

**Central Administrative Tribunal
Principal Bench**

**OA No.799/2019 and
OA No.436/2019**

New Delhi, this the 20th day of March, 2019

**Hon'ble Sh. Justice L. Narasimha Reddy, Chairman
Hon'ble Mohd. Jamshed, Member (A)**

OA No.799/2019

Dr. H.C. Taneja
Director-Professor(ENT)
GTB Hospital & University of College
of Medical Sciences
R/o E-12, GTB Hospital Campus, Dilshad Garden
Delhi-110095. ...Applicant

(By Advocate: Shri Rakesh Dhingra)

Vs.

1. Government of NCT of Delhi
Through its Principal Secretary
Department of Health and Family Welfare
9th Level, Delhi Secretariat
I.P. Estate, New Delhi-110002.
2. Secretary (H&FW)
Ministry of Health and Family Welfare
Govt. of India, Nirman Bhawan
New Delhi-110018.
3. Medical Director
GTB Hospital & University College
Of Medical Sciences, Dilshad Garden
Delhi-110095. ...Respondents

(By Advocate: Shri S.N. Verma)

OA No.436/2019

Dr. P.K. Rathore, Aged 58 years

Director-Professor (ENT)
Maulana Azad Medical College
R/o 108 IRCON, Sector-18A, Dwarka
New Delhi-110078.

...Applicant

(By Advocate: Shri Rakesh Dhingra)

Vs.

1. Government of NCT of Delhi
Through its Principal Secretary
Department of Health and Family Welfare
9th Level, Delhi Secretariat
I.P. Estate, New Delhi-110002.

2. Secretary (H&FW)
Ministry of Health and Family Welfare
Govt. of India, Nirman Bhawan
New Delhi-110018.

3. Dean, Maulana Azad Medical College
Bahadur Shah Zafar Marg
New Delhi-110002.

...Respondents

(By Advocates: Ms. Esha Mazumdar and Shri S.N. Verma)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

These two OAs are filed by the Medical Officers in two Govt. hospitals, who were transferred to different places within Delhi. As a matter of fact, the transfer as regards both the applicants is in a way, mutual in nature. The applicant in OA No.436/2009 is working as Director Professor (ENT) in Maulana Azad Medical College (MAMC) since 1998. The applicant in OA

No.799/2019 is working in Guru Teg Bahadur Hospital (GTBH) as Director Professor (ENT) since 2002.

2. Through an order dated 30.01.2019, the applicant in OA No.799/2019 was transferred from MAMC to GTBH. Through another order dated 01.02.2019, the applicant in OA No.436/2019 was transferred from GTBH to MAMC. The orders of transfer are challenged mainly on the grounds of jurisdiction.

3. The applicants contend that they are the members of Central. Health Service(CHS) and the Delhi Govt. has no competence or right to transfer them from one hospital to another. It is also stated that the Central Govt. issued Office Memorandum dated 16.01.2007 constituting committee to consider the cases of transfer of certain categories of officers in the CHS and in the instant case, the transfers were effected without consulting the committee, so constituted.

4. The applicants further contend that the administration was inimically disposed against them and the same is evident from the fact that the transfers

made in respect of other similarly placed doctors, were kept in abeyance, whereas they are being transferred.

5. Respondent No.1, respondent No.2 and Respondent No.3, filed separate counter affidavits opposing the OA No.436/2019. The plea of the applicant that the Delhi Govt. has no jurisdiction to transfer him is flatly denied by the respondent Nos.2 and 3. It is stated that there are four sub cadres in the CHS, namely, General Duty Medical Officers, Teaching, Non Teaching and Public Health, and as of now, the officers in Teaching and Public Health sub cadres are under the GNCT of Delhi.

6. It is stated that once the officers of those sub cadres are kept at the disposal of the Delhi Govt., the latter has every right to transfer them and to deal with other ancillary matters.

7. In its counter affidavit, the first respondent stated that the necessity to transfer the applicant arose on account of a serious complaint received against him from a Lady Medical Officer. It is stated that the plea of the applicant as to jurisdiction is devoid of merit.

According to them, the applicant has himself acknowledged the transfer and postings by the GNCTD and his emoluments are also being paid by them.

8. The counter affidavits filed in OA No.436/2019 cover the other OA also on the principal contentions.

9. We heard Shri Rakesh Dhingra, learned counsel for the applicants and Ms. Esha Mazumdar and Shri S.N. Varma, learned counsel for the respondents.

10. The first contention raised by the applicants is that the GNCTD does not have jurisdiction to transfer them. It is no doubt true that the applicants are members of the CHS. Their services are governed by the CHS Rules, 2014. Earlier to that, a different set of rules was governing them. Rules 2(g), 3 and 13(2) are to the effect that there are four streams of the Service, namely, General Duty Medical Officers, Teaching, Non Teaching, Public Health and each of them is a sub cadre by itself.

11. The Central Govt. categorically stated that the Teaching and Public Health sub cadres under GNCT of Delhi are manned by CHS Officers and the Delhi Govt.

has formed its own cadre i.e. Delhi Health Service in the year 2010. The applicants are said to be part of that. The relevant part of counter affidavits is as under:-

"7. That it is submitted that Central Health Service (CHS) comprises of four Sub-cadres viz. General Duty Medical Officers Sub-Cadres, Teaching Sub-Cadre, Non-Teaching Sub Cadre and Public Health Sub-Cadre. The Ministry of Health and Family Welfare is the Cadre Controlling Authority for the aforesaid Sub-Cadres. At present, the Teaching and Public Health Sub Cadres under GNCT of Delhi are manned by Central Health Service Officers. For General Duty medical Officer and Non-Teaching Sub-Cadres, the Delhi Government has formed its own Cadre, Delhi Health Service in 2010. The applicant belongs to Teaching Sub-Cadre of CHS."

12. As regards the power of the GNCTD to transfer the applicants, the Central Govt. stated as under:-

"9. Thus, it follows from the above that main subject matter of OA i.e. transfer of the applicant pertains to GNCT of Delhi i.e. respondent no.1 and the Respondent No.2 has no role to play in transfer of the applicant from one Institute/Hospital to another under the administrative control of GNCT of Delhi. The respondent no.2 is neither a necessary party nor a proper party to the proceedings in as much as the proceedings before this Hon'ble Court may go on even without the Secretary (Health & FW) as the Secretary (Health & FW) is not concerned in any way with the subject matter."

13. This very question was dealt with by this Tribunal in **Anil Mehra Vs. Govt. of NCT of Delhi** in the year 2007. The contentions raised by the medical officers therein were dealt with as under:-

"7. Fifty-four senior administrative Grade officers, whose services were placed at the disposal of Government of NCT of Delhi by Central Government, carry necessary concomitant powers to decide their posting & transfer. As per Ministry of Health & Family Welfare, Government of India, officers of CHS would continue to be placed at the disposal of the Govt. of N.C.T. Delhi, who in turn can make further posting/transfers etc. within their institutions on certain terms & conditions."

14. Similarly in OA No.1064/2016 decided on 25.04.2016, this Tribunal rejected the identical plea.

15. The learned counsel for the applicants submits that the Central Govt. constituted committees to deal with transfer of certain categories of medical officers and that they were transferred without reference to that Committee. That, however, is in respect of officers who are still under the control of the Central Govt. In the instant cases, the applicants are placed at the disposal of the Govt. of NCT of Delhi. Their salaries are being paid by that Govt. and on its part, the Central Govt. did not raise any objection for the transfer being

effected vis-a-vis the applicants. Therefore, we do not accept the contentions of the applicants.

16. It is not in dispute that the applicants were transferred earlier by the GNCTD and they did not raise any objection for that. The mere promotion to any particular cadre does not make much of difference.

17. Added to that, there are serious complaints and allegations against the applicant in OA No.436/2019 that too, by a Lady Medical Officer, and he is continuing there for almost for past two decades.

18. It is not as if the applicants are transferred to any place outside Delhi. It is just an adjustment within Delhi and they cannot be said to have been put to any hardship on account of the transfers.

19. We do not find any basis to interfere with the orders of transfer. Both the OAs are accordingly dismissed. There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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