

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No.1232/91

DATE OF DECISION 7-6-1991

All India General Duty Medical
Officers' Association through
Dr.Dinesh Baswal, Sr. Medical
Officer, Central Govt. Health
Scheme, Delhi
Joint Secretary & Ors.

---- APPLICANTS

VS

Union of India & Ors.

---- RESPONDENTS

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SHRI D.K. CHAKRAVORTY, HON'BLE MEMBER (A)

SHRI T.S. OBEROI, HON'BLE MEMBER (J)

FOR THE APPLICANT NO.1

SHRI AJIT PUDISSERY, COUNSEL

FOR THE APPLICANT NO.2

SHRI K.L.BHATIA, COUNSEL

FOR THE APPLICANT NO.3

SHRI RAVINDRA BANA, COUNSEL

FOR THE RESPONDENTS

SHRI P.H.RAMCHANDANI, Sr.
Counsel.

1. Whether Reporters of local papers may be
allowed to see the Judgment? yes .

2. To be referred to the Reporter or not? yes .

JUDGMENT

(DELIVERED BY SHRI T.S.OBEROI, HON'BLE MEMBER (J))

This application has been filed under Sec.19
of the Administrative Tribunals Act, 1985, by All India
General Duty Medical Officers' Association, on behalf

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of its members, as applicant No.1, and also, by applicants No.2&3, in their individual capacity. In it, they have sought for quashing of orders No.A-32012/2/38-CHS.II dated 9-10-1991, No.22012/20/91-CHS.II dated 14-5-1991 and No.22012/2/91-CHS.II dated 15-5-1991, transferring 11 applicants, from their earlier places of posting, to other places, as mentioned in the said orders.

2. An M.P. was also filed on behalf of the applicants seeking to file a single application, on behalf of all the applicants, as per provisions contained in rules 4(5) (a) & (b) of the Central Administrative Tribunal (Procedure) Rule, 1987, which was also granted vide order dated 27th May, 1991.

3. A notice was issued to the respondents on admission as well as interim relief upon which, respondents have filed their counter, opposing both the admission as well as interim relief. The applicants have not chosen to file any rejoinder, and both the parties have agreed that, in view of the urgency of the matter involved, the application may be finally heard and disposed of at the stage of admission itself. Accordingly, we proceed to dispose the application finally.

4. The applicants' case briefly is that the impugned transfer orders are mala fide and have been issued with the purpose of harming the interests of the applicants, while benefitting some others, unjustifiably.

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The learned counsel for the applicants elaborated that, by these transfer orders, while some of the applicants stand to lose, in the matter of their status and facilities/privileges, available to them, by virtue of their present posting, those of some of the others, joining in their places, stand to gain unduly, in spite of being juniors to the former ones. The learned counsel for the applicants further pleaded that these transfer orders are not at all guided by the public interest, but are attended upon, by mala fide reasons, to harm the interests of General Duty Medical Officers, in general, at the behest of the Director General of Medical Services, as the latter belongs to a different sub cadre, and for that matter, wants to subjugate the interests of General Duty Medical Officers, to those of other sub cadre officers, in Central Health Service, and hence attributed and alleged mala fide to the present Director General of Health Service (respondent No.2). The learned counsel for the applicants also cited a number of authorities, in support of his contentions, in this respect, notably the following:-

(1) 1972 (2) SLR 910 (Cal.High Court) - Dr.Smt.

Puspika Chatterjee vs. State of West Bengal

(2) 1975 (2) SLR page 67 (Patna High Court) -

Ramanike Chaudhary vs. State of Bihar.

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(3) 1982 (1) SLR Page 563 (Kerala High Court)
(4) 1969 SLJ Page 576
(5) AIR 1958 SC Page 36-- P.L.Dhingra Vs. Union of India etc.

5. The learned counsel for the applicants also assailed the impugned transfer orders on the ground that the same have not been approved by the Appointments' Committee of the Cabinet (A.C.C.), which is the competent authority in such like transfers, and hence, the transfer orders are also not valid ones.

6. The learned counsel for the applicant No.2 pleaded that the applicant is left with barely four months to retire from service, and therefore, has to get prepared his pension papers etc, and in the event of his transfer to Calcutta, as per the impugned order, he will be suffering from this account also, besides suffering in the matter of status, as he is presently serving as Director, Central Government Health Scheme, whereas, as per impugned transfer order in his case, he has been posted to C.G.H.S. Calcutta, obviously not an equivalent post. The learned counsel for the applicant No.2 also cited some rulings, to press his point, including A.T.R. 1987 (2) CAT Page 64 (Shanti Kumar Ghosh versus Union of India), in which it was held that the transfer at the fag end of service of the Government servants amounts to, mala-fidies.

7. Similarly, the learned counsel for the applicant No.3, while reiterating the other points, urged in respect of applicants No.1 and 2, added that this applicant is left with nearly 11 months, to retire, and, therefore, the points applicable in case of applicant No.2, are equally applicable, in case of applicant No.3, as well. He also pleaded that Dr. Gupta, according to his erstwhile posting, was enjoying much higher status, as Additional Director, C.G.H.S. (Head Qr.), as against his posting as Medical Supdtt., S.G.M.H., Delhi Administration, as per impugned order dated 14-5-1991.

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8. We have heard the learned senior counsel for the respondents, who, in the first instance, raised the preliminary objection with regard to applicant No.1 representing the General Duty Medical Officers, involved in these transfer orders, as atleast 7 of them have, by now, joined the places of their posting, as per the impugned orders, obviously suggesting that they have nothing to oppose, or are satisfied with the transfer orders, whereas, they have not been made party, in the case, and the interests of some of the applicants as against those who have joined their new posting, being in conflict, the representation of the Association, on behalf of all the members of the Association including those who have joined, is legally not tenable, and thus, the application deserves to be dismissed on that account, alone.

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9. The learned senior counsel for the respondents also made a distinction between the initial appointment on promotion, with that of subsequent transfer, by submitting that the initial appointment was approved by the A.C.C., and the present postings, as per the impugned orders, are merely subsequent transfers, which do not need the approval of the A.C.C., and hence, the objection in this regard, raised by the learned counsel for the applicants, is of no consequences.

10. The learned senior counsel for the respondents also pointed out that there is no material difference in the status or other facilities, available to various applicants involved in these transfer orders, and even if there remains any, the same will be sorted out, by issuing appropriate directions, by the competent authorities in this regard, and thus, the respondents are within their rights and powers, to issue the impugned orders, in case of the applicants, as held by Hon'ble Supreme Court in the case of Gujarat Electricity Board and Anr. versus Atma Ram Sundomal Poshani (JT 1984(3)SC 20), and H.N.Kirtania (JT 1989 (3) SC (31), which being later in point of time, have to be followed, as compared to various authorities, cited by the learned counsel for the applicants, in this regard, and the applicants have no option but to join their new places of posting, and may subsequently represent, in case they feel aggrieved, in any manner.

11. In the case of applicant No.2 (Dr.A.K.Das), the learned senior counsel for the respondents pointed out

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that his transfer stands made, to Calcutta, at his own request, as would be seen from some notings to that affect, by the higher officers concerned, and he having not come with clean hands, in seeking relief as per his present application, without correctly bringing the facts and circumstances to the notice of the court, deserves no sympathy on that ground, rather deserves to be severely dealt with for having made mis-statement or concealed the real fact. As regards the applicant No.3, the learned senior counsel for the respondents pleaded that as earlier submitted, this applicant remains at the same station, and the change of status, or corresponding diminution in facilities/privileges, is mere imaginary, and of no real consequences or significance.

12. As regards mala fide alleged and attributed by the applicants to respondent No.2, the learned senior counsel for the respondents vehemently denied the same, adding that it has almost become a fashion these days, to somehow allege such malafidies, as otherwise, in the face of the rulings cited by him earlier, the matters relating to transfers are seldom looked into by the courts, Tribunals. The learned senior counsel for the respondents thus prayed for the summary rejection of the application on behalf of all the applicants involved herein.

13. We have given rather careful consideration to the rival contentions, as briefly discussed above. We have also carefully perused the contents of the O.A. as well as the counter filed by the respondents, in reply to the application. We have also carefully gone through

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the various citations referred to, by both the sides, during the arguments, has briefly touched upon in the preceding paragraphs.

14. Coming to the preliminary objection taken up by the respondents as per para 6 of the counter, regarding objection by the applicant No.1 on behalf of all the applicants, including those who have since joined their new places of posting, as per the impugned orders, and obviously suffering conflict of interests between those who joined and not joined, suffice it to say that, we find the objection having abundant force, and therefore has to be accepted. We, accordingly, confine ourselves to the case of applicants No.2&3, who are also co-applicants in the case.

15. Out of various points urged in case of applicants No.2&3, one of the point urged is that applicants No. 2&3 are due to retire four months and eleven months, from hence, respectively. The learned counsel for the applicants have referred to certain citations on the point that Government servants due to retire shortly, should not be displaced from their earlier posting, rather may be given postings at places of their choice, as far as possible. Though the learned senior counsel for the respondents had urged during arguments, that applicant No.2 had requested the authorities concerned to transfer him to Calcutta, in any capacity, we do not think it necessary to enter into that aspect of the case, as, the fact remains that applicant No.2 Dr.A.K.Das is aggrieved with his transfer, to Calcutta, as per impugned order dated 14-5-1991, in his case. Though the applicant

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might have, at some point of time, requested the authorities concerned, for such transfer, there might have been some change in ^{his} ~~the~~ circumstances, leading to the filing of the present application, seeking cancellation ^{of} ~~to~~ his transfer order. We, accordingly feel that his transfer to Calcutta, at this juncture, and for the same reasons, in case of applicant No.3, also is not sustainable in law, on this ground, alone. We do not think it necessary to dwell upon various other points urged, for and against, by the learned counsel for the parties. However, before concluding, we may refer to the submissions made by the learned senior counsel for the respondents, with reference to the two citations pressed into service by him, to emphasise his point, ^{and} we may say that every case has primarily to be judged from the facts and circumstances of its own, and from that stand point, if the interests of justice so require, courts are not stopped from taking such decisions, as may be necessary to ensure the ends of justice being met.

16. As a result of foregoing discussion, the application is partly allowed in respect of applicants No.2&3 only, and impugned orders in their respect are hereby set aside. Applicants No.2&3 would, accordingly, remain at their earlier places of posting, before the issue of impugned order in their respect. From the perusal of the relevant order dated 14-5-1991, affecting

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these two applicants, we understand that this would not cause much dislocation in case of others affected thereby, as chain reaction, since they continue to remain at the same station, and not much change in their status also takes place, ~~to~~ commensurate with their seniority. We hold accordingly, but in the circumstances of the case, make no order as to costs.

Deeboi
(T.S. OBEROI)
MEMBER (J)

Deekshabandhu
(D.K. CHAKRAVORTY)
MEMBER (A) 7-6-691