

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW**

(31)

**Original Application No.450/2005
This, the 8th day of July 2008**

HON'BLE MR. M. KANTHAIYAH, MEMBER (J)

Dr. Jitendra Prasad, aged about 43 years, Son of Late Keshav Prasad, resident of House No.45 Eldco Green Woods Colony Malhaur Road, Chinhat, Lucknow.

Applicant.

By Advocate:- Shri D. Awasthi.

Versus.

1. Union of India, through its Secretary, Medical of Health and Family Welfare, Government of India (Department of Health), Narman Bhawan, New Delhi.
2. The Director General, Department of Health, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
3. The Director (C.G.H.S.) Department of Health, Ministry of Health and Family Welfare, Nirman Bhawan, New Delhi.
4. The Additional Director (CGHS) 9-A, Rana Pratap Marg, Lucknow.
5. Dr. P.K. Gupta, aged about 50 years, Son of Sri T.R. Gupta, resident of A-787, Indira Nagar, Lucknow.

... Respondents.

**By Advocate:- Shri K.K. Shukla for Official respondents.
Shri Vikas Argawal for Respondent No.5.**

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ORDER**BY MR. M. KANTHAIH, MEMBER (J)**

The applicant has filed this OA under Section-19 of the Administrative Tribunal Act, 1985 with a prayer to quash the impugned transfer order Dt. 31.08.2005 (Annexure-1) under which, the applicant has been transferred from CGHS, Lucknow to CGHS, Allahabad on the ground that his transfer is against the public interest and to accommodate Respondent No.5 and also on other grounds.

2. The Respondent No.1 to 4 have filed Counter Affidavit, stating that the transfer of the applicant covered under Annexure-A-1 is a speaking and reasoned order and he has been transferred to accommodate the Respondent No.5 on the ground that he is longest stay at CGHS, Lucknow and thus, opposed the claim of the applicant.

3. The Respondent No.5 filed his separate Counted Affidavit, stating that his earlier transfer order was revoked after considering his representation and thus, the applicant was transferred in his place on the basis of longer stay at CGHS, Lucknow and thus, prayed for dismissal of the OA.

4. The applicant has filed Rejoinder Affidavit, denying the stand taken by the respondents in disputing his claim.

5. Heard both sides.



6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7. The admitted facts of the case are that the applicant is a Medical Specialist and he has been working against the vacant post of Specialist Grade-I (Medicine) in CGHS, Lucknow since 01.09.1993. There are two sanctioned post of Medical Specialist at CGHS, Lucknow and in one of the post the applicant and in the other post Dr. Ashok Kumar are working since 01.02.1994. In the year 1994, while the Respondent No.5 was working as Senior Medical Specialist at CGHS, Kanpur, made representation for his transfer to CGHS, Lucknow on his personal problems upon which, he was transferred and posted to CGHS, Lucknow vide order Dt. 19.01.1995 and in pursuance of such orders he joined at CGHS, Lucknow on 01.02.1995. At that time, Respondent No.5 made his representation to the Respondent No.1, stating that if no post of Medical Specialist (Physician) is lying vacant in CGHS, Lucknow, he may be adjusted against any vacant post of CDMO/ other specialist or he may be transferred alongwith the present post to CGHS, Lucknow. Annexure-CA-2 Dt. 28.11.1994 is the copy of such representation of Respondent No.5. After considering such representation of Respondent No.5, respondent No.1 issued orders Annexure-A-2 Dt. 5.099.1995 directing Respondent No.4 to adjust the Respondent No.5 against one of the existing vacancies of specialist in the non teaching specialist cadre of the CGHS until further orders and accordingly, he was posted and since then, he is

working at CGHS, Lucknow, though, there is no post of his cadre therein. It is also not in dispute that Respondent No.5, which working there, he was promoted as Consultant in Medicine in the scale of Rs. 18400-500-24000 on 21.01.2000 and he assumed charge of the new post on 25.1.2000 and continued to work at the same place of CGHS, Lucknow. Annexure-CA-4 Dt. 20.02.2000 is the copy of pay fixation of Respondent No.5 reveals the same.

8. But in the month of December, 2004, the Respondent No.5 was transferred from CGHS, Lucknow to CGHS, Allahabad upon which, he made representation to the Respondent No.1 for cancellation of his transfer and retention at Lucknow on the ground, that he is senior most and other two doctors are juniors to him and in case of any transfer, junior officers are to be transferred. He also further represented that the said junior Doctors are working since October, 1993 and February, 1994 respectively and as such keeping in view of his minimum stay at Lucknow, junior most must go in the event of transfer on administrative exigency and in public interest. Annexure-CA-5 Dt. 12.01.2005 is the copy of the representation of Respondent No.5.

9. Thereafter, the applicant also filed an O.A.No.29/2005 on the file of this Tribunal challenging his transfer order Dt. 20.12.2004, transferring him from CGHS, Lucknow to CGHS, Allahabad and the same was disposed of on 18.01.2005, with a direction to the respondents to dispose of the representation of the applicant expeditiously and till then, if the applicant is not already relieved,

the order of transfer shall not be given effect to. Annexure-C-1 Dt. 18.01.2005 is the copy of the said order. Thereafter, the said representation of the applicant for his retention in CGHS, Lucknow was placed before the transfer committee in its meeting held on 15.04.2005, and after considering his request Dt. 07.01.2005, transfer committee agreed to retain him in CGHS, Lucknow and in his place they recommended the name of this applicant on the basis of longest stay in CGHS, Lucknow w.e.f. 16.10.1993 and Annexure-1 enclosed to Supplementary Counter reply of official Respondent No.1 to 4 reveals the same. In pursuance of such recommendations of the transfer committee, the applicant has been transferred from CGHS, Lucknow to CGHS, Allahabad and thus, cancelled the transfer order of the Respondent No.5 Dt.20.2.2004 and issued Annexure-1 Dt. 31.08.2005, which is under challenge in this O.A.

10. Admittedly there are only 2 sanctioned post of Medical Specialist at CGHS, Lucknow, in which the applicant and Dr. Ashok Kumar have been working since 01.09.1993 and 01.02.1994 respectively. Even from the respondents, it is clear that the applicant has been effected transfer covered under Annexure-A-1 Dt. 31.08.2005 to accommodate the Respondent No.5, who has been working at CGHS, Lucknow w.e.f. 01.02.1995. The cadre of Respondent No.5 is different since he was working as Consultant in Medicine for which there was no sanctioned post at CGHS, Lucknow. After the Respondent No.5 had been transferred from CGHS, Kanpur to CGHS, Lucknow in the month of February, 1995,

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the posting of these Doctors i.e. applicant, Dr. Ashok Kumar, who have been working in the sanctioned post of Medical Specialist at CGHS, Lucknow, have not been effected. Further, admittedly the Respondent No.5 was not accommodated in the two sanctioned post of Medical Specialist.

11. It is the case of the applicant that while, he was working as Medical Specialist in the sanctioned post at CGHS, Lucknow, transferring him to CGHS, Allahabad to accommodate the Respondent No.5, who is not in the cadre of sanctioned post of Medical Specialist at CGHS, Lucknow is not at all correct and no Public interest is involved for accommodating him.

12. From the version of the official respondents that in view of the direction of this Tribunal passed in O.A.No.29/2005, the transfer committee considered the representation of the Respondent No.5 Dt. 07.01.2005 and agreed to retain him at CGHS, Lucknow on the basis of longest stay of the applicant in CGHS, Lucknow w.e.f. 16.10.1993. In his representation, the Respondent No.5 had taken such ground that in the event of any transfer, junior most must be affected with such transfer and also on the ground that other two juniors doctors who are longest stay is working since October, 1993 and February, 1994 respectively.

13. Considering the stay of the candidates and also their seniority and longest stay etc. will arise only if all the candidates are working in the same cadre. But in the instant case, Respondent No.5 is not at all similar cadre to the other juniors doctors and admittedly no

sanctioned post is available for his cadre, in such circumstances, the analogy of effecting the transfer of the applicant on the ground that the junior most must go in the event of transfer is not at all justified.

14. Admittedly, the post of Consultant (Medicine) is the promotion post from the post of Medical Specialist and Consultant (Medicine) can be posted even in the post of Medical Specialist if no such specialist is available. But in the instant case, while the applicant, Medical Specialist has been working in the same sanctioned post, what is the necessity or requirement for posting Respondent No.5 Consultant (Medicine) in the place of applicant, by effecting his transfer. Further, accommodating the Respondent No.5, who belongs to higher and promotion cadre as Consultant in Medicine in the post of Medical Specialist at CGHS, Lucknow by shifting the applicant, who is in the sanctioned cadre of Medical Specialist, is not at all justified and convincing. Thus, transferring the applicant, who has been working in the sanctioned post of Medical Specialist, to accommodate, Respondent No.5 who is in the higher and promotion cadre of consultant in medicine is not at all desirable and admissible for smooth functioning of the administration and more particularly in the profession of doctors and permitting such practice is nothing but inviting many other complications in future.

15. In view of the above circumstances, effecting the transfer of the applicant from CGHS, Lucknow to CGHS, Allahabad, for

accommodating Respondent No.5, neither any interest of Public ~~nor~~ administrative exigency is involved and as such the applicant is justified in questioning the validity of the impugned transfer order covered under Annexure-A-1.

In the result, OA is allowed quashing the impugned transfer order covered under Annexure-A-1 Dt. ~~20.12.2004~~ ³¹⁻⁰⁸⁻²⁰⁰⁵ transferring the applicant from CGHS, Lucknow to CGHS, Allahabad. No costs.


(M. KANTHAIAH)

MEMBER (J)

08.07.2008

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