

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1194/91
T.A. No.

199

DATE OF DECISION 17.9.1991

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| <u>Shri N.K. Khadiya</u> <u>Shri M.K. Ramamurthy with Mr. E. V. Joseph</u> <u>and Shri Sanjay Kumar</u> Versus <u>Union of India through Secy., to the President & Ors.</u> <u>Shri G. Ramaswamy, Attorney Genl.</u> <u>and Shri P.H. Ramchandani</u> | Petitioner Applicant Advocate for the Petitioner(s) Respondent Advocate for the Respondent(s) |
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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The question arising for consideration is whether the applicant, a Senior Medical Officer in the C.G.H.S., Delhi, who had been initially appointed on deputation basis in 1984 as Deputy Physician to the President of India and confirmed and absorbed in the said post in 1987, could be deconfirmed and reverted to his parent cadre by the impugned orders dated 10.5.1991 and 13.5.91.

2. Under the Government of India (Allocation of Business) Rules, 1961, the President's Secretariat is a Department of

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the Central Government. The employees of the President's Secretariat are governed by the same statutory rules framed and administrative orders/executive instructions issued by the Central Government pertaining to service matters. They are paid out of the Consolidated Fund of India and are Central Government servants.

3. The President's Secretariat occupies a peculiar position in the governmental set-up, in the sense that the President himself is the ultimate authority in his Secretariat, like the Ministers in the various other Central Government Ministries/Departments. In other words, while the Ministers in the various Ministries/Departments symbolise the President in the constitutional sense, the President of India himself functions as the Head of his own Secretariat.

4. The facts of the case are not disputed. The applicant entered Government service as Medical Officer in 1975 after passing M.B.B.S. and at the time of his deputation to the President Secretariat, he was a Senior Medical Officer under C.G.H.S., Delhi. There is a clinic in the President's Secretariat known as the President's Estate Clinic which



is under the administrative and supervisory control of the Physician to the President of India. The functions of the said Clinic are to provide medical cover to all those dependent on it, advise on family welfare, prenatal and well baby clinic and technical guidance to sanitary staff for the maintenance of public health measures at Rashtrapati Bhavan and the President's Estate. The beneficiaries of the said Clinic are (i) the President of India and members of his family, (ii) the President's personal guests staying in Rashtrapati Bhavan, (iii) VIPs, both foreign and Indian, and their entourage camping in Rashtrapati Bhavan, (iv) staff of the Rashtrapati Bhavan and their families, and (v) dependants of of Rashtrapati Bhavan staff who are normally resident with them on the President's Estate and who are not covered by the C.G.H.S., in emergencies, or at the discretion of the Physician to the President. Apart from the Physician to the President and the Deputy Physician to the President, there are a number of subordinate members of staff, like Technical Assistants, Laboratory Technicians, Radiographer, Nursing Sister, and the like. The duties of the Deputy Physician to the President include looking after the duties of the Physician to the President when the latter is away on tour, or on leave, attend on VIPs and any member of their

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entourage staying at Rashtrapati Bhavan and to inform the Physician about his visits to such patients at the earliest, attend to all emergencies at the Clinic or the residences of the members of the President's staff and conduct General Outpatient Services for the President's Secretariat staff and their families. He is a vital link with the Medical Institutes and specialised hospitals to procure the services of any specialists, when so required. The Deputy Physician to the President has thus an important role to play in the said Clinic.

5. The establishment of a Head of State, expected to interact with high level dignitaries from home or abroad, requires very exacting standards of courtesy and efficiency from the staff and it is absolutely essential that all the key members of staff have a perfect rapport with him. The whole team has to work in a harmonious manner. It is necessary to bear in mind these special requirements of the Rashtrapati Bhavan.

6. The post of the Deputy Physician in the President's Secretariat is one of the key posts. A certain degree of trust and confidence and adequate rapport between the Deputy Physician and the President of India is called for at all times. It may be difficult for the Deputy Physician to discharge his duties and functions in the President's Estate Clinic in the absence of such rapport and without enjoying the trust and confidence of the President of India. It is also implicit in the scheme of things that the President has the privilege and prerogative to choose his own Deputy Physician and the choice made by him does not necessarily bind his successor in office.

7. In the instant case, the then Secretary to the President of India wrote to the then Secretary, Ministry

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of Health & Family Welfare on 13th September, 1984 that the term of deputation of Dr. S. Banerjee, a Senior Medical Officer of the Central Health Services who was then working as Deputy Physician to the President, would expire on 31st December, 1984, and that a panel of at least three names of generalist Physicians be sent to him so that a choice could be made from the said panel. He emphasised that the President's Secretariat wanted only generalist Medical Officers and not any Specialist for the post of Deputy Physician. It was also added that they do not insist on M.D. qualification, but shall be satisfied with M.B.B.S. with a good record of service. On 18th September, 1984, the President's Secretariat again requested the Ministry of Health & Family Welfare to forward the A.C.R. dossiers of the applicant who was at one time working in C.G.H.S. Dispensary of the President's Secretariat along with those candidates that may be sponsored by them, for consideration. On 7.12.1984, the Secretary to the President wrote to the Secretary, Ministry of Health & Family Welfare stating that it had been decided to appoint the applicant on deputation as Deputy Physician to the President in place of Dr. S. Banerjee. The applicant had been selected by the President's Secretariat after considering the panel of names received from the Ministry of Health & Family Welfare. It was added that the applicant could be posted, on an informal basis, to the President's Estate Clinic from 22.12.1984 to enable him to acquaint himself with his new responsibility by working as under-study of

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u.e.f.31.12.84. of Dr. Banerjee, who would be relieved by the applicant/

On 31st December, 1984, the President appointed the applicant as his Deputy Physician until further orders. On 20th March, 1986, the President's Secretariat wrote to the Ministry of Health & Family Welfare proposing to absorb the applicant in the President's Estate Clinic on permanent basis as Deputy Physician to the President. It was also stated that the applicant had agreed and was willing to relinquish his lien in the C.G.H.S. The concurrence of the Ministry of Health & Family Welfare was sought for the permanent absorption of the applicant in the President's Secretariat.

8.. On 21st April, 1987, the Ministry of Health & Family Welfare conveyed the sanction of the President (the Minister concerned) to the permanent absorption of the applicant in the President's Secretariat, as Deputy Physician. Consequent upon this, it was added that the applicant had severed his administrative lien in the Central Health Service and as such, he would not thereafter be borne on the strength of the Central Health Service.

9. On 7th May, 1987, the President's ^{Secretariat} issued a notification in the Gazette confirming the applicant in the post of Deputy Physician to the President in the President's

Secretariat w.e.f. 5th May, 1987.

10. On 12th June, 1987, the Ministry of Health & Family Welfare issued a notification in the official Gazette to the effect that the applicant has severed his administrative lien in the post of Senior Medical Officer in the Medical Officer's Grade of the Central Health Service on the afternoon of 21.4.1987.

11. Thus, the applicant worked in the President's Secretariat from 31st December, 1984 to 10th May, 1991, when the impugned order was passed by the President's Secretariat purporting to deconfirm him and to revert him to his parent cadre. The impugned memorandum dated 10th May, 1991 reads as follows:-

"Dr. N.K. Khadiya's confirmation as Deputy Physician to the President with effect from 5.5.1987 has been found to be contrary to the provisions of the President's Secretariat (Recruitment and Conditions of Service) Rules, 1976 as he does not meet the prescribed qualifications. As such, the confirmation order is void ab initio and he does not acquire any right to hold this post.

2. The order of confirmation is, therefore, being cancelled and Dr. Khadiya will be deemed to have been on continued deputation with the President's Secretariat. In order that this action does not cause any harm to Dr. Khadiya and in the interest of justice and fairplay, it has been ensured with the Ministry of Health and Family Welfare that his lien would consequently get revived, and on his reversion to the Central Health Service he would be given all due benefits as per rules.

3. Accordingly, it is proposed to revert Dr. Khadiya to his parent cadre, i.e. Central Health Service with effect from 31.5.91 (AN). If Dr. Khadiya does not accept the above proposed course of action, the President's Secretariat would be constrained to issue him a show-cause notice as to why his services should not be terminated."

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12. The applicant has contended that the impugned memorandum is illegal, unfair, unjust and unreasonable and that it takes away the rights vested in him. Before he could submit any representation, the President's Secretariat issued another notification on 13th May, 1991, whereby they cancelled the earlier notification dated 7th May, 1987 by which the applicant was confirmed.

13. The present application was filed in the Tribunal on 14th May, 1991. On 17.5.1991, an interim order was passed to the effect that the applicant may not be relieved till 30.5.1991 though it is open to the respondents whether to take work from him or not. On 31.5.1991, the learned counsel for the applicant and the learned Attorney General were heard and an order was passed to the effect that it has been mutually agreed upon that the applicant shall proceed on leave from the afternoon of 31.5.1991 till the final disposal of the

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application, without prejudice to the rights and contentions of either party. It was further directed that in case the respondents appoint another person in place of the applicant as Deputy Physician in the President's Secretariat, it would be without prejudice to the contentions and claims of either party and that it would be subject to the final decision of the application. It was further made clear that the applicant shall be entitled to the emoluments for the period of leave being availed of by him. The leave salary for the period involved was to be provisionally paid by the President's Secretariat, subject to final adjustment, in accordance with the decision on the application. The applicant was also allowed to retain the Government accommodation in his occupation, besides other facilities to which he was entitled during the leave period. The interim order was continued thereafter till the case was finally heard and judgement reserved on 9.9.1991.

14. The applicant has stated that by accepting permanent absorption and confirmation in the post of Deputy Physician to the President of India, he had forgone various promotional opportunities, ^{such as} opportunities of going on deputation abroad, opportunity of taking

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study leave for the purpose of further study and other facilities and benefits which are available to doctors in the C.H.S. Cadre. His juniors have been promoted as Chief Medical Officers in the pay-scale of Rs.3700-5000. Had he remained in the C.H.S. Cadre, he would have been promoted as Chief Medical Officer on 22.7.88 and ~~xxxx~~ he would also have been eligible for further promotion to the grade of Rs.4500-5400. A number of his juniors had availed of opportunities of deputation to Indian Embassies abroad and other benefits which are open to doctors in the C.H.S. Cadre. He has mentioned the name of Dr. Mittal, who is junior to him, who went on deputation to the Embassy of India in Nepal under the Colombo Plan. Dr. Jeevan Prabha, another person junior to him, had got a scholarship under the Colombo Plan for studies in England. Many of his juniors have got scholarships. He could have taken study leave and done his M.D. had he continued as a C.H.S. doctor. He chose to forego all such benefits, facilities and opportunities and had acted in terms of the offer made to him regarding his absorption and confirmation.

15. The respondents have contended in their counter-affidavit that when Shri R. Venkataraman, the present

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President took over from Giani Zail Singh, the case of the applicant was carefully examined in consultation with the Law Ministry and the Department of Personnel & Training. It was found that his confirmation/absorption as Deputy Physician to the President was erroneous and ab initio void as he neither possessed the essential qualifications prescribed for the posts of Deputy Physician to the President nor did the recruitment rules provide for absorption of a deputationist to the said post. In the circumstances, it was decided with the approval of the President to cancel the orders of confirmation which were erroneously made and treat the applicant as on continued deputation w.e.f. 5.5.1987. The respondents have stated that in order that this action does not cause any harm to the applicant and in the interest of justice and fairplay, it has been ensured with the Ministry of Health & Family Welfare that on reversion, the applicant would be given all due benefits as per rules, by them. This has also been incorporated in the impugned order dated 10th May, 1991, mentioned above.

16. We have carefully gone through the records of the case and have considered the rival contentions. The respondents have sought to deconfirm the applicant and

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revert him to his parent cadre on the ground that his confirmation was ab initio void as he did not possess the essential qualifications prescribed for the post of Deputy Physician to the President, nor did the Recruitment Rules provide for absorption of a deputationist to the said post. It is true that the applicant is only M.B.B.S. and that he does not possess the Degree of M.D. The relevant Recruitment Rules notified in 1976 insofar as they applied to the post of Deputy Physician to the President, stipulate that the method of recruitment is "by deputation or direct recruitment", that the qualification required for direct recruitment is "M.D. in Medicine or equivalent with two years' experience in the speciality in a recognised hospital or institution", and that if the recruitment is by deputation, the selection should be made from officers of Group 'A' of the Central Government Health Scheme of similar grades in the State or Army Medical Service. It is also stipulated in the Recruitment Rules that the incumbent will hold the post during the pleasure of the President. The Recruitment Rules provide for probation and confirmation only when candidates are appointed either by direct recruitment or by promotion. If a person is appointed on deputation or transfer, he shall

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be governed by such general terms and conditions of deputation or transfer, as may be laid down by the Central Government from time to time or such terms and conditions as may be settled between his parent office and the President's Secretariat, in consultation with the Ministry of Finance, where necessary. The expression 'deputation' has been defined in Rule 2 (a) to mean the ^{temporary} transfer of the services of an officer to the Secretariat from any office outside the Secretariat and vice versa where the terms of transfer are regulated under the orders of the Central Government contained in the Ministry of Finance O.M. No.F.10(24)-E.III/60 dated 4th May, 1961, as amended from time to time.

17. Rule 16 which contains the power to relax, provides that the President may, if he is of opinion that it is necessary or expedient so to do in the public interest, by order, relax or amend any of the provisions of these rules with respect to any class or category of officers or to any of the posts specified in the Schedule.

18. The Rules of 1976 were amended in 1988 and 1989. Under the amended Rules, the essential qualification for the post of ^{Physician to the President} Deputy ~~Secretary~~ is "M.B.B.S. with two years' experience in a recognised hospital or institution" and that M.D. or equivalent degree has been mentioned as a

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desirable qualification. By the amendment of the Rules in 1989, it has been stipulated that for the post of Deputy Physician to the President, the essential qualification is "Postgraduate Degree in Medicine or equivalent in the relevant field, with two years'

experience in a recognised hospital or institute" is essential.

19. The amended Rule of 1988 has omitted the provision that the incumbent will hold the post during the pleasure of the President.

20. The applicant has contended that all along from 1947, the post of Deputy Physician has been held by doctors who did not have the M.D. qualification. He has further contended that the absorption into ^{and} confirmation ^{and} in the posts ^{and} in the Services in the Rashtrapati Bhavan had been a common feature under every President. He has given examples of this in the application. According to him, all such appointments have been made in exercise of the power of relaxation provided for in the Rules. In the case of the applicant, it has been argued that the non-possession of M.D. qualification by him, ^a should be deemed ^a relaxed by the President, though there are no formal orders to that effect communicated to him.

21. As against the above, the respondents have contended that the confirmation/absorption of the

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applicant was an administrative mistake. As regards the power to relax, the respondents have pointed out that Rule 16 of the Recruitment Rules of 1976 was amended in 1986 which provides that "the President may, if he is of opinion that it is necessary or expedient so to do in the public interest, by order, relax any of the provisions of these rules with respect to any class or category of officers. Reasons will be recorded in writing whenever action is taken invoking this rule".

22. Referring to the aforesaid amendment, the respondents have contended that there has to be an express order of the President stating that the rules have been relaxed. In the instant case, there has been no such order of the President.

23. The learned counsel for both the parties have relied upon numerous rulings^{*} in support of their respective contentions and we have duly considered them. The learned counsel for the applicant forcefully contended.

* Rulings relied upon by the Applicant:

AIR 1982 S.C. 691; 1989 (1) SCC 764; AIR 1967 SC 1269; AIR 1966 S.C. 1942; AIR 1978 S.C. 327; J.T. 1990(2) S.C. 264; 1984 (4) SLR 732; 1981 (2) SCC 673; 1986 (2) SCC 157; 1991 (2) SCALE 365; 1974 (2) SLR 652; 1989(11) ATC 96; 1987 (3) SLR 525; AIR 1989 SC 1577; AIR 1985 SC 1416.

Cases relied upon by the Respondents:

AIR 1964 S.C. 521; 1977 (1) SLR 194; 1987 (4) SLR 75; AIR 1966 S.C. 828.

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that the President had occasion to watch the performance of the applicant from 1984 onwards and that throughout the period from 1984 to 1991, the applicant has never received any Memo. or warning or anything which indicates any complaint about his conduct and performance of duty. The former President had considered the matter and taken a conscious decision to confirm the applicant in terms of the powers conferred on him by the Recruitment Rules of 1976 as they stood before the amendment. The respondents have not also adversely commented upon the work or conduct of the applicant in the counter-affidavit filed by them. In the facts and circumstances of the case, it would not be appropriate to conclude that the former President had acted contrary to the rules while dealing with the case of the applicant.

24. At the same time, as mentioned in para.5 above, having regard to the nature of duties to be performed by the applicant in the President's Estate Clinic and the need for utmost trust and confidence and adequate rapport between the President and his Deputy Physician posted in his Secretariat, it will not be appropriate to conclude that the decision taken by the President to amend the rules and in the light of the amended rules, appoint a new person as his Deputy Physician and revert the applicant to his parent cadre is liable to be set aside and quashed, as

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prayed for by the applicant. It will not be appropriate for a Court or Tribunal to direct the President's Secretariat to retain the applicant as the Deputy Physician to the President when he has taken a decision to the contrary.

25. The upshot of the above discussion is that it is the privilege and prerogative of the President of India to retain the services of such persons who, in his opinion, are suitable to function in the two key posts of his Physician and Deputy Physician in his Secretariat. He may have to consult and seek their advice on an almost continuous and day-to-day basis and they, in turn, are expected to render personalised service to him, the members of his family and the VIPs visiting or residing at Rashtrapati Bhavan. An element of subjectivity may often be involved in the interactions between them. Consequently, the views of the President of India as regards the suitability of the holders of such high posts, may not necessarily bind his successor in office. In this light, there is nothing illegal, improper or questionable if the successor in office reviews the matter, amends the rules and prefers to choose a new incumbent as his Deputy Physician in his Secretariat. In a case of this kind, it will not be appropriate for a Court or Tribunal to issue any directions to the President's

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Secretariat to retain a person as the Deputy Physician to the President of India against the latter's choices and preferences.

26. While the special requirements of the establishments directly under the President have to be taken into account, it is equally important that the applicant who has been placed in his present predicament, should be given full protection in respect of his service prospects.

27. This is not a case of administrative mistake as has been characterised in the counter-affidavit filed by the respondents. It has been stated in the impugned order dated 10.5.1991 that in case the applicant does not accept reversion to his parent cadre, his services would be terminated after giving him a show-cause notice. This tantamounts to giving him a Hobson's choice. The reversion of the applicant, who has functioned satisfactorily as Deputy Physician to the President from 1984 to 1991, to his parent cadre, or the prospect of termination of his services, would have entailed civil consequences but for the assurance given to him in the impugned order dated 10.5.1991 itself that he would be given all due benefits as per the rules, on his reversion to the parent cadre.

28. In the light of the foregoing discussion, the application is disposed of with the following orders

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and directions:-

(i) We hold that it will not be appropriate for a Court or a Tribunal to interfere with the arrangements made for providing the medical services to the President and his guests.

The wishes of the Head of the State as to who should serve him as Deputy Physician, should be respected.

(ii) In view of the fact that in spite of ab initio void appointment of the applicant, as has been asserted in the counter-affidavit, the applicant rendered satisfactory service and was confirmed as Deputy Physician with his lien having ^{been} ~~terminated~~ in the post of Senior Medical Officer in the Medical Officer's Grade of the Central Health Service, on 21.4.1987, we direct the respondents to grant the following reliefs to him:-

(a) The services of the applicant shall be transferred back to the Central Health Service immediately, treating his service in the President's Secretariat as on deputation and enabling him to retain his position in the seniority list as on the date of deputation w.e.f. 31.12.1984.



- (b) The period of leave availed of by the applicant pursuant to the interim orders passed by the Tribunal, may be treated as period on account of waiting for a posting and the same shall not be debited to his leave account. Necessary entries shall be made in the leave account of the applicant accordingly. In any event, the applicant shall be paid full pay and allowances from 31.5.1991 till he is given a suitable posting in his parent cadre within one month from the date of receipt of this order. The Ministry of Health & Family Welfare shall also release to him his pay and allowances for the said period within one month.
- (c) The applicant may, within one week from the date of receipt of this order, apply to the authorities concerned for allotment of alternative Government accommodation from the general pool in accordance with his entitlement or in the event of non-availability, a category below his entitlement. On the receipt of such application, the Ministry of Health & Family Welfare shall do the needful in the matter
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in consultation with the authorities concerned as expeditiously as possible. Till he is allotted such accommodation, the applicant shall be allowed to continue in the quarter allotted to him by the President's Secretariat and he shall be continued to be given other facilities provided to him before the passing of the impugned order of reversion to his parent cadre.

- (d) The Ministry of Health & Family Welfare shall consider the case of the applicant for promotion as Chief Medical Officer in the Central Health Service by constituting a Review D.P.C. within a period of three months from the date of receipt of this order. If such D.P.C. finds him fit for promotion, he shall be promoted from the date his next immediate junior was so promoted. In that event, he would be entitled to all consequential benefits, including seniority, difference in pay, if any, between the pay of Deputy Physician to the President and of the Chief Medical Officer and the increments drawn by his immediate junior.

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- (e) In case, any person junior to the applicant in his parent cadre had been sent on foreign deputation under the Colombo Plan or otherwise, during the period of his service in the President's Secretariat, the Ministry of Health and Family Welfare shall sponsor his name for at least one such assignment as and when occasion arises.
- (iii) The application is disposed of on the above lines. We do not consider it necessary to go into the various other contentions advanced on behalf of both parties in view of the above conclusions reached by us.
- (iv) The parties will bear their own costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 17/9/97
Administrative Member

P.K. Kartha
17/9/97
(P.K. Kartha)
Vice-Chairman(Judl.)