

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1064/2016

Order Reserved on: 19.04.2016
Order Pronounced on: 25.04.2016

Hon'ble Mr. P.K. Basu, Member (A)

Dr. Anirban Hom Choudhuri,
S/o Shri Arun Kumar Hom Choudhuri
Age 43 years, Professor,
GB Pant Hospital, New Delhi
R/o Flat 105, Tower 32,
Common Wealth Games Village,
Delhi-110092

....Applicant

(By Advocate Shri S.D. Singh)

Versus

1. State of NCT Delhi
Through its Principal Secretary
Deptt. of Health and Family Welfare,
Delhi Secretariat, I.P. Estate,
New Delhi-110002
2. Dy. Secretary (HR Medical)
Department of Health
9th Level, Delhi Secretariat,
New Delhi-110002
3. Director,
GB Pant Hospital,
Delhi Gate,
New Delhi-110002
4. Union of India
Through its Secretary
Ministry of Health & Family Welfare
Nirman Bhawan,
New Delhi

.... Respondents

(By Advocate Shri Amit Anand, for respondents 1-3
Shri Rajeev Kumar, for respondent 4)

ORDER

The applicant is a Medical Doctor belonging to the Central Health Service (CHS). He was posted at G.B. Pant Hospital as Assistant Professor. Vide order dated 4.03.2016, he has been transferred to Dr. Baba Saheb Ambedkar Medical College and Hospital, Government of National Capital Territory of Delhi (GNCTD) by the Health and Family Welfare Department of the GNCTD. The applicant has sought interim relief of stay of his transfer on the following grounds:

- (i) The applicant belongs to the CHS, Ministry of Health and Family Welfare (MoH&FW), Government of India (GoI) and the competent authority under the CHS Rules to transfer a member of the Service is the GoI. Therefore, the transfer order dated 4.03.016 issued by the GNCTD is without jurisdiction and deserves to be quashed. He has cited the judgments in OA No.2398/1995, OA No.1870/2013, OA No.397/2008 and OA No.557/2013 to substantiate that the Tribunal has time and again held that the power to transfer the members of the teaching, non-teaching, public health or general duty sub-cadre is with the GoI and it has not been delegated to the GNCTD;

- (ii) It is stated that vide order dated 5.07.2011, the applicant along with others belonging to Teaching Specialist sub-cadre of CHS was promoted as Associate Professor and thereafter vide order dated 6.08.2014, he has been promoted as Professor whereas the transfer order dated 4.03.2016 indicates his designation as Assistant Professor;
- (iii) The applicant belongs to teaching cadre and there is no teaching post in Dr. Baba Saheb Ambedkar Hospital;
- (iv) As per GoI notification dated 7.04.2014 formulating the CHS Rules 2014, the "Controlling Authority" means the GoI in the MoH&FW and "Sub Cadre" means any of the 4 streams of the Service, namely, General Duty, Public Health, Non Teaching Specialist and Teaching Specialist, as the case may be. Under Rule 10 it is stated that all appointments to the Service shall be made by the Controlling Authority i.e. by the MoH&FW. Attention was drawn to heading "Teaching Specialist Sub-Cadre" under Schedule II, stating that the name of Dr. Baba Saheb Ambedkar Hospital does not find a mention there under and thus the applicant cannot be transferred to that hospital; and

- (v) It is stated that even if the applicant has given a consent to join at G.B. Pant Hospital on a notification by the GNCTD, it does not mean that he cannot challenge the order dated 4.03.2016 on the ground of jurisdiction.

2. Learned counsel for the respondents, Shri Amit Anand referred to OM dated 10.03.2008 regarding offer of appointment to the applicant as Assistant Professor of Anesthesiology in the Teaching Specialist Sub-Cadre of CHS. The order clearly states that he has been posted at GNCTD. Clause (vii) also stipulates that the appointment carries with it the liability of service in any part of India or outside. Clause (xii) stipulates that other conditions of service will be governed by the relevant rules and orders issued from time to time. It was also pointed out that order dated 23.06.2008 posting the applicant as Assistant Professor at G.B. Pant Hospital was also issued by the GNCTD. However, at that point of time since it suited to the applicant, he did not raise the question of jurisdiction. In fact, it is further pointed out that in order dated 5.07.2011, the applicant has not been allocated to any particular hospital. My attention was also drawn to the applicant's representation dated 8.03.2016, which is reproduced below:

"Sir,

With due regards, I seek to make the following submissions-

1. That I am working in GB Pant Hospital w.e.f. 06/06/2008 and as Professor since 15-11-2013.

2. That I am involved in the expansion and development of Critical Care division of GB Pant Hospital since April 2013 as in charge of General ICU which is in its phase of expansion. The process to start academic courses (DM/FNB) in critical care is also underway.
3. I stay at the Govt. accommodation at Common Wealth Games Village in East Delhi allotted by the Directorate of Estates, Govt. of India.
4. I have been transferred to BSA Medical College as per the aforesaid order which is 37 kms from my place of residence.
5. Under these constraints, it will not be possible for me to deliver my best professional services.

Therefore, I would request you to kindly reconsider and cancel my transfer order."

It is pointed out that nowhere in this letter also, the applicant has raised the question of lack of jurisdiction. The ground to stay his transfer is basically that his house is at a long distance from the new place of posting.

3. I have heard the learned counsel for the parties and gone through the pleadings available on record.

4. As regards the authority to transfer, there is no doubt that it is MoH&FW. However, doctors of CHS are posted both with Central Government Hospitals and GNCT Hospitals. In case of the applicant, his services were placed with the GNCTD. The GNCTD first posted him at G.B. Pant Hospital and thereafter, vide order dated 4.03.2016, they have relocated him to Dr. Baba Saheb Ambedkar Hospital. Neither the applicant nor MoH&FW raised the question of jurisdiction when he was posted at G.B. Pant Hospital by GNCTD. In fact, as pointed out by the learned

counsel for the respondents, even in his representation the applicant has not raised this issue. In his promotion order also, the applicant is shown posted at GNCTD. That means that his services are placed at the disposal of GNCTD to be utilized in hospitals under GNCTD, wherever required. In fact, original appointment letter of the applicant also recites that he can be asked to serve anywhere in India. So his original transfer is from Central Government to GNCTD and that has been authorized by the MoH&FW. Beyond that, within Delhi, where he is asked to work, is not a question of transfer or posting at all. He remains in the same city and only his place of work changes. This much of freedom obviously the GNCTD should have to utilize his services wherever medical/ administrative exigencies required. It will be wrong for the Tribunal to interfere in such deployment of a doctor from one Hospital to another. Had he been posted outside Delhi, there could have been some interpretation that it is a transfer but he has been kept in Delhi. I fail to understand how it matters to the applicant in which locality he is serving or teaching.

5. Therefore, I am not inclined to stay the transfer order dated 4.03.2016 and to that extent, interim relief sought by the applicant is rejected. Having said that, I direct the respondents to verify as to how the applicant has been referred as Assistant Professor when the MoH&FW has already promoted him as

Professor and rectify the mistake.

Post on 6.05.2016.

(P.K. Basu)
Member (A)

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