

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

**O.A No.2540/2014**

**Reserved On:15.05.2017  
Pronounced On:17.05.2017**

**Hon'ble Mr. V. Ajay Kumar, Member (J)  
Hon'ble Mr. P.K. Basu, Member (A)**

Dr. Hemant Kumar Gohil, CMO (NFSG),  
Aged about 50 years  
S/o Late Mohan Lal Gohil  
R/o Flat No.153, C&D Block,  
Kanishka Apartment, Shalimar Bagh,  
Delhi-110088. ...Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

North Delhi Municipal Corporation & Ors.

1. The Director,  
Local Bodies,  
New Secretariat, New Delhi.
2. The Commissioner,  
North Delhi Municipal Corporation,  
SPS Civic Centre, JLN Marg, New Delhi.
3. The Addl. Commissioner (Health)  
North Delhi Municipal Corporation,  
SPS Civic Centre, JLN Marg, New Delhi.
4. The Director,  
Hospital Administration,  
Health Department,  
North Delhi Municipal Corporation,  
SPS Civic Centre, JLN Marg, New Delhi.
5. The Commissioner,  
South Delhi Municipal Corporation,  
SPS Civic Centre, JLN Marg,  
New Delhi. ..Respondents

(By Advocate: Mrs. Rashmi Chopra for Respondent No.1  
Shri Amit Sinha with Shri R.N. Singh for Respondents No.2  
to 4

Ms. Anupama Bansal for Respondent No.5)

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

The applicant was appointed as General Duty Medical Officer (GDMO) Grade-II on regular basis in Municipal Corporation of Delhi (MCD) vide Office Order dated 28.02.1993. He has been transferred several times till date. He is aggrieved by impugned order dated 11.07.2014 by which he has been posted in Public Health Department (PHD).

2. The MCD was bifurcated into three separate Corporations, namely, North, East and South. The Delhi Municipal Act, 2011 was amended and a new Section 90A was added which reads as follows:-

“Certain officers and employees of the erstwhile corporation to become officers and employees of respective corporations

(1) On the establishment of the Corporations under sub-section (1) of section 3 –

(a) the officers and the employees of the erstwhile Corporation at the ward and zonal level shall become officers and the employees of the respective new Corporations.

(b) the officers and the employees of the erstwhile Corporation, other than those covered under clause (a), shall be divided amongst the new Corporations by the Director of Local Bodies in consultation with the Commissioner of the erstwhile Corporation”.

Since the applicant was working in Karala Polyclinic, which became part of North Delhi Municipal Corporation (NDMC), therefore, according to the applicant, he became an employee of NDMC.

3. The applicant has filed this OA seeking the following reliefs:-

“(i) To quash and set aside the impugned order dated 11.07.2014.

(ii) To declare the action of respondents in transferring and posting the applicant outside his cadre and in another Corporation as illegal.

(iii) To allow the OA with cost.

(iv) To pass any such other order as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case”

4. The grounds on which the above prayers are made are as follows:-

(i) Since the applicant became employee of NDMC, he could not have been transferred to South Delhi Municipal Corporation (SDMC);

(ii) Impugned Order dated 11.07.2014 has been issued by Director, Hospital Administration (NDMC) who was not competent to transfer the applicant. Even in the matter of joint request, only Director, Local Bodies with the consent of all three Commissioners can effect inter-Corporation transfer;

(iii) The impugned order has neither been issued in exigency of service nor in public interest;

(iv) The Hon’ble Apex Court in the case of **UOI & Others Vs. Anil Kumar & Others 1999 (5) SCC 743** has held that no

discrimination can be permitted only at the whims of the administration or to satisfy another section of the Civil Service". Similarly in the case of **Tukaram Kana Joshi Vs. MIDC 2013 (1) SCC 353** it has been viewed by Hon'ble Supreme Court that discrimination not only breeds corruption, but also disrespect for governance, as it leads to frustration and to a certain extent, forces persons to take the law into their hands. Such discrimination cannot be accepted and excused as it remains a slur on the system of governance and justice alike, an anathema to the doctrine of equality which is the soul of our constitution. It is clear from the facts of the case of the applicant that the respondents have discriminated him;

(v) The respondents have acted in violation of trite law on the subject of posting in a different cadre, as pronounced by various judgments:-

(a) **Bhagwati Prasad G. Bhatt Vs. State of Gujarat & Others 1977 (1) GLR 562.**

(b) **Prem Parveen Vs. UOI 1973(2) SLR 659.**

(c) **Prakash R. Borkar VS. UOI and Others 1984 (1) BomCR 95.**

In all the above judgments, it has been held that a person belonging to a cadre cannot be deputed or

transferred outside the parent department and outside the cadre without his consent;

(vi) By this transfer order, the applicant has been posted in PHD (SDMC) under his junior;

(vii) Respondents have failed to consider that the respondents are maintaining separate seniority list for DGMO and Public Health Cadre (PH Cadre). It is further pointed out that in the GDMO cadre the age of retirement is 60 years whereas in the case of PH Cadre, the age of retirement is 62 years; and

(viii) Since the applicant is borne on the establishment of NDMC, he cannot be transferred to SDMC.

5. The learned counsel also relied on order of this Tribunal dated 07.02.2017 in **OA No.4143/2016**. This OA was filed by a Ward Aya working in North Delhi Municipal Corporation who was transferred to South Delhi Municipal Corporation on her request for transfer to any hospital near her residence due to her physical disabilities, after intervention of Commissioner (Disabilities). However, SDMC refused to accept her joining. She had, therefore, approached the Tribunal. The Tribunal held as follows:-

“4. Today, when this matter was heard in Court, it was agreed upon by the parties that respondent No. 1 could not have transferred the applicant from one Corporation to another. As such, the order dated 13.07.2016 passed by that respondent is a

nullity in law. Consequently, the order of relieving dated 03.08.2016 passed by North Delhi Municipal Corporation also cannot be sustained. The applicant has to be treated as if she continued in the service of North Delhi Municipal Corporation.

5. Accordingly, we dispose of this O.A. with a direction to respondent Nos. 2,3 & 4 to immediately take the applicant back on 4 OA-4143/2016 duty on their rolls and treat her continuously in service as well as to pay her salary for the intervening period. No costs”.

6. In their reply, the NDMC (respondents No.2 to 4) have stated that GDMO cadre Medical Officers having PG degree in Public Health, are posted in Public Health Department as a stop gap arrangement due to non-availability of Medical Officers in the PH Cadre. However, this does not mean that there is a change of cadre. The GDMO remains in his own cadre and posted back as and when Medical Officers of PH Cadre are available. It is an interim arrangement in public interest. It is stated that the applicant was earlier posted in the PH Cadre as Epidemiologist on 13.04.2007 and stayed on this post till 30.05.2008 when he was posted back to his own cadre. It is further stated that there are no separate independent cadres in the three Corporations and there is a common seniority list of all categories of staff working in three Corporations and as per decision of Co-ordination Meeting of the Commissioners of Municipal Corporation held under the Chairmanship of Director, Local Bodies on 02.06.2012, the work of recruitment of all categories of staff of three Corporations is entrusted with South Delhi Municipal Corporation whereas the work related to preparation of seniority, promotions of staff of all categories of all three Corporations is entrusted with North Delhi Municipal Corporation.

Finally, it is stated that the applicant has been only assigned to SDMC and not posted under any of his juniors. The matter of posting in SDMC will be decided by the PHD of SDMC for which letter dated 15.12.2014 has been issued in which it has been clearly stated to ensure that the applicant is not posted under his junior on his joining the PHD of SDMC.

7. Respondent No.1, namely, Director of Local Bodies, in their counter-affidavit have stated that no relief is claimed against them and they have no role to play in the transfer of Corporation employees. The learned counsel for respondent No.1 stated that there is no provision currently of transfer of employees from one Corporation to another.

8. SDMC in their counter-reply have stated that the order of Director of Local Bodies dated 18.04.2012 has been issued for the distribution of existing staff amongst the Corporations and as per the order of Director, Local Bodies dated 13.06.2014, since there is no provision under the DMC Act with regard to inter-Corporation transfer, inter-Corporation transfer cannot be entertained. In this regard, Circular dated 14.07.2014 has been annexed which states as follows:-

“Subject: Inter-Corporation transfer of MCD employees.

The undersigned is directed to say that a number of requests for inter-Corporation transfer have been receiving from various categories of employees in Central Establishment Department and other Departments of SDMC. Recently, the Director of Local Bodies in the case of request of inter-Corporation transfer of teachers has

held, inter alia, that there is no provision in the DMC Act to consider the request of inter-Corporation transfer (copy enclosed). The aforesaid decision of the Director (Local Bodies), Govt. of NCT of Delhi is brought to the knowledge of all concerned for information and necessary action”.

9. The learned counsel for the respondents also relied on the following orders:-

(i) Order dated 08.03.2016 in **OA No.2008/2014**. This OA had been filed by the Accounts Officers being aggrieved by the fact that respondents had not separated the seniority list of Accounts cadre of South Delhi Municipal Corporation. We quote below paras 6 and 7 of the order:-

“6. We heard counsel for parties and perused the record. Indubitably, the applicants herein had joined the services in the MCD and in the unified seniority list of the Accounts Officer, their seniority position is 58 and 66. The individuals promoted as Deputy Controller of Accounts even from reserved category are much seniors to them. None of the legitimate expectation of the applicants far less any of 10 OA2008/2014 their individual legal rights have been infringed. In the OA filed by them they have espoused the general issue. In the counter reply filed on behalf of respondent no. 1, it has been categorically stated that the issue regarding application of Section 89 and 92 by DMC Act, 1957 is under examination. Para 17 of the reply read thus:-

“17. That in the Cabinet Decision No.1874 dated 16.03.2012 circulated vide No.F.3/2/2011-GADF/CN- 1158-1169 dated 19/03/2012 it was decided as “ it has been further proposed that in respect of category-B and Category-C (Group & Group D) posts, individual Corporation will be the Cadre Controlling Authority and in respect of Category-A posts, a Joint Cadre may be maintained under a Joint Cadre Controlling Authority provided, it is permissible under the existing provisions of the DMC Act ( as

amended in particular Section 89 and 92 of the Act). This issue has been referred to the Services and Law Department of GNCTD and is separately under examination”. The matter is still under examination and has not been finalized.”

7. In view of the stand taken by respondents in para 17 of the reply, the OA is disposed of with direction to respondents to take a final view regarding application of Section 89 of DMC Act, as expeditiously as possible, preferably within six months. While taking such decision, they should give due regard to the stand taken by respondent No.1 and 2 in their counter reply. The decision should be taken by a Committee comprising of Director of Local Bodies and Commissioner of all the three Corporations as well as such other members as decided by the Lt. Governor. Nevertheless, in view of the order passed by this Tribunal on 12.08.2015, the new mechanism, if 11 OA2008/2014 any, introduced on the basis of legal advice referred to in para 17 and the decision of the Committee would not nullify the past promotions. The OA stands disposed of. No costs”.

It is the contention of the learned counsel for the respondents that this order would show that Group ‘A’ officers would have a Joint Cadre maintained under a Joint Cadre Controlling Authority. Since the applicant belongs to Group ‘A’ post, his is a Joint Cadre and, therefore, he can be transferred from one Corporation to another.

- (ii) Order dated 12.08.2015 in **OA No.603/2015**. This OA was filed seeking direction to hold DPC for regular promotion to the grade of Dy. Law Officer without having prepared Corporation-wise seniority list of feeder grade of Assistant Law Officer after trifurcation of the Municipal Corporation

of Delhi. Attention was drawn to para 41, which stated as follows:-

“41. Now we come to the issue as to what relief, if any, could be granted to the applicant. Here, we have already seen that the act of trifurcation in respect of Group ‘A’ and other employees mentioned under Section 90-A of the Act is not final and irrevocable, rather placement had been made provisionally; the service matters related to the above employees shall continue to be common with inter-changeability and transfer from one corporation to other; the powers in relation to all service matters in respect of all Groups of employees have devolved upon the respondent no.3 to be undertaken, of course, in consultation through the mechanism of the Coordination Committees under the aegis of respondent no.6; right to be considered for promotion involves the civil rights of the employees and cannot be swept under the carpet for the recruitment rules to be framed and seniority list to be finally published; right to promotion before trifurcation to be considered under the rules existing as have been provided in the mechanism as detailed above, and these rights could be articulated through the mechanism of CED and Coordination Committees headed by the respondent no.3 and attended by the Commissioners of all the three corporations”.

The OA was dismissed and the interim order passed on 12.02.2015 also stood vacated.

10. Heard the learned counsels and perused the pleadings, orders and judgments.

11. Learned counsel for NDMC has clarified that impugned order dated 11.07.2014 will not result in change of cadre of the applicant from GDMO to PH Cadre. It is a stop gap arrangement and the applicant will be brought back to the GDMO cadre after an officer of the PH Cadre is available. It has also been stated that applicant

himself has spent about a year in the PH Cadre in the year 2007-08 and he was brought back to the GDMO cadre after a year. The Tribunal in **OA No. 603/2015** (supra), after examining all the various rules and regulations as pointed out above, held that service matters related to the above employees shall continue to be common with inter-changeability and transfer from one Corporation to another. Moreover, as pointed out by the Tribunal in **OA No.2008/2014** (supra) there would be a Joint Cadre for category 'A' posts. The order dated 07.02.2017 in **OA No.4143/2016** (supra) has not taken into account the findings in **OA No.2008/2014** (supra) and **OA No.603/2015** (supra) and hence rendered *per incuriam* as it has not considered the decisions of coordinate bench pronounced earlier to the order dated 07.02.2017. In view of this, order in **OA No.4143/2016** (supra) cannot act as precedent.

12. What is, therefore, clear from the above is that the applicant's cadre is not going to change and he would continue to be in GDMO cadre and that the impugned order dated 11.07.2014 is just a stop gap arrangement and the applicant will be brought back to the GDMO cadre immediately once an officer of PH Cadre is available. In fact, the applicant himself has spent a year in PH cadre in 2007-08 at the end of which, he was brought back to the GDMO cadre. Secondly, the respondents have assured that the applicant will not be posted in SDMC below any of his junior. Only issue, therefore, is whether the applicant could be transferred from NDMC to SDMC. Clearly, the

applicant or any of the respondents have not been able to demonstrate that the applicant cannot be transferred in exigencies of administration. Needless to say that Public Health is of prime importance and if a doctor has been temporarily assigned in another area in Delhi on a Public Health assignment, it does not behove of him to protest in this fashion. The doctor's duty is to serve patients whether it is in one part of Delhi or in another part of Delhi. Since the cadre of doctors is a Joint Cadre, we do not find any reason why the applicant can refuse to serve in the PHD of the SDMC.

13. In view of above, we do not find any merit in the OA and the same is, therefore, dismissed. The interim stay granted on 30.07.2014, accordingly stands vacated. No costs.

**(P.K. BASU)**  
**MEMBER (A)**

**(V. AJAY KUMAR)**  
**MEMBER (J)**

Rakesh