

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1586/91
T.A. No.

199

DATE OF DECISION 16.9.91

Dr. S.C. Sharma

Petitioner

Shri G.D. Gupta

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.H. Ramchandani

Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman.(J).

The Hon'ble Mr. R. Venkatesan, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri
Justice Ram Pal Singh, Vice-Chairman (J).

J U D G M E N T

The applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred as 'Act') praying therein:

- (i) to quash the impugned order dated 8th March, 1991 and 23rd/27th February, 1991;
- (ii) declaring the applicant entitled to continue in the post of Addl. D.D.G. (G) in the D.G.H.S. Headquarters and not entitled to be posted to the Dispensary-cum-Hospital complex, like Police Hospital Rajpur Road, Delhi;
- (iii) respondents be directed to allow the applicant to continue in the post of Addl. D.D.G. (G) in D.G.H.S. Headquarters and not to transfer and post him to the Dispensary-cum-Hospital Complex, like Police Hospital, Rajpur Road, Delhi.

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2. On 16.7.91, this Tribunal, as an interim measure, restrained the respondents from filling up the posts of Asst. Deputy Director General, if not already filled.

3. At present, the applicant is employed as Additional Deputy Director General (General) in the Directorate General of Health Services, Ministry of Health and Family Welfare, New Delhi. The applicant was initially appointed as Asstt. Surgeon, Grade-I, in the Contributory Health Service Scheme under the Ministry of Health and Family Welfare on 12th August, 1959. The Contributory Health Service Scheme was named as Central Government Health Service and hence the applicant became a member of the Central Health Service with effect from 1st January, 1965. Thereafter, the applicant was promoted as Chief Medical Officer on 8th October, 1987. The Central Health Service was reconstituted with coming into force of the Central Health Service Rules of 1982 and was divided into four sub-cadres, viz., Non-teaching Specialists Sub-cadre, Teaching Specialists Sub-cadre, Public Health Specialists Sub-cadre and General Duty Medical Officers Sub-cadre. Ultimately, the applicant was selected and given promotion to the post of Addl. D.D.G. (G) which is the post in supertime grade in the scale of Rs. 5900-6700, in March, 1991. The promotion of the applicant was preceded by the selection by a duly constituted D.P.C. and duly approved by the Appointments Committee of the Cabinet. Before the order dated 7th March, 1991 was issued, the applicant vide order dated 23.1.91 was ordered to be transferred from the post of Asstt. Director General (HA), D.G.H.S. in his capacity as C.M.O. (NFSG) to Police Hospital, Rajpur Road, under the C.G.H.S., Delhi (Annex. A-2). This posting of the applicant was made vice Dr. ^(Mrs.) S.P. Kohli who was transferred from Police Hospital, Rajpur Road, Delhi, and posted to 'D.G.H.S., but the applicant did not represent against the said posting, as, according to the applicant, his promotion to the post of Addl. D.D.G. (G) in the supertime grade of the General Duty Medical Officers Sub-cadre of C.H.S. was under process before the Ministry. According to the applicant, he fell ill and was on leave from 11th March 1991 to 10th May, 1991. According to the applicant, he came to know around 21st of March, 1991, that

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a move to transfer him was being contemplated from the post of Addl. D.D.G. (G) at D.G.H.S. Headquarters to the post of Medical Superintendent, Police Hospital, Rajpur Road, Delhi. He, therefore, on 21st March 1991 filed a representation in anticipation of this transfer order (Annexure A-4). The applicant contends that he was arbitrarily picked up from amongst the other Post-graduate CMOs while he was 15th in number in the order of seniority. He also contends that his transfer to the said Police Hospital did not even remotely require the services of a Sr. C.M.O like the applicant. He further contends that he will have to report to his juniors for taking orders and shall also be inspected by them. He contends that his transfer is a downgradation in his service and order of transfer itself is malafide. He also contends that he is the President of the C.H.S. Officers' Association and an Executive Member of the Joint Action Council of Service Doctors Organisation and as he has been voicing and fighting for the cause and grievance of the Service Doctors, he has been transferred malafide with a vengeance as a motive behind. While performing his duty as the President and Executive Member, he has inadvertently incurred the displeasure of the higher authorities.

4. In his lengthy and cumbersome O.A., in para 10, he has given instances where he had rubbed with the Director General (Dr. G.K. Vishwakarma) (Respondent No. 3). The applicant in his O.A. has also repeated that he was promoted to supertime scale of General Duty Medical Officers Sub-cadre of C.H.S. and post/^{ed}to D.G.H.S. Headquarters as Addl. D.D.G. (G) on 7th March, 1991. He further contends that his representation dated 21.3.91 has not been replied by the respondents and thus he has, by this O.A., prayed for the aforesaid reliefs.

5. The respondents, on notice, appeared and filed their return in which they controverted the contents of the facts contained in the O.A. and maintain, inter alia, that the law does not permit the interference from this Tribunal in the order of transfer which has been passed on administrative grounds. This return has been filed by all the

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respondents, including Respondent No. 3 (Dr. G.K. Vishwakarma), Director General of Health Services, Ministry of Health & Family Welfare, Nirman Bhavan, New Delhi. The counter has been sworn by Shri P.K. Kapoor, Under Secretary in the Ministry of Health. The respondents maintain that the order of transfer was not mala fide and the allegations of mala fide are concocted. As the pleadings were complete, on the request of the counsel for the parties, we have heard the matter finally at the admission stage itself.

6. The law with regard to transfer of a Government employee has been settled by the judgments of the apex court of the country in the cases of Gujarat Electricity Board & Anr. and H.N. Kirtania. In Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani (Judgements Today 1989 (3) S.C. 20) the court observed:

"Transfer of a Government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant Rules..."

In the case of Union of India & Ors. vs. H.N. Kirtania (Judgements Today 1989 (3) S.C. 131), the apex court observed:

"...we do not find any valid justification for the High Court for entertaining a writ petition against the order of transfer made against an employee of the Central Government holding transferable post. Further there was no valid justification for issuing injunction order against the Central Government. The respondent being a Central Government employee held a transferable post and he was liable to be transferred from one place to the other in the country, he has no legal right to insist for his posting at Calcutta or at any other place of his choice. We do not approve of the cavalier manner in which the impugned orders have been issued without considering the correct legal position. Transfer of a public servant made on administrative grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of mala fides. There was no good ground for interfering with the respondent's transfer."

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7. The conclusion from these two judgments, which can be drawn is, that a Government servant has no legal right to insist for his posting of his liking. The transfer of a public servant made on administrative or in public interest should not be interfered with unless there are strong and pressing grounds rendering an order illegal on the ground of violation of statutory rules or on grounds of malafide.

8. The transfer of a Government servant may be due to exigencies of service or due to administrative reasons; the courts cannot interfere in such matters. As the right to transfer an employee is a powerful weapon in the hands of an employer, hence allegations of malafide or the allegation of violation of statutory rules are required to be examined closely.

9. The applicant, in para 10 of his O.A., has stated that as he is the President of C.H.S. Officers' Association and Executive Member of the Joint Action Council of Service Doctors' Association, he has been voicing and fighting for the cause and grievance of the Service Doctors and the applicant might have pressed certain matters on behalf of the Service Doctors not to the liking of some of the senior officers of the Ministry and D.G.H.S. and may have inadvertently incurred their displeasure. He further contended in para 10 that there were many hot utterances by the Director General with the applicant. Unfortunately, the applicant has not supplied any particulars with regard to its place and timing when he had confrontation with the Director General while acting as an office-bearer of his Association. In the absence of any particulars with regard to animosity of Respondent No. 3 it is difficult to assess whether the order of transfer passed was suffering from malaise of malafide or not. Malafide is opposed to bonafide. Malafide would include colourable exercise of the power i.e. an exercise of power which is ostensibly so, but which is really a pretext with the ulterior objective for achieving some other end. But it is for the party alleging mala fides to establish that element as a reasonable inference on the facts ^{and} probabilities shown to exist; a mere allegation of mala fides as not entirely improbable, will not do and courts have to take notice of the increasing trend to allege mala fides without any evidentiary substance.

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7. The applicant has also tried to prove that Respondent No.3, Director General of Health Services, Ministry of Health and Family Welfare, was a man who fostered groupism within the medical profession and also created among them a level of discontent by criticising personnel and wage policies of the Government. This has been alleged on the basis of Annexure A-6. This document contains excerpts from the records of OA No. 1232 of 1991 which has been filed by Respondent No. 3 in the Tribunal against certain orders of Respondent Nos. 1 and 2. These excerpts are from the return filed by Respondent Nos. 1 and 2 in that O.A. wherein Respondent Nos. 1 and 2 are also said to have alleged that they have lost their faith in Respondent No. 3 because the post of Director General of Health Services was the highest post in the Central Health Service and situations were created by Dr. G.K. Vishwakarma which was not to the liking of Respondent Nos. 1 and 2. In this return, it is also alleged by Respondent Nos. 1 and 2 that Dr. Vishwakarma (Respondent No. 3), during the working hours collected a gathering of the group of his close followers in the CHS and manipulated, master minding informal administrative measures for settling his scores with others who were seen as non-following. Certain examples have also been given which need not detain us more. The relevance of Annexure A-6 in this matter appears to be remote and far fetched. Even assuming that in the opinion of Respondent Nos. 1 and 2, Respondent No. 3 was not performing his duty according to the norms, yet any recommendation made by him, on this ground, cannot be said to be that of a malice towards the applicant.

8. Annexure R-1 is dated 23.1.91 and was sent under the signatures of Respondent No. 3 to the Secretary, Health, in which he has written that the applicant, Dr. S.C. Sharma, is now working as Assistant Director General (H.A.) and he has experience in Hospital administration. According to Respondent No. 3, in Annexure R-1, he states that they have a post of Medical Officer In-charge, Police Hospital, Rajpur Road, where Dr. (Mrs.) S.P. Kohli is working against the post and in the interest of proper functioning of the Police Hospital, he suggested

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that Dr. S.C. Sharma, ADG (HA) may be immediately transferred to that post and Dr. (Smt.) S.P. Kohli may be transferred to the post of Asstt. Director General (HA) in the Dte. GHS. Thus, when R-1 was passed, he was already working there in the Police Hospital and after the applicant got the supertime grade, his post stood upgraded to supertime scale. This order at R-1 was approved by the Secretary, Joint Secretary and lower staff of the Health Ministry. Annexure R-1 does not smack of any malafide and thus it does not appear to be detrimental to the service conditions of the applicant. The mind behind the person who penned Annexure R-1 might have carried within it the germs of malafide, as alleged by the applicant, but it does not indicate that Respondent No. 3, Secretary and Joint Secretary of the Health Ministry, were in any manner acting either prejudicially to the interest of the applicant or against the provisions of any statutory rule.

9. According to the return of the respondents, the post of Medical Superintendent, Police Hospital Rajpur Road, is the upgraded post in the supertime grade of Rs. 5900-6700. According to them, the applicant was transferred to this post as he has experience in hospital administration and it was expected that the applicant would ensure the proper functioning of the Hospital. According to respondents, even after his promotion to supertime grade, he could continue there because that post had been upgraded to the level of supertime grade. They have denied that the transfer of the applicant was arbitrary, illegal or malafide or that respondent No. 3 had any bias towards the applicant and was the officer belonging to General Duty cadre. They have also described the long leave availed by the applicant after his transfer was contemplated in the supertime grade post as Medical Superintendent, Police Hospital. They have, further contended that the applicant has been transferred to a post which carries the same scale of pay and allowances as he was getting in his earlier posting and there was no demotion or downgrading in status and position in his case. They further contended that the posts are inter-transferable. All supertime grade posts are equal and inter-changeable and the applicant does not suffer in status or otherwise in any manner by his posting as Medical Superintendent of the Police Hospital. They have maintained in their return

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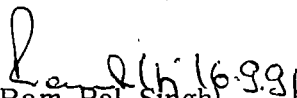
that the approval of the A.C.C. is not required for subsequent transfer of officers from one post to another post of the same status in the same cadre. It is also observed that the transfer order of the applicant was passed after the Secretary and Joint Secretary level had scrutinised the proposal contained in Annexure R-1. The applicant either in OA or in his previous representation had not made any allegations against the Secretary or the Joint Secretary of the Health Ministry. It cannot be said that the Police Hospital does not need a senior person of experience and knowledge of the category to which the applicant belongs and if a supertime doctor has been posted in the Police Hospital, it cannot be said that it contravenes any statutory rule.

10. Though both the counsel have made extensive submissions at the bar, yet they need not detain us from arriving at a conclusion that the transfer order of the applicant impugned in the O.A. neither suffers from mala fide nor contravenes any statutory rules. In the light of the observations made by the apex court in the cases of Gujarat Electricity Board (supra) and H.R. Kirtania (supra), we are not inclined to interfere in the impugned transfer order passed by the respondents.

11. Consequently, this O.A. is dismissed and the interim order passed earlier stands vacated. Parties shall bear their own costs.


(R. Venkatesan)

Member (A)


(Ram Pal Singh)

Vice-Chairman (J)