

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2155/2016

Reserved on : 15.07.2016.

Pronounced on : 16.07.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Dr. Mohd. Ajazur Rahman Vs. Govt. of NCTD

Present : Sh. Sagar Saxena with Ms. Himanshi Saini, counsel for applicant.
Ms. Rashmi Chopra, counsel for respondents.

ORDER ON INTERIM RELIEF

The following order was passed in this case while issuing notice to the respondents on 01.07.2016:-

"Learned counsel for the applicant has submitted that the applicant was appointed to Central Health Services after being selected for the same through the Union Public Service Commission vide order dated 21.01.1998. According to him, the cadre controlling authority of the aforesaid service is the Ministry of Health and Family Welfare, Government of India, as is evident from the notification dated 08.10.1996. The same view has already been taken by this Tribunal in OA No. 557/2013 in the case of Dr. Sanjay Agarwal Vs. State of Delhi and Anr.

Learned counsel has submitted that the applicant has been transferred from Aruna Asaf Ali Hospital to Rao Tula Ram Memorial Hospital by the Govt. of NCT of Delhi who were not competent to do so.

Issue short notice to the respondents returnable on 15.07.2016. In the meanwhile, the aforesaid transfer order shall not be acted upon in so far as the applicant is concerned.

Order **DASTI.**"

2. Today, Mrs. Rashmi Chopra has appeared for Govt. of NCT of Delhi and submitted that the applicant has obtained the aforesaid interim relief by misrepresentation of facts. She submitted that before approaching this Tribunal, the applicant had approached Hon'ble High Court of Delhi vide Writ Petition

(C) No. 5707/2016, which was disposed of by Hon'ble High Court on 22.06.2016 by the following order:-

“CM APPL.No. 23579/2016 (Exemption)

Exemptions allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 5707/2016 and CM APPL.No.23580/2016(Stay)

The present is a petitioner under Article 226 of the Constitution of India praying as follows:-

"(i) Issue appropriate writ/order thereby directing the respondents to refer the investigation of corruption and financial irregularities prevailing in the respondent no. 3 to an independent agency like CBI or such agency as may be deemed fit by this Hon'ble Court;

(ii) Issue appropriate writ/order thereby quashing the impugned transfer order dated 30.05.2016 (Annexure P-19) and direct the respondents to allow the petitioner to resume his duties on the same post/position i.e. Chief Medical Officer (NFSG) in the respondent no. 3 hospital, as was held by him prior to issuance of above impugned transfer order with all benefits;

(iii) Cost of the present proceeding be awarded in favour of the petitioner and against the respondents; and

(iv) Such other order(s) as this Hon'ble Court may deem fit and proper in public interest and in the interest of justice."

In so far as prayer clause (ii) is concerned, the same has been rendered infructuous in view of the corrigendum dated 21st June, 2016 issued by the Government of NCT of Delhi, Health and Family Welfare Department stating that the petitioner herein has been posted as the CMO (NFSG).

Insofar as prayer clause (i) is concerned, learned counsel appearing on behalf of the petitioner seeks leave to withdraw the present writ petition with liberty to institute appropriate proceedings in accordance with law before the court of competent jurisdiction.

The writ petition is disposed of accordingly. Pending application also stands disposed of."

3. Learned counsel for the respondents submitted that it is clear from the above that applicant's prayer Clause-ii, which dealt with his transfer, has already been decided by Hon'ble High Court of Delhi. She further submitted that in OA-1064/2016 (Dr. Anirban Hom Choudhuri Vs. State of NCT Delhi & Ors.) this Tribunal has already taken the view that GNCTD was competent to transfer such of the doctors belonging to Central Heath Service, whose services had been placed at the disposal of GNCTD. She argued that when the applicant was appointed his services were placed at the disposal of GNCTD and it was that government, which had posted him to a particular hospital. She has produced copy of the appointment letter of the applicant as well as two orders of GNCTD dated 22.08.2000 and 01.05.2009 by which the applicant was posted to Lok Nayak Hospital and Aruna Asaf Ali Hospital respectively.

4. The applicant's counsel, on the other hand, argued that the applicant had approached Hon'ble High Court of Delhi vide the above mentioned Writ Petition seeking a CBI enquiry into certain financial irregularities. Learned counsel submitted that since the applicant had been transferred because he had acted as a whistle blower and exposed corruption in the department, he had also sought quashing of his transfer order on the ground that the respondents had posted him as Senior Medical Officer whereas actually he was holding a higher position of Chief Medical Officer. The respondents have thereafter issued a corrigendum and on perusal of the same Hon'ble High Court of Delhi had passed the aforesaid order. However, the applicant had approached this Tribunal seeking quashing of the transfer order on entirely different ground, namely, that he had been transferred by an incompetent authority. Learned counsel relied on the judgment of this Tribunal in OA-557/2013 (Dr. Sanjay Agarwal Vs. State of Delhi & Ors.) dated 31.07.2015 in which

this Tribunal has taken the view that Ministry of Health & Family Welfare, GNCT of Delhi was the cadre controlling authority of Central Health Service cadre and since no delegation of powers to transfer the doctors had been made by that authority, Govt. of NCT of Delhi was not competent to transfer doctors belonging to that service. Learned counsel denied that he had misrepresented the facts in any manner. He also produced a copy of the Notification dated 08.10.1996 wherein while notifying GSR-460(E) it has been clearly laid down that the controlling authority for Central Health Service was the Government of India in the Ministry of Health & Family Welfare.

5. I have heard both sides on interim relief and have perused the material placed on record. Prima facie, it appears that the applicant first approached the Hon'ble High Court of Delhi for cancellation of his transfer but when he did not succeed there he has filed O.A. before this Tribunal. The main ground taken by him for seeking cancellation of this order was that GNCTD was not competent to transfer him as he was a doctor belonging to Central Health Service. He has placed reliance on the judgment of this Tribunal in the case of Dr. Sanjay Agarwal (supra). This was, however, opposed by learned counsel for the respondents, who submitted that Dr. Sanjay Agarwal belonged to teaching cadre whereas the applicant herein was from GDMO cadre and the rules governing these two cadres were different. She stated that this case was covered by judgment of this Tribunal in Dr. Anirban Hom Choudhuri (supra), who was also a doctor belonging to GDMO cadre.

6. On going through the material placed before me, I find merit in the contention of the respondents. I also find merit in their submission that the services of the applicant on appointment were placed at the disposal of GNCT of Delhi and the hospital was assigned to the applicant by that government.

She has produced copies of the orders posting of the applicant to Lok Nayak Hospital and Aruna Asaf Ali Hospital where the applicant is still working. She argued that applicant himself had not opposed these posting orders and complied with them. Thus, *prima facie* it appears that Govt. of NCT is competent to transfer the applicant within hospitals under that Govt.

7. After hearing both sides I am of the opinion that the respondents have made out a strong *prima facie* case for denial of interim relief to the applicant. In any case, no irreparable loss would be caused to the applicant if he joins his new place of posting. He can still continue to seek cancellation of his transfer order. In the case of **S.C. Saxena Vs. UOI & Ors.**, 2006 SCC (L&S) 1890 Hon'ble Supreme Court has laid down that if a government employee is aggrieved by his transfer then he should first join his posting and then agitate against the same.

8. In view of the above, I see no reason to extend the interim relief granted to the applicant on 01.07.2016. Respondents are directed to file reply to the OA within one week. Rejoinder may be filed within two weeks thereafter. List for final hearing on 19.08.2016.

**(Shekhar Agarwal)
Member (A)**

/Vinita/