

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 372 OF 1998

Cuttack, this the 11th day of September, 1998

Dr.Baishnab Panda ..... .

Applicant

Vrs.

Union of India and others .....

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*11.9.98*

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ORIGINAL APPLICATION NO. 372 OF 1998  
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**CORAM:**

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Dr.Baishnab Panda,  
aged 51 years,  
s/o late Natabar Panda,  
Karadapalli,  
PO-Bania, PS-Baideswar, Cuttack,  
at present serving as Chief Medical Officer,  
Mobile Medical Unit, Gujidarada,  
Bhadrak ..... Applicant

By the Advocates - M/s A.K.Misra  
J.Sengupta  
B.B.Acharya  
P.R.J.Dash  
C.Mohanty &  
G.Sinha

Vrs.

1. Union of India, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi through its Secretary.
2. Union of India, Ministry of Labour through its Secretary, Jaisalmarg, Singlestory hutment (Mansingh Road), New Delhi.
3. The Welfare Commissioner, Ministry of Labour, Government of India, 33, Ashok Nagar, Bhubaneswar.
4. Dr.S.K.Kar, Sr.Medical Officer, Primary Health Centre, At/PO-Joruri, Keonjhar

..... Respondents

By the Advocate - Mr.Ashok Mohanty  
Sr.C.G.S.C.

.....  
**O R D E R**

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of transfer dated 17.7.1998 at Annexure-4 transferring the applicant from the post of

Chief Medical Officer, Mobile Medical Dispensary, Gujigarada under L.W.O., Bhubaneswar, to L.W.O., Karma, Bihar, under Welfare Commissioner, Karma. There is also a prayer for a direction that the petitioner is not entitled to be disturbed from Labour Welfare Organisation, Bhubaneswar, to which he has been posted in order dated 16.4.1990 at Annexure-1.

2. The case of the petitioner is that he joined Central Health Services as Medical Officer and his services were placed at the disposal of the Labour Welfare Organisation, Bhubaneswar, in Ministry of Health and Family Welfare's order dated 16.4.1990 at Annexure-1. In accordance with this, he reported for duty before respondent no.3 who gave him a posting from Static-cum-Mobile Dispensary, Bagedia, to Mobile Medical Unit, Gujigarada. This order is at Annexure-2. He joined at Gujigarada in March 1994. While he was working as such, an order was issued on 2.6.1995 at Annexure-3 promoting him to the post of Chief Medical Officer (Non-functional Selection Grade) in the scale of Rs.4500-5700/- with effect from 1.1.1992. The petitioner has stated that at Gujigarada he had taken a house on rent for Mobile Medical Unit from a private person and there was some controversy relating to that house and certain medical equipments/medicines were locked up by the owner. Even though the matter has been reported to the police, it has not been settled. The petitioner has brought this to the notice of the Labour Commissioner, but the problem has not been solved. In view of this, it will be difficult for him to hand over charge to respondent no.4 who has been posted in his place. The applicant has further stated that when he has been posted in order dated 16.4.1990 by the Ministry of Health to Labour Welfare Organisation, Bhubaneswar, the Labour

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Ministry has no authority to transfer him from Orissa to Karma in Bihar because he is a member of Central Health Services and the transferring authority for him is the Ministry of Health. It has been further stated that the applicant's wife is under treatment of the Professor, Department of Psychiatry in S.C.B.Medical College,Cuttack. His children are also studying in +3 in Utkal University at Bhadrak College, and his second son is studying in +2 Science and would appear Final +2 Examination shortly and therefore, if he is disturbed in mid-academic session, he will suffer great harassment. In view of this, the petitioner has come up with the aforesaid prayers.

3. The departmental respondents in their counter have submitted that once the services of the petitioner have been placed at the disposal of the Labour Minsitry by the Ministry of Health, it is for the Labour Ministry to transfer him to any post under the Labour Ministry. Such delegation of power to other Ministries has been done by the Ministry of Health in office memorandum dated 25.2.1985 at Annexure-A. It is also stated that the petitioner was earlier working under Labour Welfare Organisation at Bagedia from where he was transferred by the Ministry of Labour in order dated 14.12.1993 at Annexure-2 to Gujidarada. The petitioner having accepted such a transfer, it is not open for him now to say that the Ministry of Labour do not have the authority to transfer him. The respondents have also stated that because of the problem with the house owner at Gujidarada the aplicant cannot deny handing over charge because his handing over charge has nothing to do with the earlier owner of the house since the Mobile Medical Unit is functioning in a separate building for the last two years. They have also stated that respondent

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no.4, successor of the applicant has joined as Medical Officer, Gujdarada on 22.7.1998. It is also submitted that the applicant has handed over charge to respondent no.4 on 24.7.1998 and he has received Transfer T.A. Advance of Rs.26,000/-. On the above grounds, the respondents have opposed the prayers of the petitioner.

4. The petitioner has filed a rejoinder on the date of hearing. As the learned Senior Standing Counsel wanted to take further instructions on the rejoinder, he wanted time to argue the matter. In view of this, it was submitted by the learned counsel for the petitioner that he does not rely on the rejoinder. However, the admitted facts repeated in the rejoinder have been taken note of in our order.

5. We have heard Shri Aswini Kumar Mishra, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the departmental respondents and have also perused the records. The learned Senior Standing Counsel has filed a memo on 7.9.1998 enclosing copies of certain orders of Health Ministry. These orders have also been taken note of.

6. Learned counsel for the petitioner has made only three points, firstly that the transfer order having been issued by the Ministry of Labour is without jurisdiction. The second point urged is that the petitioner has been transferred in mid-academic session causing him avoidable hardship. The third point urged is that amongst the eleven officers transferred, he is the only one who has been transferred from Orissa to Bihar and he has thus been discriminated against.

7. As regards the first point, the respondents have relied on the circular dated 25.2.1985

of the Ministry of Health in support of their contention that once the services of the applicant have been placed at the disposal of the Ministry of Labour, it is for the Ministry of Labour to post the applicant to any office under Labour Ministry. It has been pointed out by the learned counsel for the petitioner that in this circular dated 25.2.1985 the other Ministries have been given power to transfer only Medical Officers in Junior Class I and Senior Class I Grades in the scales of Rs.700-1300/- and Rs.1100-1600/- respectively subject to certain conditions. The petitioner is at a higher grade of Rs.4500-5700/- which corresponds to the earlier scale of Rs.1500-2000/- and as such this circular is not applicable to him. We find that in order dated 14.12.1993 at Annexure-2 the petitioner who was then working under the Ministry of Labour as Chief Medical officer in Static-cum-Mobile Dispensary, Bagedia, was transferred to Mobile Medical Unit, Gujistarada. At that time, he was not in the grade of Rs.4500-5700/- which came in order dated 2.6.1995 (Annexure-3). In course of hearing, we enquired from the learned counsel for the petitioner and learnt that at that time the petitioner was in the next lower grade of Chief Medical Officer with the scale of Rs.1200-1800/- which corresponds to 4th Pay Commission scale of Rs.3700-5000/-. Learned Senior Standing Counsel has submitted that at the time the circular dated 25.2.1985 was issued there were only two grades of Medical Officers in the scales of Rs.700-1300/- and Rs.1100-1600/- and there was no other grade of Medical Officers higher than Rs.1100-1600/-. These two scales were later on revised to Rs.2200-400/- and Rs.3000-4500/-.

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In order dated 20.8.1987 it was indicated that Medical officers in the scale of Rs.2200-4000/- may be promoted to the grade of Senior Medical officers in the scale of Rs.3000-4500/- after five years of service and these two posts will be inter-changeable. Later on in order dated 11.12.1991 (Annexure-E) the post of Chief Medical Officer was sanctioned scale of Rs.3700-5000/- and it was ordered that Senior Medical Officer could be promoted as Chief Medical Officer on completion of six years of regular service as Senior Medical officer. Again in order dated 2.6.1995 at Annexure-G Chief Medical Officers were given Non-functional Selection Grade of Rs.4500-5700/-. On this basis, it has been argued that the order dated 25.2.1985 covers the petitioner who is in the Non-functional Selection Grade. From the above discussion, it appears that originally there were only two scales of Rs.700-1300/- and Rs.1100-1600/- which were revised to Rs.2200-4000/- and Rs.3000-4500/- and these two posts were also made inter-changeable in the order dated 20.8.1987. Thus, the Senior Medical officers who got scale of Rs.3000-4500/- were also covered by the circular dated 25.2.1985. In order dated 11.12.1991 it was provided that Senior Medical Officer on completion of six years of service will be promoted as Chief Medical Officer and such promotion will be insitu and personal to the officers posted. Those persons in the scale of Rs.3700-5000/- even though they were designated as Chief Medical Officers, also continue to be covered by the circular dated 25.2.1985 because the promotion of such officers from Senior Medical Officers to Chief Medical Officers was insitu and personal to them. Learned counsel for the petitioner has stated that the circular dated 25.2.1985 *prima facie* does not apply to the persons in

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the scale of Rs.1200-1800/- ( Rs.3700-4500/- revised). The petitioner has accepted such a transfer order issued vide Annexure-2 and has joined at Gujistarada. Therefore, it is not open for him to say that he being in a scale higher than Rs.1100-1600/- he can be transferred only by the Ministry of Health and not by the borrowing Ministry. It is the normal rule that once the services of an officer have been placed at the disposal of another Ministry, that Ministry is competent to transfer him from one place to another under the same Ministry. The applicant having accepted such a transfer order issued vide Annexure-2 cannot now question that the impugned transfer order issued by the Ministry of Labour is without jurisdiction. This ground of challenge to the impugned order of transfer (Annexure-4) must, therefore, be held to be without any merit and is accordingly rejected.

8. The second ground urged is that he has been transferred in mid-academic session. It has been submitted by the learned Senior Standing Counsel that the transfer order has been issued on 17.7.1998 which is not mid-academic session. Normally College session starts from July and in public interest an officer can be transferred even in the mid-academic session.

9. The third point urged by the learned counsel for the petitioner is that of the eleven officers transferred, ten have been transferred vide order dated 17.7.1998 at Annexure-B to the counter within Orissa and he alone has been transferred in the order issued on the same day, i.e. 17.7.1998, from Gujistarada to Karma in Bihar. Thus, it is stated that he has been discriminated against. The Hon'ble Supreme Court have laid down in a series of cases that it is primarily for the departmental authorities to decide when and to which place an employee is to be transferred and the Tribunal can interfere with

such order of transfer only if there is mala fide or violation of statutory rule. In this case, no mala fide has been alleged, and we have also held that the transfer order has been passed by the competent authority.

10. In this case, it is for the departmental authorities to take note of the difficulties of the petitioner. In case he is so advised he may file a representation before the Labour Ministry for consideration of his difficulties. But in view of several pronouncements of the Hon'ble Supreme Court in this regard, it is not possible for the Tribunal to take his personal difficulties into consideration and quash the impugned order of transfer.

11. The other ground urged by the petitioner regarding the trouble with the old house owner, etc., has been denied by the respondents in their counter. The learned counsel for the petitioner did not also urge this point and as such it is not necessary for us to consider this aspect.

12. In the result, therefore, we hold that the petitioner has not been able to make out a case for any of the reliefs asked for by him. We also note that the successor of the petitioner has already joined and the petitioner has already handed over charge to him and has taken the Transfer T.A.Advance, presumably for proceeding to his new place of posting. In view of this, the Application is held to be without any merit and is rejected, but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN