
(2009) 07 DEL CK 0039

In the Delhi High Court

Case No : Writ Petition (Civil) No. 519 of 2009

Dr. A.K. Bhardwaj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-07-2009

Acts Referred:

Citation : (2009) 07 DEL CK 0039

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : A.K. Bhardwaj and Jagriti Singh, for the Appellant; A.S. Chandhiok, ASG, Anil Gautam and Ritesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner was appointed by the Respondent as Medical Officer. He was posted at Rural Health Training Centre, New Delhi on 3rd July, 1986. Subsequently, vide order dated 20th June, 1997 of Respondent he was transferred to Dr. Ram Manohar Lohia Hospital, where he joined his duties on 15th July, 1997, as Medical Officer. In due course he assumed charge of Chief Medical Officer.

2. Vide order dated 7th October, 2008 Petitioner was transferred from Dr. Ram Manohar Lohia Hospital to Government of National Capital Territory of Delhi (GNCTD) in public interest. Vide order dated 14th October, 2008 he was relieved of his duties from Dr. Ram Manohar Lohia Hospital with immediate effect to join GNCTD.

3. Aggrieved by his transfer Petitioner filed an Original Application bearing OA No. 2477/2008 before the Central Administrative Tribunal, Principal Bench, New Delhi (for short referred to as "Tribunal") alleging therein that his transfer order was passed with malafide intention and be quashed being punitive. In the Central Health Services (CHS), there were two categories of doctors i.e. (a) regularly appointed doctors (b) doctors whose services had been regularized. Petitioner

belongs to latter category. On account of disputes between the aforementioned different categories of doctors, Petitioner was transferred. As per the Petitioner transfer was arbitrary and there was use of colourable exercise of power by the Respondent. Transfer was punitive and stigmatic. Petitioner's transfer would affect his promotion prospects. Transfer order was passed by the incompetent authority.

4. Respondent refuted above allegations. As per the Respondent transfer order was passed in administrative exigencies and public interest. Petitioner had been misbehaving with subordinate staff as well as junior and senior doctors including Medical Superintendent because of which atmosphere in the hospital was vitiated. Presence of Petitioner in the hospital was not in public interest. Transfer order was issued by the Under Secretary with the approval of competent authority and was having legal force.

5. Vide order dated 6th January, 2009 Tribunal dismissed the OA. Aggrieved by this order Petitioner has filed this writ petition praying therein that the order dated 6th January, 2009 passed by the Tribunal as well as the transfer order dated 7th October, 2008 be quashed.

6. On the basis of material produced before it by the parties to the lis, Tribunal held that the Petitioner was transferred in public interest. Report of Medical Superintendent revealed that Petitioner had been misbehaving with senior and junior doctors and departmental action was contemplated. In absence of proper and comfortable environment in the hospital on account of disharmony between the doctors, it is the patient who suffers. Tribunal was also of the view that Central Health Service was a well knit cadre of doctors, therefore, seniority of the Petitioner would not suffer due to transfer. Tribunal also held that since order was issued by the Under Secretary with the approval of competent authority it was proper.

7. We have heard learned Counsel for the Petitioner and the learned A.S.G. for the Respondent and we do not find any reason to interfere with the impugned order passed by the Tribunal. In the facts of this case order passed by the Tribunal is not found faulted. We do not find any force in the contention of learned Counsel for the Petitioner that the transfer order is liable to be quashed as it has been issued by the Under Secretary who is not the competent authority of Petitioner. It has been categorically mentioned in the transfer order that it has been issued with the approval of competent authority. In our view transfer order has been passed by the competent authority and is enforceable.

8. We are also of the view that transfer order has been issued for administrative reasons and in public interest. As per report of the Medical Superintendent, Petitioner had been misbehaving not only with his colleagues but also with the subordinate staff. He even misbehaved with the Medical Superintendent. Respondents have now decided to hold a departmental enquiry and have even issued a charge-sheet dated 22nd April, 2009. Accordingly, in our view, Tribunal

has rightly held that if atmosphere in the hospital is vitiated the casualty will be the patients. We are also of the view that transfer order has not been issued with malafide reason or to victimise the Petitioner.

9. Learned Counsel for the petitioner has placed reliance on judgments titled *Ramadhar Pandey Vs. State of U.P. and Others*, , and *Arvind Dattatraya Dhande Vs. State of Maharashtra and others*, to buttress his arguments that the transfer order is loaded with malafides and is punitive in nature. We have perused the above judgments and find that the same are in different facts. In our view these judgments are not applicable to the facts of the present case. In *Arvind Dattatraya Dhande*'s case (supra) the concerned officer had conducted a raid at the business premises of an influential businessman and had even got registered a criminal case against him for indulging in adulteration of toddy thereby endangering the lives of consumers. The businessman lodged a complaint with the Minister for District as well as State Minister for Excise. By exercising political influential he got the officer transferred. In these facts Supreme Court held that transfer was not in public interest and was done in order to victimise an honest officer. In *Ramadhar Pandey*'s case (Supra) the issue involved was intra cadre transfer of an officer. The facts of this case are totally different. We have already noted that presence of the Petitioner in the hospital was vitiating the atmosphere and for this reason it was thought fit to transfer him in some other hospital in Delhi.

10. We are of the view that Petitioner has failed to show that his transfer order is loaded with malafides and has been passed in order to victimise him. Petitioner is a member of Central Health Service and his post is transferrable anywhere in India or abroad in terms of notification No. GSR 460 (E) dated 8th October, 1996 of Ministry of Health and Family Welfare. In our view, transfer of an employee is not only an incidence inherent in terms of his appointment but is also implicit as an essential condition of service in absence of any specific indication to the contra in the law governing the service condition. A Government servant holding a transferrable post has no vested right to remain posted at one place or the other as per his choice. Transfer order issued by a Competent Authority does not violate any of his legal rights. It is well settled that a transfer order has not to be interfered with unless the same is vitiated by malafides and is in violation of any statutory provision. In this case the petitioner was holding a transferrable post. Accordingly, action of the respondent in transferring the petitioner cannot be faulted.

11. In the facts of the present case we are of the view that transfer order of the petitioner has been passed for administrative reasons and by no stretch of imagination it can be termed as an arbitrary or vitiated by malafide or infraction.

12. We accordingly, dismiss the writ petition.