

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.1362/2015  
MA No.1234/2015**

Order Reserved on : 05.10.2018  
Pronounced on : 12.10.2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman  
Hon'ble Mr. Pradeep Kumar, Member (A)**

1. Faculty Welfare Association  
through its General Secretary  
Dr. Sharda Patra, Aged 43 years,  
having its registered office at  
Lady Hardinge Medical College,  
Bhagat Singh Marg, New Delhi-110001  
(Registration No.5/18996).
2. Dr. Shilpi Nain W/o Dr. SatyaKumar,  
R/o B-91, 2<sup>nd</sup> Floor, Hari Nagar,  
New Delhi-110064  
(Aged about 34 years)  
(Asstt. Professor, Teaching Sub-Cadre (CHS))
3. Dr. Meenakshi W/o Dr. Rajesh Ranjan,  
R/o H. No.14, New T Block,  
Phase-II, Nanhe Park, Uttam Nagar,  
New Delhi-110059  
(Asstt. Professor, Teaching Sub-Cadre (CHS))
4. Dr. Vidhi Chaudhary W/o Dr. Sandeep Kumar Sinha,  
R/o H-102, Pearl Court, Ramprastha Greens,  
Vaishali Extension, Sector-7, Ghaziabad,  
UP-201012. ... Applicants  
(Asstt. Professor, Teaching Sub-Cadre (CHS))

( By Mr. Ajesh Luthra, Advocate )

Versus

1. Union of India through Secretary,  
Ministry of Health and Family Welfare  
(CHS Division), Nirman Bhawan,  
New Delhi.
2. The Director,  
Lady Hardinge Medical College,  
Bhagat Singh Marg,  
New Delhi-110001. ... Respondents

( By Mr. Gyanendra Singh, Advocate )

### **ORDER**

**Justice L. Narasimha Reddy, Chairman :**

The applicants 2, 3 and 4 are Assistant Professors in Teaching Sub-Cadre of the Central Health Service (CHS), and the first applicant is the Faculty Welfare Association. The Government of India, Ministry of Health and Family Welfare issued office order dated 29.12.2014 deputing various Specialists (Non-Teaching), Assistant Professor (Teaching) and General Duty Medical Officers (GDMOs) (with PG qualifications) of the CHS, to serve in Andaman & Nicobar Islands for a period of 90 days. Similar order dated 05.01.2015 was issued, deputing the Specialists, Assistant Professors and GDMOs to work in the Lakshadweep Administration for 90 days. Both the orders are challenged in this OA.

2. The applicants contend that in the CHS, there exist separate sub-cadres for Non-Teaching, Teaching, Public Health and GDMOs, each sub-cadre has got its own duties and responsibilities, and that there is no legal or factual basis for posting the applicants outside their sub-cadres. It is also pleaded that an employee can be sent on deputation by his parent department to any borrowing department, only with his consent, and not otherwise. Other contentions are also advanced.

3. In the counter affidavit filed by the respondents, it is stated that the CHS takes in its fold employees of various establishments, including hospitals, medical colleges, and the hospitals in A&N Islands and Lakshadweep are part of the same Service. According to them, the posts in A&N Islands and Lakshadweep were remaining vacant for variety of reasons, and to meet the minimum needs for extending the medical services to the people living in those Islands, officers working in various establishments are assigned duties for limited period, and that there is no justification for the applicants to decline to discharge the duties assigned to them.

It is pleaded that the applicants continue to be in the same sub-cadre.

4. We heard Shri Ajesh Luthra, learned counsel for the applicants, and Shri Gyanendra Singh, learned counsel for the respondents.

5. The CHS takes in its fold, quite a large number of establishments. In the definition clause of the CHS Rules 2014, the expression "Sub-Cadre" is defined to mean the four streams of the Service, namely, General Duty, Public Health, Non-Teaching Specialists and Teaching Specialists. While rule 3 defines composition of the 'Service' as mentioned in Schedule-I, rule 4 stipulates the authorized strength of the Service mentioned in Schedule-II. The establishments in Lakshadweep Administration (clause *m*), and A&N Administration (Clause *s*) are mentioned in Schedule-II itself. Strength of Non-Teaching cadre is 10 for the Lakshadweep Administration, and 46 for A & N Administration. It is stated that the posts in those establishments were lying vacant for variety of reasons, and to attend to the medical needs of the local residents, the medical officers of all categories are being sent for discharge of duties for a limited period.

6. Though the word “deputation” is employed in the impugned order, it is in a totally different context. Normally, ‘deputation’ contemplates the employee of one organisation (parent department) to work in a different organisation (borrowing department) for a specified period. The salient features of deputation are that it shall be with the consent of or on the request of the employee concerned, the emoluments of the employee are paid by the borrowing department, and even promotions can be earned there.

7. In the instant case, the applicants are not being sent to any other organisation. They are being sent to different units of the same Service. A perusal of the counter affidavit discloses that the employees who were working as Non-Teaching Specialists were being converted to Teaching Specialists, depending on the vacancy position or necessity.

8. Further, rules 11 and 12 of the CHS Rules, read as under:

“11. **Posting.** – Officers appointed to the Service shall be liable to serve anywhere in India or abroad.

12. **Liability to serve Defence service or posts connected with Defence.** – Any officer appointed to the Service, if so required, shall be

liable to serve in any Defence Service or post connected with the Defence of India, for a period of not less than four years including the period spent on training, if any;

Provided that such officer shall not –

- (a) be required to serve as aforesaid after the expiry of ten years from the date of his appointment to the Service or from the date of his joining the Service;
- (b) ordinarily be required to serve as aforesaid if he has attained the age of 45 years.”

9. It is important to note that rule 11 refers to the officers appointed to the ‘Service’, in contradistinction to the ‘Sub-Cadre’. The duties of medical officers are such that many a time, it becomes difficult to draw distinction between one sub-cadre and another, and postings can take place interchangeably, depending on the requirements. However, in the long run, the distinction needs to be maintained. The applicants cannot shy away from their obligation to serve the public, and cannot treat their personal comfort as the paramount consideration. In fact, one should feel proud of being chosen to serve the needy public, than to adopt an ostrich like approach, being indifferent to the happenings around.

10. Reliance is placed upon a judgment of the Delhi High Court in *Prem Parveen v Union of India* [(1973) 2 SLR

659]. That was a case in which an employee was transferred from one unit of appointment to another. The petitioner therein was a UDC who became ripe for promotion in his unit of appointment, but was transferred to another unit, which had the effect of postponing his promotion. The facts of that case have no similarity with those of the present case. The judgments of the Hon'ble Supreme Court in *Umapati Choudhary v State of Bihar and others* [(1999) 4 SCC 659] was on an issue where, in the given set of facts, an employee working on deputation can be treated as part of the borrowing department for certain benefits. Reliance is also placed on the judgment of the Bombay High Court in *Seshrao Nagorao Umap v State of Maharashtra & others* [W.P. No.3426/1983, decided on 11.07.1984]. That was a case of transfer of an employee from one department to another.

11. In none of the precedents referred to above, the question of temporary posting of an employee from one unit to another of the same service was in question. The applicants remain in the same service and in the same cadre, and even their emoluments are paid as usual. They were not made part

of any other department or unit, even on temporary or *ad hoc* basis.

12. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.

13. If on account of the order of stay granted by this Tribunal in this OA, any doctors mentioned in the impugned orders, did not join, it shall be open to the respondents to assign duties to them forthwith.

**( Pradeep Kumar )**  
**Member (A)**

**( Justice L. Narasimha Reddy )**  
**Chairman**

/as/