

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**

**No. M.A. 104 OF 2018
O.A. 83 OF 2018**

Date of order: 23.03.2018

**Present: Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

**Dr. (Mrs.) Shipra Paul,
Daughter of Late Dr. D.C. Bhattacharyya,
Aged about 59 years,
Residing at Quarter No. L-5, Link Road,
Goalghar, District – South Andaman, Port Blair,
Pin – 744 101 working to the post of
Director of Health Service on CDC basis in the
Office of the Director Andaman & Nicobar
Administration,
Port Blair – Pin – 744 101.**

.. Applicant

Vs.

- 1. Union of India,
Through the Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan,
New Delhi Pin – 110 001.**
- 2. The Lieutenant Governor (Administrator),
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair – 744 101.**
- 3. The Andaman & Nicobar Administration,
Through the Chief Secretary,
A&N Islands,
Secretariat,
Port Blair – Pin – 744 101.**
- 4. The Principal Secretary (Health),
Andaman & Nicobar Administration Secretariat,
Port Blair,
Pin – 744 101.**
- 5. The Assistant Secretary (Health),
Andaman & Nicobar Administration Secretariat,
Port Blair,
Pin – 744 101.**

And

In the matter of :

- 1. Union of India,
Through the Secretary,
Ministry of Health & Family Welfare,**

**Nirman Bhavan,
New Delhi, PIN – 110 001.**

- 2. The Lieutenant Governor (Administrator),
Andaman & Nicobar Islands,
Raj Niwas,
Port Blair, PIN – 744 101.**
- 3. The Andaman & Nicobar Administration
Through the Chief Secretary,
A&N Islands Secretariat,
Port Blair,
Pin – 744 101.**
- 4. The Principal Secretary (Health),
Andaman & Nicobar Administration Secretariat,
Port Blair,
Pin – 744 101.**
- 5. The Assistant Secretary (Health),
Andaman & Nicobar Administration Secretariat,
Port Blair,
Pin – 744 101.....Applicants/Respondents**

Vs.

- 1. Dr. (Mrs.) Shipra Paul,
Daughter of Late Dr. D.C. Bhattacharyya,
Aged about 59 years,
Residing at Quarter No. L-5,
Link Road, Goalghar,
District – South Andaman, Port Blair,
Pin – 744 101 working to the
Post of Director of Health Service on CDC basis
In the Office of the Director Andaman & Nicobar
Administration, Port Blair – Pin – 744 101.**

.... Respondent/Applicant

- 2. Dr. S.P. Burma,
Medical Superintendent,
G.B. Pant Hospital, Port Blair,
Who is belonged to CHS Cadre,
Office of the Director of Health Services,
Port Blair – 744 101.**

.. Respondent/Respondent

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. R. Halder, Counsel

ORDER

Dr. Nandita Chatterjee, Administrative Member:

Miscellaneous Application bearing No. 351/00104/AN/2018 as well as a supplementary application arising from O.A. No. 351/00083/2018 has been filed by the respondents praying for vacation of interim order dated 25.1.2018 in O.A. No. 351/00083/2018.

2. The interim order dated 25.1.2018 had directed as under:-

“5. In the instant context, we find that although an FIR has been filed based on a CBI raid alleging illegal gratification from private suppliers by abusing her official position by the applicant, Ld. Counsel for the respondents have not been able to produce before us any document as evidence towards the same. Further, Ld. Counsel for the respondents does not have any instructions as to whether any disciplinary proceedings have been initiated against the applicant on the basis of the allegations.

6. Hence, following the ratio as laid down by the Hon'ble Apex Court in SLP (C). 7020 of 2016 (supra) we hereby direct the Union Territory of A&N Islands to pass orders whereby the applicant may be re-posted as Director of Health Services in the capacity of holding current duty charges in that post.

7. At the same time, however, considering the gravity of the allegations made and in particular the observations of the Chief Secretary on the sensitivity of the post of Director of Health Service which had led to her transfer to a non-sensitive post, we also hold at the same time that while passing such a posting order, the A&N Administration will make it clear that the applicant concerned will not exercise any power on procurement of any goods, services, materials, medicines, drugs, pharmaceuticals or any other items in connection with the health service of A&N Islands nor will the applicant exercise any power of financial liability. The applicant will also be restrained from dealing with any matters relating to the allegations brought against her.

8. The Andaman & Nicobar administration, however, are at liberty to initiate disciplinary proceedings against the applicant under the Rules.

9. We are given to understand by the Ld. Counsel for the respondents that there are no additional financial benefits associated with holding the current duty charge of DHS and hence there will be no financial benefits to which the applicant will be entitled during the period of holding of current duty charges.

10. Needless to say that the interim order will be subject to the outcome of the O.A.

11. The respondents are at liberty to raise objections to the interim orders, if they so desire.”

3. The respondents have filed the two instant Miscellaneous Applications praying for vacation of said interim order on the following grounds:-

(i) That the applicant in the O.A., who was in the grade of CMO, NFSG (Adhoc) was given current duty charges of Director of Health Services from

1.4.2015 in the first spell and thereafter was discontinued in compliance with judgment of Hon'ble High Court (Circuit at Port Blair) in WPCT No. 024 of 2016 read with WPCT No. 029 of 2016 along with judgment in SLP (C) No. 7202 of 2016.

(ii) That, the post of Director of Health Service of Senior Administrative Grade (SAG) but the applicant is two grades below SAG and the applicant has neither been confirmed as CMO (NFSG) nor has been promoted to SAG to hold the post of DHS on regular basis.

(iii) That, the applicant's matter cannot be equated with that of Dr. R. Thulasidasan, who was the petitioner in WPCT No. 024 of 2016 as a junior to Dr. R. Thulasidasan was considered for the post of DHS in current duty charge and in the instant case no junior to the applicant has been assigned current duty charge but only Dr. S.P. Varma, Consultant in the SAG was given only the additional charges of DHS as stop gap arrangement.

(iv) That, an FIR was registered on the basis of preliminary enquiry conducted by CBI on 11.10.2007 and that a vigilance clearance has been given to the GDMOs on 16.8.2017 prior to the registration of the FIR.

(v) That, the applicant's posting as DHS with current duty charges will impede enquiry and fair investigation by Central Bureau of Investigation.

(vi) That, the Chairperson, Port Blair Corporation had written to PMO to initiate disciplinary proceedings against the applicant and direction has been received from the Office of the Lt. Governor accordingly.

(vii) That, the administration is contemplating initiation of disciplinary proceedings against the applicant shortly.

(viii) That, reposting the applicant as DHS on current duty charges will severely affect the public perception of posting of officials against whom there are enquiries on corruption charges in senior level posts in the health administration.

4. The interim order was a conditional order in which due regard have

been given to the gravity of the allegations made in the CBI enquiry as well as the observations of the Chief Secretary, A&N Administration. In deference to the same, the interim order had issued specific directions that, the applicant, when re-posted as DHS on current duty charges, will be debarred as follows:-

- (a) The applicant will not exercise any power on procurement of any goods, services, materials, medicines, drugs, pharmaceuticals in connection with health services of A&N Islands.
- (b) The applicant will not exercise any power of financial liability.
- (c) The applicant will be restrained from dealing with any matters relating to allegations brought against her.

The interim order had also provided the administration liberty to initiate disciplinary proceedings against the applicant under the rules and also qualified that there would be no financial benefits to which the applicant would be entitled during the period of holding the current duty charges.

The objections to the interim order as prayed in the vacation application can be summarised as follows:-

- (i) That, on account of corruption charges and public perception against corrupt officials as well as the pending CBI proceedings, the applicant should not be allowed to be re-posted as DHS on current duty.

It is difficult to be convinced as to how an official bereft of all powers of procurement and financial expenditure can be a party to further corrupt practices. The applicant's temporary period of reinstatement as DHS on current duty charges only authorizes the applicant to conduct routine administrative matters. Public perception can be adverse when wrongful dealings associated with procurement and finances in the health administration of the respondents is perpetuated, which has not been so in the interim

order so impugned. Further, as nothing prevents officials senior to the applicant to decide on procurement and financial liabilities during such temporary reinstatement, public confidence will be restored thereby.

Admittedly, the applicant is the senior-most GDMO of Health Department and hence current duty charges of the post of DHS was accorded to her by the administration and not by the Tribunal. The Tribunal had only restored her to that post pending departmental enquiry and posting of a regular incumbent and that too bereft of any sensitive dealings in such post.

- (ii) The next round of objections against the interim order is that the applicant's continuation in the post of DHS in current duty charges will impede fair and transparent investigation by CBI.

In the interim order it has been made very clear that the applicant will be restrained from dealing with any matters relating to allegations brought against her. Hence, reiteration of the same is a mere tautology which is not required to be pressed in the Miscellaneous Application.

- (iii) The respondents in their prayer for vacation have referred to complaints received against the applicant from the Chairperson, Port Blair Municipal Council addressed to the PMO based on which the Office of the Lt. Governor had directed that disciplinary proceedings be initiated against the applicant.

As the Tribunal had accorded the administration liberty to initiate disciplinary proceeding against the applicant under the Rules, it is not understood as to why the currency of the interim order would impede initiation of disciplinary proceedings against the applicant.

5. Decisions in **State of U.P. vs. Gobardhan Lal, (2004) 11 SCC 402** and **Shilpi Bose (Mrs.) v. State of Bihar, 1991 Supp**

(2) **SCC 659** have been referred to in the Miscellaneous Application and during oral submissions the Ld. Counsel for the respondents referred to the judgments in the following matter:-

- (i) **Manoj Narula v. U.O.I. & ors. (2014) 9 SCC 1**
- (ii) **Subramanian Swamy v. Director, Central Bureau of Investigation & anr. (2014) 8 SCC 682**

Regarding the decisions cited in support, these are dealt with in serial:-

- (i) **State of U.P. vs. Gobardhan Lal, (2004) 11 SCC 402**

The ratio herein held was that transfers are not to be normally interfered with by Courts.

- (ii) **Shilpi Bose (Mrs) v. State of Bihar, 1991 Supp (2) SCC 659** wherein the Hon'ble Apex Court had similarly held that Courts normally should not interfere with transfers.

In this background, the interim order had under no circumstances, interfered with any orders of transfer of the respondents as it is the respondent authorities, who had posted the applicant as DHS with current duty charges in the first place. In the context of Chief Secretary's direction to move the applicant to a non-sensitive post as Dy. Director (Medical), the findings of the Chief Secretary on sensitivity of the post of DHS has been duly taken into account in the conditional interim order whereby the applicant has been directed as not to be entrusted with any procurement, financial or disciplinary matters that may attribute sensitivity to the post.

- (iii) **Manoj Narula v. U.O.I. & ors. (2014) 9 SCC 1**

In their orders dated 27.8.2014, the Hon'ble Apex Court had held that such Ministers should not be chosen who

have criminal antecedents or are facing charges with respect to offences pertaining to corruption.

Admittedly, a regular incumbent is shortly to be posted as DHS by the administration and there will be no permanence attached in this context.

(iv) **Subramanian Swamy v. Director, Central Bureau of Investigation & anr. (2014) 8 SCC 682** in which the Hon'ble Apex Court had concluded as follows:-

“99. In view of our foregoing discussion, we hold that Section 6-A(1), which requires approval of the Central Government to conduct any inquiry or investigation into any offence alleged to have been committed under the PC Act, 1988 where such allegation relates to : (a) the employees of the Central Government of the level of Joint Secretary and above, and (b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, government companies, societies and local authorities owned or controlled by the Government, is invalid and violative of Article 14 of the Constitution. As a necessary corollary, the provision contained in Section 26(c) of Act 45 of 2003 to the extent is also declared invalid.

The Ld. Counsel for the respondents, however, has not been able to establish as to how the above ratio is applicable in the instant matter.

6. The interim order does not prevent the administration from initiating disciplinary proceedings against the applicant. The interim order does not prevent fair and transparent investigation against the applicant by Central Bureau of Investigation. The interim order, having eschewed all powers of procurement from the applicant, does not lead to a nexus with sensitive activities.

Accordingly, we are not inclined to vacate the interim order at this stage as because the administration is yet to initiate disciplinary proceedings against the applicant in this regard.

It is stated, however, that the administration is quite at liberty to proceed against the applicant as per Rules and to take any administrative

action thereafter. Once such disciplinary proceedings are initiated, the interim order will stand automatically vacated.

7. With this the M.A. is disposed of. No orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member

SP

