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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 254/89

Tr.A. No. X

DATE OF DECISION 07/10/1992

Dr. Sunil M. Chauhan

Petitioner

Shri C.S. Upadhyay

Advocate for the Petitioner(s)

Versus

Union of India & others

Respondent

Shri Akil Kureshi

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. H.N.V. Krishnan
Vice Chairman

The Hon'ble Mr. R.C. Bhatt
Member (J)

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 ? ✗

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CHAIRMAN

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Dr.Sunil M.Chauhan

.....applicant

(Advocate ; Mr.C.S.Upadhyay)

Versus

1. Dy.Director,Central Government,
Health Scheme,Ahmedabad.
2. The Director General of
Health and Medical Services
(Department of Health),
Government of India,
New Delhi.
(Union of India through)
3. Secretary,Government of India,
Ministry of Health and Family Welfare,
Nirman Bhavan,
New Delhi.

.....respondents

(Advocate : Mr.Akil Kureshi)

O R A L O R D E R

O.A./254/89

Date : 07/10/1992

Per : Hon'ble Mr.R.C.Bhatt
Member (J)

1. The applicant has filed this application under section 19 of the Administrative Tribunal Act,1985 seeking the relief that the Director General of Health and Medical Services (Department of Health), Government of India, New Delhi, in short D G H M be directed not to terminate the applicant's services but should cancel the order of

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filling up his consequential vacancy by the transfer of Dr. Rajesh Kumar of C G H Patna, state of Bihar, and further to direct the respondents to protect the applicant and to continue him and to pay the salary and allowances. The applicant, during the pendency of the application, has amended the original application by adding para 9 A to C, alleging that the order of termination of the applicant dated 3rd July, 1989 is unjust, arbitrary and ultravires and the same be cancelled. According to the applicant, he is senior to ~~the~~ one Dr. B. P. Jarmarwala and hence, also his services were not liable for termination.

2. The respondents have filed reply controverting the allegations made by the applicant. The applicant has filed rejoinder.

3. The learned advocate for the applicant submitted that the order of termination of services of the applicant vide Annexure A/9 dated 3rd July, 1989 was illegal, because according to him, the applicant's junior Dr. Jarmarwala should have been terminated first but, ~~he~~ he has been continued. In order to appreciate this contention of the learned advocate for the applicant, we directed the respondents to produce the record of the services of the applicant, as well as that of Dr. Binduben A Jarmarwala. The respondents have produced the record and the same has been shown to the learned advocate for the applicant. This record shows that the initial appointment of Dr. Jarmarwala was made by CGHS, A'bad on 7th January, 1988 which was continued from the time to time. The applicant's appointment

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vide Annexure A/2 was made by order dated 3rd August, 1988 by the said authority. Therefore, having seen the original record, it cannot be gain said that the respondents have violated Article 14 of the constitution or have taken arbitrary ^{action}. It cannot be said that the junior is continued in service ignoring the senior as alleged by the applicant. The record shows that Dr. Jarmarwal was appointed prior to the present applicant. In this view of the matter, the main limb of the argument of the learned advocate for the applicant falls flat. The next submission of the learned advocate for the applicant was that according to the averments made in para 6 of the rejoinder affidavit of the ^{applicant} ~~application~~, there are two offices at Ahmedabad under the Ministry of Health and Family Welfare, namely CGHS and RHO. The applicant has come with the case that there is one vacancy under RHO and the Ministry of Health and Family Welfare, and that there is one vacancy under RHO and ^{thus} the Ministry of Health and Family Welfare, seems to have ^{issue} ~~issued~~ the transfer order inadvertently and posted Dr. Rajesh Kumar in CGHS, which shows carelessness on the part of the respondents. The order in question Annexure A is dated 8th June, 1989.

4. It may be mentioned at this stage that at the time of admission on 13 ~~th~~ October, 1989, the learned advocate for the applicant had raised the point before the Tribunal that the services of the applicant were sought to be terminated to

accommodate Dr. Rajesh Kumar who was transferred from Ptna to Ahmedabad vide order dated 8th June, 1989. The Tribunal on this point observed

" It should be borne in mind that the question of transfer of Dr. Rajesh Kumar is not in question. Even assuming for the sake of argument that the services of the present applicant are terminated as a result of the transfer of Dr. Rajesh Kumar at this stage, it is difficult to rule that the question of termination is in any manner questionable."

Thus the applicant ^{has} ~~having~~ not questioned the transfer of Dr. Rajesh Kumar ^{but} ~~L~~ now in the rejoinder only he attacks the transfer of ~~XX~~ Dr. Rajesh Kumar as a carelessness on the part of the respondents on the ground that there are two offices at Ahmedabad under the Ministry of Health and Family Welfare and there is one vacancy under the RHO. This ~~XXXXXX~~ ^{even} averment is not substantiated at all. However, as ~~L~~ observed above the transfer of Dr. Rajesh Kumar was never in question. In this view of the matter there is ^{no} ~~sustance~~ ^L in the ~~arg~~ argument of the applicant that the applicant should have been continued or should be reinstated.

5. The learned advocate for the applicant submits that according to the information of the applicant, there are 4 vacancies in CGHS and the applicant desires to make representation for one post in CGHS. He submits that the respondents may be directed to consider the representation of the applicant why filling up in these vacancies. We can only say ~~x~~ that.

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it is left to the applicant to make such representation but, we do not desire to give any direction to the respondents.

6. In the result as there is no sustance in the contentions of the applicant, we pass the following order.

O R D E R

The application is dismissed with no order as to costs. The original record be returned to respondents.

R.C. BHATT

(R.C. BHATT)

MEMBER (J)

N.V. KRISHNAN
7.10.92

(N.V. KRISHNAN)

VICE CHAIRMAN

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