

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE DAY OF JUNE 1996

Original Application No. 158 of 1996

HON.MR.JUSTICE B.C.SAKSENA,V.C.

Yogendra Nath Tiwari, S/o
Shri Bachan Tiwari, 4/9 Sheo Nagar
Colony, Allahpur Allahabad

Applicant

BY ADVOCATE SHRI A.B.L.SRIVASTAVA

Versus

1. Union of India through the Secretary
Govt. of India, Ministry of
Health and Family Welfare Nirman
Bhawan, New Delhi- 110001
2. The Director C.G.H.S
Ministry of Health & Family
Welfare Nirman Bhawan, New Delhi
3. The Additional Director Central
Govt. Health Scheme, 7-
Liddle Road, George Town, Allahabad

Respondent

BY ADVOCATE SHRI N.B. SINGH

O R D E R(Reserved)

JUSTICE B.C. SAKSENA,V.C.

The OA was heard by me on 6th of June 1996. For detailed reasons to follow, the interim order was vacated.

2. This OA has been filed to challenge an order of transfer dated 12.12.95 contained in Annexure A-1. By the said order the applicant who was working as a Store keeper in C.G.H.S Dispensary No.3 at Allahabad was transferred in the same capacity to Central Medical Stores Depot(CMSD) Allahabad.. The impugned order in the endorsement made in favour of the applicant states that he will take over the charge of drugs from Shri Vivek Kaushal, Pharmacist, C.M.S.D, CGHS Allahabad and Shri Sheo Charan Lal Pharmacist. Similar consequential directions have been endorsed to Vivek Kaushal. On the basis of this the applicant alleges that since Vivek Kaushal is holding the post of Pharmacist Cum Clerk in the scale of Rs.1350-2200,

the applicant who was a Store Keeper in the scale of Rs.1200-2040 has been required to shoulder higher responsibilities illegally. As far as this aspect of the matter is concerned, Shri N.B. Singh, learned counsel for the respondents has placed before me an office order dated 22.2.96 by which one Smt. Vaishali Agrawal Pharmacist cum Clerk was directed to take over the charge of drug items from Vivek Kaushal and it has been indicated that the said Smt. Agrawal has taken over charge. There is an endorsement on the said order indicating that Shri Y.N. Tiwari(applicant) Store Keeper will be assigned duties on reporting to office/CMSD after being relieved from dispensary No.3. The work will be assigned as per details for Store Keeper. The learned counsel for the respondents submitted, as also stated in the counter affidavit, that the applicant has been transferred to work as Store Keeper only.3.

3. The learned counsel for the applicant next submitted that according to the Staff Inspection Unit Report there is no post of Store Keeper in the CMSD. According to the said report post of Store keeper for each dispensary has been provided for. Thus the learned counsel for the applicant submits that there is no post of Store Keeper in the CMSD and the order of transfer is illegal for the said reason.

4. As far as this aspect of the matter is concerned on the basis of the pleadings of the parties it is clear that the applicant has not raised this plea in his representation preferred to the Respondent no.2. Copies of the said representations have been placed as Annexures A6 and A7.

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5. The applicant has no doubt, specifically averred in Para 4.4 and 4.5(b) that there is no post of Store Keeper sanctioned for CMSD in the Administrative offices. In the counter affidavit filed by Dr. S.K. Garg, Addl. Director, C.G.H.S Allahabad no reply to the averment of Para 4.5.(b) has specifically been given. In the short counter affidavit parawise reply to the averments in the OA had not been given. Thus since the said averment is not controverted by the respondents this Tribunal has to proceed on the basis that the averment made by the applicant is correct. However, nothing turns on this aspect of the matter. Since in the counter affidavit it has been indicated that the applicant is working as a StoreKeeper in a Dispensary and keeping records, drugs/non drugs/dead stock items in the office and CMSD also he is supposed to do the similar work. As such nature of work has not changed. It has also been indicated that for administrative convenience due to exigencies of services and due to sensitive post like Pharmacist, Store Keeper and other the incumbents of these posts are rotated by transfer so that they do not develop any vested interest. In this behalf reference had been made to a letter dated 11.10.77 issued by the Respondent no.2 which in para 2 provided as follows:

" that a sum of the posts are sensitive like post of Store Keeper, Pharmacist etc the incumbents of these posts are rotated so that they do not develop any vested interest."

It has further been indicated in the counter affidavit that the applicant for the last 7 years have been working as Store Keeper in CGHS Dispensary No.3 and as a matter of fact he has been working as a Store Keeper for the last 12 years in CGHS Dispensaries at Allahabad. Ever since his appointment is under the CGHS Allahabad.

6. The applicant in his Rejoinder affidavit has indicated the names of two persons one Sri S.P. Tripathi, Store Keeper and Sri G.K. Ansari, Pharmacist who have been allowed to continue for long duration. Administrative Authorities have the exclusive jurisdiction to determine the administrative exigencies. A plea of discrimination in the context is wholly irrelevant. It has not been denied that the applicant has continued to work as Store Keeper in CGHS Dispensaries at Allahabad for the last 12 years and for the last 7 years at Dispensary No.3. This is a good and sufficient administrative reason.

7. In the Counter affidavit it has also been stated that there is no loss of emoluments to the applicant nor of status and he will continue to work as a Store Keeper and discharge the duties of the said post only in the CMSD. The main burden of the applicant's grievance with regard to absence of a sanctioned post of a Store Keeper in the CMSD has to be read in conjunction with the other plea based on the endorsement made in the impugned order. As a matter of fact on a correct reading of the pleadings of the applicant it would appear that his grievance is that since no post of Store Keeper has been sanctioned for CMSD the applicant cannot be said to have been transferred to the CMSD in the same capacity of a Store Keeper. To buttress this plea he further relies on the endorsement made in the impugned order and has taken the plea that he has been posted at the CMSD to shoulder higher responsibility, as he was required to take charge of the drugs from Vivek Kaushal and S.C. Bharatiya, Pharmacists. The position with regard to the endorsement has already been gone into in the preceding para of this order. The applicant is under a misconception that he would be required to work and discharge the duties of Pharmacist cum Clerk or a Pharmacist. It has also been indicated in the counter

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affidavit^{that} the applicant by his transfer to CMSD has been required to look after a part of the Store and a Senior Pharmacist and a Pharmacist cum, Clerk are already working there under the supervision of the Asstt. Store Supdt. As noted hereinabove Smt. Vaishali Agrawal Pharmacist cum Clerk has been posted at the CMSD, CGHS Allahabad.

8. In paragraph 20 of the counter it has been stated that the duties and responsibilities of the incumbents of the three cadres i.e. to say Pharmacist, Store Keeper and Pharmacist cum clerk are similar, as such, transfer order dated 12.12.95 is right and based on instructions of the higher authorities which is in public interest. Perhaps in view of this stand of the respondents a specific reply to para 4.5.(b) that no post of Store Keeper has been sanctioned in the CMSD has ^{not} been given. Evidently this plea had also been taken in reply to OA 1052/90 Shiv Dutt Joshi and Others Vs. Union of India and Ors wherein the Store keepers had challenged the validity of the Central Govt. Health Scheme, Delhi Apathic Pharmacist Gr. I/Store Keeper/Pharmacist cum Clerk) Recruitment Rules 1979 ~~was~~ ~~been challenged~~ and a prayer was made that separate rules for Store Keepers be provided for. In the said order a Division Bench took ~~the~~ note of the plea taken by the respondents therein that in view of identical nature of duties discharged by Pharmacist/Pharmacist cum clerk/Store keepers fresh rules for regulating the method of Recruitment to the post of Pharmacist Gr.I/Store keeper/Pharmacist cum clerk were framed in the year 1979. The IVth Pay commission keeping in view the qualifications placed the incumbents of the three posts in different scales of pay and store keepers who did not possess the qualification of Pharmacist were placed in the lower scale of Rs.1200-2040. The Division Bench considered the

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question whether the Store keeper should be given the same scale of pay as has been given to the Pharmacist. It held that since there is no material ^{before us} to show the duties the Pharmacist and Store keepers are discharging. We are therefore, not in a position to record a finding whether they are discharging similar functions. However, since the matter was ~~xx engaging~~ the attention of the Vth Pay Revision Commission the said OA was disposed of. The applicant has tried to raise the same question herein again which clearly ^{is} irrelevant for the purposes of the OA which is directed against the order of transfer. 2.

9. The learned counsel for the applicant next submitted that at the meeting held with the Director (Respondent no.2) a delegation of All India CGHS Employees Association Branch Allahabad on 21.3.94, Amongst other items two items on which reliance is placed were on the agenda.

Item 20

The seniormost Pharmacist should be entrusted the job of Store or dispensary/CMSPD.

Item 21

In general it would be followed .

However, the local department may make some changes considering the work load of

different units. ~~Based on these items of agenda~~ The
Based on these items of agenda the
applicant has taken the plea that he is the juniormost
Store Keeper and a seniormost Pharmacist should be
entrusted the job of Stores of the CMSD. Again this is a
matter which can be considered by the Administrative
Authorities only. The decision if any taken at the meeting
held on 21.3.94 in respect of the two items do not create
any statutory right which the applicant ~~can~~ get
enforced through the OA.

10. The learned counsel for the applicant next submitted that the order of transfer has been passed by the Respondent No.3 who is not the Cadre Controlling Authority and thus it is pleaded that the order is without jurisdiction. The respondents have met this plea by indicating ^{that} the respondent no.3 is the Appointing Authority as also the Disciplinary Authority of the applicant which fact has not been disputed also by the applicant in his rejoinder. The respondents therefore have taken the plea that the respondent no.3 was Competent to make an intra unit transfer. The Dispensary no.3 and the CMSD office of the CGHS at Allahabad fall within the same CGHS unit under the control of Respondent No.3. Since it is a local transfer and within the same CGHS unit it is difficult to hold that the order of transfer has been passed without jurisdiction by the Respondent no.3.

11. The learned counsel for the applicant has cited the following decisions..

- (1) Smt. Saroj Kumari Singh Vs. Union of India and Ors
1989(9) ATC pg.55.

This decision ~~proceeds~~ ^{proh} on its own facts which has no relevance to the facts in hand. There the applicant who was working as Senior grade Clerk in the office of the Asstt. Engineer Eastern Railway Danapur was transferred to the medical department under an order passed by the Senior Divisional Personnel Officer. It was held that the transfer was from one cadre to another. As such the Senior Divisional Personnel Officer was not competent. It was further held that subsequent ~~xx~~ approval of the competent officer did not make it valid.

12. The next decision on which reliance was placed ^{is} reported in 1995(1) ATJ pg 227 Kailash Chandra Vs. Union of India and Ors. Learned counsel for the applicant ^{therein} placed reliance on the orders issued by the Director General of

P & T New Delhi to All Heads of Postal Circles, in his letter dated 6.1.1982 which provided for the procedure to be followed in respect of cancellation of transfer orders. the said letter provided that the Appointing Authority may inform the next Higher Authority of his intention of such cancellation giving the reasons therefore". Keeping in view the provisions of the said letter it was held in the order passed by the Tribunal that the Aurtherity which passed the order of cancellation had no jurisdiction. The said decision is wholly unhelpful.

13. The third decision relied upon by the learned counsel for the applicant is Uma Shanker Vs. Union of India and Ors reported in (1990) 13 ATC 532. Therein the question that arose was as to which Authority was Competent to transfer Head Ticket Examiner in view of Para 226 of the Indian Railway Establishment Code. It was held that the Competent Authority was the Railway Board and it was also held that the Railway Board had passed the transfer order. The applicant cannot derive any benefit from the said decision.

14. The last decision in this context is a decision of the Hon'ble Supreme Court reported in 1994SCC(L&S) 562 Dr. ramesh Chandra Tyagi Vs. Union of India and Ors. In the facts of the said case it was held that the Secretary was the Competent Authority. The order of transfer was issued by the Director General claiming to be the delegated authority. It was held that delegation must exist from the date of passing of the order and since it was not there the transfer order was invalid and non-est. This decision considered the relevant rules applicable in the said case and based the conclusions on facts of the said case. The said decision is therefore also unhelpful.

15. In the counter affidavit it has also been stated that a Telegram in the month of October 1987 was received from the H.Qs i.e. from respondent No. 2 containing the

following instructions which were required to be followed strictly:-

"Instructions were earlier issued invariably to transfer every employee after putting 4 to 5 years service in any one dispensary. Confirm that the same are being strictly followed.

16. From the discussion hereinabove ~~with~~ it would be evident that the applicant has been transferred by a Competent Authority by way of local transfer within the same CGHS unit and in the same capacity without loss of status, emoluments etc.

17. The Hon'ble Supreme Court in a decision reported in 1995(70) FLR pg 1060 State of M.P. and Ors Vs, S.S Gaurav and Ors ~~wherein~~ made the following observation:-

"the courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of Administration should be allowed to run smoothly and the courts or Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. it is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation."

In the said case the Apex Court reached the conclusion that on administrative ground the transfer order had been issued and therefore it was observed :

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" We cannot go into the expediency
of posting an officer in a particular
place."

The law on the question of judicial review of order of
transfer is fairly settled. Neither any malafides or breach
of any Statutory provisions have been shown. The OA
accordingly deserves to be dismissed and is accordingly
dismissed. Parties to bear their own costs.

Prakash

VICE CHAIRMAN

Dated: 27th of June, 1996

Uv/