough to draw attention of the Petitioner to the allegations made against her by the Head of the Department and to explain the same. That was perfectly in consonance with the principle of natural justice and fair play. It is not a case where any conclusion was formed by the respondents behind the back of the petitioner as was the situation in K.K. Jindal's case (supra).

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16. We may, however, express our displeasure over the manner the Dean disposed of the representation of the Petitioner which was addressed to the Secretary(Health), Government of India and was sent through proper channel. The Dean could not withhold the same, much less record "considered and filed" on it. Likewise, he should have passed appropriate orders on her leave application as she had not joined duty at Calcutta till then. The least he should have done was to act as a post office and pass it on to the competent authority. Such stiff necked attitude is hardly desirable.

17. Before parting with this case however we may also mention that the petitioner has not displayed total uprightness after the passing of the impugned order. She says that she learnt from her other colleagues

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that she had since been transferred and therefore she proceeded on leave w.e.f. 9-4-1987. This averment fails to carry conviction in the face of affidavits filed by the Service Peon, Shri D.S.Aggarwal, Respondent No.2 and Shri Ravi Dutt, Under Secretary, in the Ministry of Health and Family Welfare. There is absolutely no reason to believe even for a moment that the order of transfer was not issued on 6th of April, 1987 as it purports to have been issued. It is a different thing that a copy marked for the petitioner was not sent by the Ministry directly to her but was collected by a Clerk sent by the Dean on 8th of April, 1987 for this purpose. A lot of capital is sought to be made out by the learned Counsel for the Petitioner from the fact that order of her relief was issued even before she had relinquished the charge. This contention is absolutely fallacious for the simple reason that relinquishment of charge always follows and does not precede the order of relief of the incumbent from a particular post. Evidently, unless relieved, an incumbent cannot relinquish the charge of the post. That apart, the affidavit of respondent No.2 shows that the impugned orders were sent to the petitioner by registered AD post on 9th of April, 1987 but the same were received back with the report of the Postman that despite several visits on his part viz on 11-4-1987, 13-4-1987, 14-4-1987 and 15-4-1987; and despite information having been given, the addressee was not available. It is thus obvious that the Petitioner



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made herself scarce and out of the reach of the Postman whenever the latter visited her residence. It is nobody's case that the address of the petitioner as given on the registered envelop was not correct. A photostat copy of the said envelop alongwith report of the Postman has also been placed on record. So we are of the view that even though she was well within her right to ask for leave before joining at Calcutta and make a representation through the department where she was already working, it was un-becoming of her status and position to evade the service of the registered letter in this manner, especially when she had come to know of her transfer orders. So we are inclined to believe the version of the respondents rather than that of the petitioner in this respect.

17. To sum up therefore, we find no merit in this application. However, we direct the respondents to grant leave to the petitioner as admissible under the rules for the entire period from 9-4-1987 till she reports for duty at Calcutta which she should join within 10 days from to-day.

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