

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

O.A. No. 3715/2017

M.A. No. 91/2018

And

C.P. No. 784/2017

New Delhi, this the 31st day of August, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

(1) O.A 3715/2017 :

Dr. M. C. Agarwal,
Aged – 62 years,
S/o. Late Sh. R. B. Agarwal,
Working as Head of the Eye Department,
Deen Dayal Upadhyaya Hospital,
Hari Nagar, New Delhi – 64,
R/o, 232, Pocket I, Sector-4, Dwarka,
New Delhi – 110 078.

.....Applicant

(Applicant present in person)

Versus

1. Union of India through the Secretary,
Ministry of Health & Family Welfare,
Govt. of India,
Nirman Bhawan,
New Delhi.
2. The Secretary,
Ministry of Personnel,
Public Grievances and Pension,
Govt. of India,
North Block,
New Delhi.
3. Govt. of NCT of Delhi through the Chief Secretary,
Delhi Secretariat,
I.P. Estate,
New Delhi-2.
4. The Dy. Secretary (HR-Medical),
Health & Family Welfare Department,

Govt. of NCT of Delhi,
Level 'A' Wing,
Delhi Secretariat,
I.P. Estate,
New Delhi-2.

5. The Medical Director,
Govt. of NCT of Delhi,
Deen Dayal Upadhyay Hospital,
Hari Nagar,
New Delhi – 64.

....Respondents

(By Advocate : Mr. Pradeep Kumar for Mr. Vijay Pandita)

(2) C.P 784/2017 :

Dr. M. C. Agarwal,
Aged – 62 years,
S/o. Late Sh. R. B. Agarwal,
Working as Head of the Eye Department,
Deen Dayal Upadhyaya Hospital,
Hari Nagar, New Delhi – 64,
R/o, 232, Pocket I, Sector-4, Dwarka,
New Delhi – 110 078.

.....Petitioner

(Petitioner present in person)

Versus

Dr. A. K. Mehta,
Medical Director,
Govt. of NCT of Delhi,
Deen Dayal Upadhyay Hospital,
Hari Nagar, New Delhi – 64.

...Respondent

(By Advocate : Mr. Pradeep Kumar for Mr. Vijay Pandita)

O R D E R (O R A L)

Justice L. Narasimha Reddy, Chairman :

O.A. No. 3715/2017 :

The applicant joined the service of NCT of Delhi in the year 1995. Earlier to that, he is said to have been on

Short Service Commission in Military. Through an order dated 18.10.2017, he has been transferred from Deen Dayal Upadhyay Hospital (DDUH) to Rao Tula Ram Memorial Hospital (RTRMH), as a specialist in Ophthalmology. This O.A is filed challenging the same. The applicant contends that he is the senior most Ophthalmologist in DDUH and on account of his experience and expertise, several critical operations have been conducted at that hospital, and without there being any reason, he has been transferred to RTRMH, where hardly any facilities in the department of Ophthalmology are available, and that the impugned order of transfer is motivated. An interim order was passed by this Tribunal on 31.10.2017 directing the maintenance of status-quo.

2. Complaining that the Interim Order passed by the Tribunal has not been complied with, he filed C.P. No. 784 of 2017.

3. The respondents filed separate counter affidavits opposing the O.A as well as C.P. They contend that the applicant has been in the same hospital for more than two decades, ever since he joined service and an earlier attempt made to transfer him in the year 2016 was thwarted by him

by misusing the process of law. It is also stated that the applicant is not the senior most and with a view to make the expertise of the applicant available at the RTRMH he has been transferred. The allegations as to arbitrariness and mala fide are denied.

4. The petitioner argued the O.A as well the C.P in person and has made reference to several records.

5. On behalf of the respondents, Mr. Pradeep Kumar for Mr. Vijay Pandita, learned counsel has argued.

6. It is matter of record that the applicant joined the service of the respondents in the year 1995, and ever since then, he is in DDUH. The record also discloses that an attempt was made to transfer him for the first time from that place through order dated 28.04.2016. Challenging the said order, the applicant filed W.P.(C) No. 4555/2016. Initially, an interim order was passed therein and ultimately the Writ Petition was disposed of on 29.07.2016, with the following observations :-

“On the last date of hearing, notice in the petition was issued and impugned order dated 28th April, 2016 was stayed by this Court.

It is noted that the petitioner is an employee of the Govt. of India and posted in the Govt. of NC T of Delhi. The cadre controlling authority of the petitioner is the Ministry of Health and Family Welfare, Govt. of India.

The challenge in the petition is with regard to transfer of the petitioner and the subject matter of the petition would fall within the jurisdiction of the Central Administrative Tribunal.

Learned counsel for the petitioner seeks to withdraw the petition with liberty to approach the Central Administrative Tribunal. He also states the protection granted by the Court on the last date of hearing be extended to the petitioner till he approaches CAT and pray for interim relief.

Learned counsel for the respondent would state that the order dated 28th April, 2016 in so far as the petitioner is concerned shall not be given effect to till the petitioner files a petition before CAT and matter is heard on the interim relief. Her statement is taken on record.

The petition is dismissed as withdrawn with liberty as prayed for.

Dasti.”

7. The purport of this order was that, till the applicant approaches this Tribunal, challenging the order of transfer, the interim order passed by the High Court shall remain in force. He did not file O.A at all before this Tribunal till today, challenging the order dated 28.04.2016. The result is that he availed the benefit of interim order passed by the Hon'ble High Court indefinitely. For all practical purposes, the order of transfer dated 28.04.2016 died its natural death and the respondents were left in a helpless condition. That is the astuteness of the applicant. One rarely comes across such level of misuse of the process of law.

8. The impugned order dated 18.10.2017 was passed transferring him from DDU Hospital to RTRM Hospital.

His allegation that he has not been assigned any other duty at that hospital is not true. The order indicates that he is transferred as a specialist in Ophthalmology. Even if it is true that he has been working as Consultant in DDU Hospital, there is nothing in law which requires that he shall be posted as Consultant alone in the place, to which he is transferred. Works are assigned depending upon the nature and facility available and the other relevant factors.

9. In relation to the present transfer also, there are some peculiar developments before this Tribunal. The applicant filed O.A No. 3674/2014 challenging an order through which he was relieved of his administrative position i.e., HOD. During the hearing of the O.A, the order dated 18.10.2017 transferring him from DDUH to RTRMH came into existence. In that O.A, the following order was passed by this Tribunal :-

“Mr. Yogesh Sharma, learned counsel for applicant submits that after filing of this O.A, the respondents have passed two orders dated 18.10.2017 whereby the applicant has been transferred from DDU Hospital to RTRM Hospital as Specialist (Ophthalmology) and order dated 23.10.2017 whereby he has been relieved from the DDU Hospital with direction to join RTRM Hospital with immediate effect. In view of this, the learned counsel seeks leave of the Tribunal to withdraw this O.A. with liberty to file a fresh comprehensive one to challenge above orders as well. Prayer allowed. Dismissed as withdrawn, with liberty prayed for”

10. It may be mentioned that in the present O.A also the petitioner sought relief vis-a-vis order dated 23.10.2017 and claimed relief in respect of his entitlement to continue as HOD till he attains the age of 65 years.

11. It means that the applicant was relieved on 23.10.2017. Across the bar, the applicant stated that he is now working at RTRMH. The question of continuing him at DDUH, much less as HOD, does not arise. He does not have the vested right to continue in the same place for the entire length of service. The record discloses that he figured as accused in several criminal cases, and there are complaints as regards his functioning at DDUH. For example, he is said to have permitted a private eye specialist to perform operation along with him at DDUH. That is his discipline and expertise.

12. Though, it is argued that there is a violation of guidelines issued for transfer, the applicant is not able to point out any specific provision of law in this regard. The guidelines are also directive in nature and even if, there is any minor violation here and there, the order of transfer does not get vitiated.

13. We do not find merit in the O.A and dismiss the same. There shall be no order as to costs.

C.P. No. 784/2017 :

14. This C.P. is filed alleging that the respondents violated the interim order passed in the O.A. Since the O.A is dismissed, and the applicant was already relieved, much before the interim order, we dismiss the C.P. also.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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