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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**O.A. NO. 2604/2004
M.A. NO. 552/2005**

New Delhi, this the 16th day of March, 2005

**HON'BLE MR. JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE MR. S.A. SINGH, MEMBER (A)**

U.K. Awasthi,
S/o Shri S.R. Awasthi,
Aged about 55 years,
R/o B-657, Delhi Govt. Flats,
Timarpur, Delhi – 110 054.

...Applicant

(By Advocate: Shri A.K. Behra)

-versus-

1. Lt. Governor,
Govt. of NCT of Delhi,
Raj Niwas Marg, Rajpur Road,
Delhi – 110 054.
2. Chief Secretary & Chief Vigilance Officer,
Govt. of NCT of Delhi,
Deli Sachivalaya, I.P. Estate,
New Delhi.
3. Controller (W & M),
Weights & Measures Department,
Govt. of NCT of Delhi,
117-118, C-Block, Vikas Bhawan,
IP Estate, New Delhi – 110 002.
4. Director,
Indian System of Medicine & Hospitals,
Govt. of NCT of Delhi,
Tibia College Complex,
Karol Bagh,
New Delhi – 110 055.

...Respondents

(By Advocate: Shri Om Prakash)

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ORDER (ORAL)

Justice V.S. Aggarwal, Chairman:

The applicant on 23.10.1985 was absorbed on permanent basis in the Weights & Measures Department of Government of National Capital Territory of Delhi. He was promoted as Assistant Controller (Weights & Measures) in 1993 on regular basis vide order dated 28.12.1993, which reads:

"ORDER

Chief Secretary, Delhi, on the recommendations of the Departmental Promotion Committee is pleased to order the appointment of Shri U.K. Awasthi, presently working as Senior Metrological Assistant in the office of Controller, Weights & Measures, Delhi, to the post of Assistant Controller (Weights & Measures)(Group 'B' Gazetted) in weights and Measures Department of National Capital Territory of Delhi, in the scale of pay of Rs. 2000-60-2300-EB-75-3200-100-3500 plus usual allowances admissible under the rules with immediate effect. He will be on probation for two years.

Shri U.K. Awasthi may exercise his option, if any, within one month in pursuance of instructions of Govt. of India regarding fixation of pay as per provisions contained in F.R. 22.

By order

Sd/-

(RAJ K. SAXENA)

Deputy Secretary (Food & Supplies
Consumer Affairs & Weights & Measures)
Govt. of N.C.T. of Delhi."

2. He was subsequently also promoted as Deputy Director (Weights & Measures) on ad hoc basis.
3. At this stage, it is relevant to mention here that for purposes of the present Original Application, nothing said herein should be taken as any

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expression of opinion pertaining to the reversion of the applicant because the sole question for consideration herein is as to whether the impugned orders dated 1.10.2004 and 4.10.2004, whereby the services of the applicant were placed at the disposal of Director (ISMH) as Superintendent.

4. Applicant contends that he has been appointed as Assistant Director (Weights & Measures), which is a Group 'B' Gazetted post. It is an ex-cadre post and recruitment rules have been notified for the said post under Article 309 of the Constitution. He contends that the impugned orders, whereby his services have been placed at the disposal of Director (ISMH) as Superintendent, are illegal because that is a cadre post in Delhi Administration Subordinate Service (for short 'DASS') and without his consent he cannot be placed outside his own line of promotion, posting, etc.

5. The impugned order in this regard reads:

"OFFICE ORDER

In pursuance of Services-I Department's order No. 413 dated 1.10.2004, Sh. U.K. Awasthi, Asstt. Controller (W&M) is hereby relieved and placed at the disposal of Director (ISMH) as Superintendent in diverted capacity from Weights & Measures Department with effect from 4.10.2004 (A/N). He will, however, continue to draw salary against the Ex-cadre post of Asstt. Controller (W&M) till further order.

Sd/-
(S.N.Jha)
Controller (W&M)"

6. In reply filed, the Original Application has been contested. Respondents plead that applicant has rightly been transferred and



posted as Director, Indian System of Medicine and Hospitals. This has been done with the approval of the Chief Secretary. He has been posted in another Group 'B' post. It is denied that applicant cannot be appointed or posted against any other post or service besides the post of Assistant Controller (Weights & Measures). It is denied that appointment of the applicant is without jurisdiction.

7. We have heard the parties' counsel and have seen the relevant records.

8. On behalf of the respondents, it was urged that in exercise of powers under Fundamental Rule 15, the posting of the applicant in this regard could be effected, but we are not dwelling further into this controversy because of the decision of the Delhi High Court in the case of **V. Paul vs. Union of India**, Civil Writ Petition No. 512/1978 decided on 5.12.1978. The Delhi High Court considered Fundamental Rule 15 and held that a government servant can be transferred within the cadre and the said Fundamental Rule has little application to give power to Delhi Administration to transfer a person from the post of Joint Director of Industries to the post of Assistant Director (Evaluation & Implementation). Therefore, this particular plea of the respondents must be rejected.

9. It is not in dispute that the post of the Assistant Controller (Weights & Measures) has specific statutory rules, which have been framed under Article 309 of the Constitution. It is also not in dispute that it is an ex-cadre post. So far as DASS is concerned, it is a cadre. The consent of the applicant, while posting him to the post in the cadre of DASS, admittedly has not been taken. Thus, we are concerned with the

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sole question if without consent of the applicant he could be posted from an ex-cadre post to a post in the cadre.

10. A Bench of this Tribunal in OA No. 1427/95 in the case of **Chander Bhan vs. Govt. of National Capital Territory of Delhi**, had considered this question on 10.10.1995. The applicant therein was a Motor Vehicle Inspector. He was promoted on ad hoc basis as Motor Licensing Officer in the Transport Department. His grievance was that against the rules and without his consent he had been transferred as Assistant Labour Officer. This Tribunal, besides holding that it was not in the public interest, also held that Motor Vehicle Inspector belongs to a separate department and separate cadre and Assistant Labour Officer belongs to a different department. There was nothing common with the nature of the duties.

11. So far as the question as to whether options must be taken while a person is transferred from one cadre to another, this matter had been considered in the case of **Suresh Kumar Nayak vs. Union of India & Ors.**, (OA No. 513/2002 decided on 13.11.2002). This Tribunal held that unless option is taken, a person could not be posted in another cadre and it violates the Office Memorandum of the Department of Personnel. The respondents Union of India had preferred Writ Petition No. 3000/2003. The Delhi High Court dismissed the said Writ Petition holding:

“We are unable to agree with learned counsel for the petitioners. In coming to the conclusion that an opportunity to exercise the option had to be granted to the respondent, the Tribunal has relied on the circular issued by the Ministry of Personnel, Public grievances & Pensions, in May 1994 when two separate cadres in the Ministry of Communications were created. We fail to

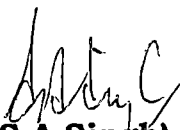


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understand why the same principle should not be applied in the present case, more so when out of the three units, sought to be carved out on trifurcation of the four units, one unit would be under the Ministry of Home Affairs and other two under the Ministry of Communication."

12. Same question had been considered by this Tribunal again in the case of **Pradeep Bhatnagar vs. Union of India & Ors.** (OA No. 2320/03 decided on 2.1.2004). This Tribunal, following the decision of the Delhi High Court, held that without the consent of the employee he could not be transferred outside his cadre.

13. We find no reason to take a different view. In fact, it clearly shows that the service of the applicant has been placed at the disposal of the Department, which is a part of DASS. The consent of the applicant has not been taken. He, therefore, could not be so transferred without his consent. Keeping in view the same, the impugned orders cannot be sustained. For these reasons, we quash the impugned orders but we make it clear that nothing said herein should be taken as any expression of opinion pertaining to other matters pending in OA No. 168/2005 between the parties. Nothing said herein also should be taken as any expression of opinion as to what other posting can be given to the applicant.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

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