

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA 3306/92

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New Delhi this the 13th day of October, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Hon'ble Shri S.P. Biswas, Member(A)

Shri Pritvi Raj Tiwari,
S/O Sh. Piyare Lal Tiwari,
Sr. Chief Health Inspector,
Divisional Hospital,
Northern Railway, Delhi
Qr. No. 174-A-2, Basant Lane, Railway Colony,
New Delhi-55

..Applicant

(By Advocate Sh. G. D. Bhandari)

Vs

Union of India through
The General Manager,
Northern Railway,
Baroda House, New Delhi.

The Divisional Railway Manager(P),
Northern Railway,
State Entry Road, New Delhi

.Respondents

(By Advocate Sh. P. S. Mahendru)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member(J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 on the grounds that the respondents have sought to revert him from the post of Senior Chief Health Inspector Grade (Rs. 2000-3200) to the post of Chief Health Inspector Grade (Rs. 1600-2660) without assigning any reason or grounds in a most arbitrary and malafide manner.

2. The brief relevant facts of the case are that originally the post of Senior Chief Health Inspector was a Headquarter controlled post till the decentralised orders were issued on 24.9.1992. Later, by the order

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On 4.12.92 the post was again centralised by Headquarters Office, N.R., Baroda House, New Delhi. The applicant submits that consequent to decentralisation, the Divisional Railway Manager, Baroda House, New Delhi by order dated 5.10.92, promoted him as Senior Chief Health Inspector in Grade Rs.2000-3200 being the senior most Chief Health Inspector against an existing vacancy and posted/ at Delhi Hospital on regular basis. He has submitted that one Shri S.K.Sharma, Sr.Chief Health Inspector, Divisional Hospital, Delhi had retired from service w.e.f. 30.4.92. At that time, as mentioned above, the post of Senior Chief Health Inspector was decentralised and the order of promotion had been passed by the D.R.M.Office, New Delhi, i.e. Divisional Authority. Learned counsel for the applicant has submitted that cancellation of decentralisation order dated 4.12.92 had been passed after a lapse of 3 months in a colourable exercise of ~~the~~ administrative powers and is full of malice, which has been adopted by the respondents for ulterior motives and to favour some one. He has also submitted that the impugned order dated 4.12.92 is without application of mind and is void abinitio as it is the rule of law which ^{should} prevail and not the whims and fancies of ^a particular authority.

3. The Tribunal by an interim order dated 21.12.1992 had directed that status quo as on that day ^{be} maintained by the respondents in respect of the applicant and this has to be read in the context of ^{his} reversion from Senior Chief Health Inspector to the post of Chief Health Inspector. Shri G.D.Bhandari, learned counsel for the applicant submits that in the seniority list (Annexure A-6) of Chief Health Inspectors Grade Rs.1600-2660 issued on 28.9.92 by the Delhi Division, the applicant's

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name is shown at Serial No.1, although his initial has been wrongly shown as 'PN' instead of 'PR'. In the provisional seniority list of Chief Health Inspectors of the Northern Railways (Annexure 7), the applicant is at Sl.No.26 and one Shri S.R.Sharma who had been promoted as Senior Chief Health Inspector w.e.f. 1.7.92 and shown at Sl.No.23 had refused his promotion. Learned counsel has also submitted that with regard to Shri Surjeet Singh who is ~~_____~~ at Sl.No.24 he has been adjusted against the resultant reversion of one Shri Paras Ram and with regard to Shri H.N.Sharma who is at Sl.No.25 he was ineligible for promotion because of a major penalty chargesheet issued against him. He, therefore, submits that whether the post of Senior Chief Health Inspector is to be considered as Centralised or Decentralised, the applicant is the senior-most eligible person for promotion.

4. The respondents in their reply have stated that the order centralising the post of Senior Chief Health Inspector has not been passed with any mala-fide intention. They have also stated that the applicant's reversion order had been issued, though not placed on record, as he is junior in the centralised seniority list. Learned counsel has, however, submitted that no reversion order as such has been passed against the applicant when the OA was filed on 18.12.1992 and there was no cause of action. The impugned order dated 4.12.1992 was in respect of centralisation of the post of Senior Chief Health Inspector which does not give any cause of action to the applicant. He has submitted that this was merely an inter departmental letter seeking certain clarifications regarding the posting/cancellation of the order dealing

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with Shri R.S.Sharma who had been promoted as Senior Chief Health Inspector, but who had apparently not accepted the promotion and transfer to Delhi from Rewari. Learned counsel has submitted that the order passed by the Headquarters dated 25.8.92 asking the DRM, Bikaner to spare Shri R.S.Sharma to report for his posting as Senior Chief Health Inspector to Baroda House, New Delhi latest by 10.9.92, otherwise he will be debarred for his promotion for one year does not mean that at that time the order promoting Shri R.S.Sharma stood cancelled. Admittedly, Shri R.S.Sharma, stood promoted to the post of Senior Chief Health Inspector w.e.f. 1.7.92 and the learned counsel submits that even upto 4.12.1992 he had neither carried out his transfer-cum-promotion order nor his order had been cancelled. Learned counsel has also submitted that in the order dated 4.12.1992 (Annexure A.11) decentralising the post of Senior Chief Health Inspector Grade Rs.2000-3200 it has been mentioned that further posting will be done after holding a selection for the centralised cadre and, therefore, he submits that there was no mala-fide intention in cancelling the previous orders.

5. We have carefully considered the records and the submissions made by the learned counsel for both the parties. By the order dated 5.10.92, we note that the applicant has been promoted as Senior Chief Health Inspector, Delhi Hospital against the existing vacancy and posted at Delhi Hospital. At that time the post of Senior Chief Health Inspector was decentralised as per the respondents' own orders dated 21.9.92. It is relevant to note that the applicant stood at Sl.No.1 in the

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Divisional seniority in the grade of Rs.1600-2660. By the order dated 4.12.92(Annexure A.11) they again centralised the post of Senior Chief Health Inspector Grade Rs.2000-3200 and have clearly stated that further posting will be done after holding a selection for centralised cadre for the post of Senior Chief Health Inspector Grade Rs.2000-3200 and Chief Health Inspector Grade Rs.1600-2660^{at}/Headquarters level. This order therefore, shows that any posting/promotion to be done by Headquarters subsequent to the order dated 4.12.1992 is prospective in nature. In this view of the matter since the applicant has already been promoted against the existing vacancy as Senior Chief Health Inspector by order dated 5.10.1992, he has a right to continue in that post under the Rules. The query raised in the order of Headquarters letter dated 4.12.1992(Ann.A.1) regarding promotion/vacancy, arising as a result of the orders passed in respect of Shri R.S.Sharma, Rewari does not appear to be relevant. Besides, it is seen that from the letter dated 25.8.92, the respondents have stated that Shri Sharma may be spared immediately to report for his posting as Senior Chief Health Inspector to Baroda House, New Delhi latest by 10.9.92, otherwise he will be debarred for his promotion for one year. Nothing has been placed on record that Shri Sharma took over charge^{as} Senior Chief Health Inspector at Baroda House New Delhi in pursuance of the promotion order dated 1.7.92. Therefore, in the circumstances of the case, Shri Sharma's promotion order must be deemed to have been cancelled as per the respondents' own letter dated 25.8.92. Therefore, from whatever angle we look at this case it is clear that the applicant cannot be reverted from the post of Senior Chief Health Inspector Grade Rs.2000-3200 to the Grade Rs.1600-2660.

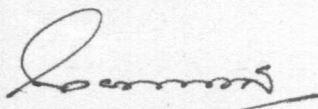
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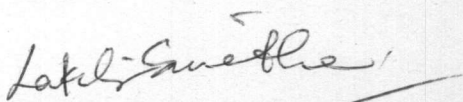
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6. In view of the above, the status quo order dated 21.12.1992 is made absolute. The applicant is entitled to continue in the post of Senior Chief Health Inspector in pursuance of the order dated 5.10.1992. The applicant shall be entitled to all consequential benefits in terms of the orders passed by the respondents.

7. OA is allowed. CP 239/95 stands disposed of and notice issued to the respondents is discharged.

No order as to costs.


(S.P. Biswas)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

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