

**Central Administrative Tribunal
Jammu Bench, Jammu**



T.A. No. 5326/2020
(S.W.P. No.981/2019)

Friday, this the 16th day of April, 2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dr. Shabir Ahmad Dar
s/o Ghulam Rasool Dar
r/o Buchpora, Srinagar
Aged 55 years

..Applicant

(Mr. Z A Qurashi, Senior Advocate)

VERSUS

1. State of J&K
Through Commissioner/Secretary to
Government, Health and Medical Education Department
Civil Secretariat, Srinagar
2. Director, Health Services, Kashmir Srinagar
3. Principal/Dean Government Medical College,
Srinagar

..Respondents

(Mr. Rajesh Thappa, Deputy Advocate General)

ORDER (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant states that he was appointed as Assistant Surgeon in Jammu & Kashmir Medical & Health Department. He has also worked as Resident Medical Officer in Government Medical College, Srinagar. It is stated that the applicant was



made the in-charge of the post of Deputy Medical Superintendent, SMHS Hospital, Srinagar, in the year 2010, and thereafter as in-charge Deputy Medical Superintendent of Psychiatric Hospital, Srinagar in the year 2013. Through an order dated 02.09.2015, the concerned authority proposed to change the status of the applicant and to replace him by Dr. Abdul Rashid Badoo. The applicant filed SWP No.1983/2015 before the Hon'ble High Court of Jammu & Kashmir. The SWP was dismissed on 11.12.2015 by the learned Single Judge. In LPA No.270/2015, the Division Bench of the Hon'ble High Court upheld the order of the learned Single Judge, but directed the respondents to fill up the post of Deputy Medical Superintendent on regular basis and till the post is filled, the applicant be continued as in-charge of the post. The general transfers were made on 11.08.2016, wherein the name of the applicant also figured. At this stage, he filed SWP No.981/2019 before the Hon'ble High Court with multiple prayers, namely, to direct the respondents to fill up the post of Deputy Medical Superintendent in Government Medical College on regular basis in accordance with the orders passed in LPA No.270/2015; and to command the respondents to allow the applicant to continue as Deputy Medical Superintendent of the Government Medical College and associated Hospitals, Srinagar, till the post is filled up. An interim order dated 29.06.2017 was passed by the Hon'ble High Court, directing that the present status of the applicant shall not be disturbed.



2. The record discloses that the respondents did not file any counter affidavit.
3. The SWP has since been transferred to the Tribunal in view of the reorganization of the State of Jammu & Kashmir and renumbered as TA No.5326/2020.
4. Today, we heard Mr. Z A Qurashi, learned senior counsel for applicant and Mr. Rajesh Thappa, learned Deputy Advocate General.
5. The substantive post held by the applicant is that of Assistant Surgeon. It was incidental that he was kept as in-charge of certain posts in the hospital where he was working. Not only the regular working at particular places, but also the corresponding in-charge or provisional are subject to transfer from time to time. Neither the applicant, or for that matter any employee, can insist on being continued in any post whatever, be it regular or in-charge. The transfer of the applicant was on routine basis and there is absolutely no reason that he shall not be transferred at all. The mere fact that he was holding certain posts on in-charge basis cannot be a factor to relieve him at a particular place.

6. The applicant cannot claim any inherent right to continue as in-charge of the post of Deputy Medical Superintendent of Psychiatric Hospital, Srinagar. Further, it is for the Department to decide whether or not, to fill up the post on regular basis. It is different matter that as and when the post is filled, the applicant and all other eligible persons in the feeder category, need to be considered.



7. We, therefore, dispose of the T.A., leaving it open to the concerned authority to effect the routine transfer. We make it clear that in case it is open to make another in-charge arrangement for the post of Deputy Medical Superintendent in any hospital, it shall be open to the concerned authority to take decision in this behalf. Interim order passed by the Hon'ble High Court shall stand vacated.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/sunil/dsn/sd/