

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.1640/2016

Tuesday, this the 8th day of August 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. Rajeev Uppal
s/o Mr. Baljit Rai Uppal
aged 59 years, Director Professor
Head of the Department
Department of Anaesthesiology
Govind Ballabh Pant Institute of Post Graduate Medical Education
And Research (formerly G B Pant Hospital)
New Delhi
r/o BE-43, Shalimar Bagh
Delhi – 110 088

..Applicant

(Ms. Tanya Uppal, Advocate)

Versus

1. Government of NCT Delhi
Through its Principal Secretary
Department of Health & Family Welfare
9th Level
Delhi Secretariat, IP Estate
New Delhi – 2
2. Mr. Pradeep Kumar
Dy. Secretary (HR Medical)
Department of Health & Family Welfare
9th Level
Delhi Secretariat, IP Estate
New Delhi – 2
3. Director
Govind Ballabh Pant Institute of Post Graduate Medical
Education & Research
(Formerly known as GB Pant Hospital)
Jawahar Lal Nehru Marg
Delhi Gate, New Delhi – 110 002
4. Union of India
Through its Secretary
Ministry of Health & Family Welfare
Nirman Bhawan, New Delhi – 110 011

..Respondents

(Mrs. Harvinder Oberoi, Advocate for respondent Nos. 1 to 3 &
Mr. Rajeev Kumar, Advocate for respondent No.4)

O R D E R (ORAL)**Justice Permod Kohli:**

Despite various opportunities, the respondents have not filed their counter affidavits. Right to file the same stands forfeited. Heard the learned counsel for the parties.

2. The applicant is a super-specialist anesthesiologist. He was posted as Director-Professor and Head of the Department, Department of Anesthesiology and Intensive Care, Govind Ballabh Pant Institute of Postgraduate Medical Education & Research (GIPMER). The applicant belongs to Central Health Service (CHS). While working at the above mentioned GIPMER, the applicant was transferred vide two impugned orders; dated 28.04.2016 passed by the Govt. of NCT of Delhi from GIPMER to Guru Tegh Bahadur Hospital. The first order comprises of a list of 86 doctors and the name of the applicant figures at Sl.No.74. For the reasons best known to the respondents, another order of the same date but with a different file number was also passed whereby the applicant was transferred to the same hospital and in the same capacity as Director-Professor. The name of the applicant figures at Sl. No.8 of the second impugned order. Both the orders are under challenge in the present O.A.

3. The applicant's contention is that the Delhi Govt., which has passed the transfer order of the applicant, is not the competent authority. The applicant belongs to CHS of Union of India and thus the transfer order issued by Govt. of NCT of Delhi is without jurisdiction. During pendency of this O.A., vide order dated 12.07.2016 passed by the Govt. of NCT of Delhi, as many as 10 doctors were repatriated to their parent Department, i.e.,

Ministry of Health & Family Welfare. The name of the applicant figures at Sl. No.6 of this order. Thereafter, Ministry of Health & Family Welfare, Govt. of India passed order dated 05.10.2016 granting approval to the transfers of 9 doctors mentioned therein, which includes the name of the applicant at Sl.No.6. Subsequently, vide order dated 11.01.2017, the aforesaid order dated 05.10.2016 has been withdrawn by the Govt. of India. As a consequence of the withdrawal of said order dated 05.10.2016, the post-facto approval of the action of Delhi Govt. to transfer CHS doctors stood withdrawn. Resultantly, the orders dated 28.04.2016 passed by the respondents are rendered without jurisdiction. In various other petitions, even the order dated 12.07.2016 passed by the Delhi Govt. has been withdrawn. We are informed that the applicant separately challenged order dated 05.10.2016 passed by the Ministry of Health & Family Welfare, Govt. of India by filing O.A. No.3512/2016. The said O.A. was, however, rendered infructuous in view of the order dated 11.01.2017 passed by the Ministry of Health & Family Welfare withdrawing order dated 05.10.2016. In the present case also, the repatriation order dated 12.07.2016 passed by the Govt. of NCT of Delhi has been withdrawn vide order dated 01.05.2017. The net result of the aforementioned various orders is that the order of rectification of the action of Delhi Government by the Union of India as also the repatriation of the applicant by the Govt. of NCT of Delhi vide order dated 12.07.2016 do not exist. The impugned transfer orders dated 28.04.2016 passed by the respondents, being without jurisdiction and without any competence, are illegal and are liable to be quashed. A similar view has been taken by this Tribunal in O.A. No.2398/1995 decided on 04.06.1996 – **Dr. N. Rajagopal Acharya v. Union of India & others.**

4. When the present applicant approached this Tribunal, vide order dated 10.05.2016 the implementation of both the transfer orders was kept in abeyance. On account of interim protection granted by the Tribunal, the applicant continues to serve in GIPMER.

5. In view of the aforesaid, this O.A. is allowed. Impugned orders No. F.A-27/26/2015- spl.secy (HR)-Secy (H&FW)/1153-1248 dated 28.04.2016 and File No.F.A-27/26/2015-Spl.Secy (HR)-Secy (H&FW)/1153-248 dated 28.04.2016 are quashed and set aside. No costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

August 8, 2017
/sunil/