

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

OA No.331/2013

Order Reserved on:22.02.2016

Pronounced on: 04.04.2016

**HON'BLE MS. CHAMELI MAJUMDAR, MEMBER (J)  
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)**

Dr. Arun Kumar Bansal,  
S/o Shri Jagdish Rai,  
R/o House No.2647, Road No.1,  
Siri Nagar, Delhi-110034  
Present Correspondence address as:-  
C/o The Director, FWTRC,  
332, SVP Road, 8<sup>th</sup> Lane, Khetwadi,  
Mumbai-400004.

-Applicant

(Applicant in person)

**-Versus-**

Union of India through its,

1. The Secretary, (HFW),  
Ministry of Health and Family Welfare,  
Nirman Bhawan, New Delhi-110011.
2. The Secretary,  
Union Public Service Commission,  
Dholpur House, New Delhi-110069.

Govt. of NCT,through its

3. Principal Secretary (H),  
Dept. Of Health and Family Welfare,  
I.P. Sachivalya, New Delhi-110002.

-Respondents

(By Advocates Shri Ashok Kumar, Shri R.V.  
Sinaha & Ms. Pratima Gupta)

## **O R D E R**

### **Mr. K.N. Shrivastava, Member (A):**

This OA has been filed. under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs sought for in the OA read as under:

- “(i) To quash and set aside memo of charges dated 25.04.08 and direct the respondent no.1 to issue orders to grant leave on medical grounds as applied for by the applicant.
- (ii) To direct the respondents to immediately open the sealed cover if applied/recommended in the case of promotion of the applicant by the DPC held on 10.12.12 as sealed cover procedure is not to be applied in cases of financial upgradatons if the charge-sheet is issued after 1<sup>st</sup> Janunary of the promotion year (herein 2008).
- (iii) To allow the prayed interim relief as permanent relief as any delay in the promotion due to sealed cover will be detrimental to the interests of the applicant, public interest and interest of natural justice.
- (iv) To direct the respondents to grant adhoc promotion to the applicant till the recommendation of the DPC is in sealed cover as a junior has already been promoted in violation of Rule 7 (4) of CHS rules, 1996.
- (v) Any other relief/reliefs this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.”

2. Brief facts of this case are as under:-

The applicant joined the Central Health Service (CHS) of Government of India on 10.09.1995 through the UPSC through recruitment process. His Cadre Controlling Authority (CCA) is Director of Health Services, who was under respondent No.1. During the year 2005 he was posted under respondent No.3. The CHS is comprised of four sub cadres, viz. General Duty, Teaching, Non-Teaching and Public Health. The applicant belongs to Public Health Specialist Sub-Cadre. After his joining CHS on 10.11.1995, the applicant was posted in Government of National Capital Territory of Delhi (GNCTD) against one of the four sanctioned posts. He was relieved by the GNCTD on 22.06.2007 with a direction to report to respondent No.1, who is his CCA. The applicant reported to respondent No.1 on 27.06.2007. Respondent No.1, posted him to Family Welfare Training and Research Centre (FWTRC), Mumbai as its Director vide order dated 31.07.2007. The applicant did not join his new posting and instead applied for Earned Leave for five days from 13.08.2007. Respondent No.1 directed him to join at FWTRC, Mumbai and then apply for leave. Applicant applied for leave on medical grounds from 17.08.2007. As he had not produced any medical

certificate in connection with his illness, the Ministry of Health and Family Welfare asked him to appear before a Medical Board but he did not appear. He filed OA-1697/2007 before this Tribunal challenging his posting as Director, FWTRC, Mumbai vide respondent No.1 order dated 31.07.2007. The said OA was dismissed by this Tribunal vide order dated 23.11.2007. The applicant challenged the said order of the Tribunal in Writ Petition No.9544/2007 before the Hon'ble High Court of Delhi, which was dismissed by the Hon'ble High Court on 19.11.2007. He filed a Review Petition No.144/2008, seeking review of the order of the Hon'ble High Court, which too was dismissed on 24.05.2008 by the High Court. The applicant ultimately reported at FWTRC, Mumbai on 17.04.2008. For his alleged unauthorized absence from 10.03.2007 to 16.04.2008, he was issued Annexure A-1 charge-memo, in which the following charge has been levelled against him:

**“ARTICLE-I”**

That Dr. Arun Kumar Bansal, a CHS Officer, while working Public Health Specialist Grade II at GNCT of Delhi absented himself from his duty from 13-8-2007 to till date without permission of the Competent Authority.

By his aforesaid act, Dr. Arun Kumar Bansal, has failed to maintain devotion to duty and acted in a manner unbecoming of a Government

servant thereby contravening the provisions of Rule 3.1 (ii) & (iii) of CCS (Conduct) Rules, 1964.”

In the meanwhile, the Ministry of Health and Family Welfare promoted six Specialists Grade-I of Public Health Sub-Cadre of CHS (scale of pay PB-4 Rs.37400-67000 with Grade Pay of Rs.8700) to the Super Time Administrative Grade (SAG) PB-4 Rs.37400-67000 with Grade Pay of Rs.10,000/-vide their order No.A-32012/5/2012-CHS-III dated 03.09.2012. The applicant was not promoted presumably on the ground that he is facing a disciplinary inquiry. Aggrieved by the impugned charge-sheet, the applicant has filed the instant OA.

3. Pursuant to the notices issued, respondents entered appearance. Respondents No.1&3 filed their reply, whereas the learned counsel for respondent No.2, UPSC submitted during the course of hearing on 13.10.2015 that respondent No.2 has no role to play in the dispute raised in the present OA and as such would not like to file any reply.

4. On completion of the pleadings the case was taken up for final hearing on 20.02.2016. The applicant, as party in person, and Sh. Ashok Kumar and Ms. Pratima Gupta, learned counsel for the respondents argued the case.

5. The applicant submitted that he was denied an opportunity to defend the show cause notice issued to him pursuant to which the impugned charge-sheet has been issued. He also submitted that he has applied for sanction of medical leave to the Ministry but no communication was sent to him to say that his medical leave has been refused. It was also submitted that the Disciplinary Authority (DA) has not passed a speaking order while ordering initiation of disciplinary inquiry against him vide impugned memorandum of charges. He also stated that he has submitted medical certificate from an authorized medical attendant almost 4-1/2 years back for sanctioning the medical leave to him but no action has been taken by the Ministry despite several reminders. He said that respondent No.3 surrendered his services to respondent No.1 unilaterally and also issued the relieving order, which smacks of mala fide. He further submitted that he was eligible for promotion to the SAG Grade on completion of 13 years of service but he apprehends that the DPC, which met on 10.12.2012, might have ignored him for the said promotion due to pendency of the disciplinary inquiry against him. He argued that his junior officer has been promoted to the SAG

Grade but he apparently has been ignored causing him great deal of pain and agony. He said that the action of the respondent No.3 in unilaterally surrendering the services of the applicant on 13.06.2007 was a vindictive action at the behest of some vested interests and unscrupulous elements. Concluding his arguments, he prayed for quashing of the impugned charge-memo and for a direction to respondent No.1 to sanction the requested leave to the applicant on medical grounds, as applied for.

6. Per contra, Shri Ashok Kumar, learned counsel for respondent No.1 submitted that the applicant was posted as Director, FWTRC, Mumbai vide order dated 31.07.2007 but he failed to join his duties at the new place. He finally joined on 17.04.2008 and as such he remained unauthorizedly absent from 13.08.2007 to 16.04.2008 and thus the impugned charge-memo has been correctly issued against him under Rule 14 of the CCA (CCA) Rules, 1965. It was also submitted that respondent No.3 repatriated his services to respondent No.1 as GNCTD had found that his continuation was vitiating the work atmosphere. The learned counsel further submitted that the applicant has been trying to somehow sabotage his posting outside Delhi without realizing that belonging to CHS

cadre, he is liable for posting anywhere in the country and that is why his OA No.1697/2007 was dismissed by this Tribunal on 23.11.2007 wherein he had challenged his posting as Director, FWTRC, Mumbai. The learned counsel also stated that the DA has already appointed the Inquiring Authority and the Presenting Officer who have been directed to complete the inquiry expeditiously. The learned counsel confirmed that a DPC meeting indeed was held on 10.12.2012 for promotion of Specialist Grade-I of Public Health Sub-Cadre to the SAG Grade and that the case of the applicant was also considered. As he is facing a disciplinary inquiry, his case has been kept in a sealed cover. The applicant had applied for medical leave without furnishing a valid certificate to that effect and instead of facing the Medical Board, he chose to indulge into avoidable litigations. Concluding his argument, the learned counsel for respondent No.1 submitted that there is no substance in the OA and as such it may be dismissed.

7. The learned counsel for respondent No.3 stated that the applicant has worked in GNCTD from 11.10.1995 to 31.05.1997 and was relieved from GNCTD on 25.06.2007 with a direction to report to the Ministry of Health and Family Welfare,

Government of India. Respondent No.3 is just a proforma party in this OA and as such has nothing to say in the matter further.

8. We have considered the arguments put-forth by the applicant, as party in person and those of the learned counsel for respondents No.1&3. The applicant reported to his CCA, i.e., Ministry of Health and Family Welfare, who vide their order dated 31.07.2007 posted him as Director, FWTRC, Mumbai. The applicant did not report for duty and instead took recourse to legal means to thwart his transfer to Mumbai. After having failed before this Tribunal and thereafter before the Hon'ble High Court of Delhi, he finally reported at Mumbai on 17.04.2008. Immediately after reporting he applied for Earned Leave and thereafter long leave on medical grounds. The respondent No.1 was fully justified in asking the applicant to appear before a Medical Board as the applicant had not submitted any valid medical certificate in support of his purported illness. Had the applicant appeared before the Medical Board and proved his credentials, we are quite sure that the respondent No.1 would have been fair in sanctioning him the medical leave. We are also of the view that the applicant ought to have obeyed the transfer order

and reported for duty at the new place of posting.

The Hon'ble Supreme Court in the case of **S.C.**

**Saxena v. Union of India & Others**, [2006 SCC (L&S)

1890] at para-6 has held as under:

“...a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to the court to ventilate his grievance. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed....

9. In view of the above ruling of the Hon'ble Supreme Court, we are of the opinion that respondent No.1 are fully within their powers to initiate disciplinary inquiry against the applicant for disobeying the transfer order and for remaining absent from 13.08.2007 to 16.04.2008 without authorization, by way of issuing the impugned charge-memo dated 25.04.2008.

10. In view of the above discussion, we do not find any merit in the OA and accordingly dismiss it. We, however, direct respondent No.1 to ensure that ongoing disciplinary proceedings against the applicant get concluded within a period of four months from the date of receipt of a certified copy of this order. The applicant is directed to cooperate in the inquiry so that it gets concluded within the given

time frame. Needless to mention that in the event of applicant getting exonerated in the disciplinary proceedings, he would be considered for promotion to the SAG Grade by opening the sealed cover if the DPC in its meeting held on 10.12.2012 has found him to be eligible otherwise.

11. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

**(Chameli Majumdar)**  
**Member (J)**

‘San.’