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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**
% W.P.(C) 3213 of 2015

Judgment reserved on : 09.10.2015
Judgment pronounced on : 30.10.2015

UNION OF INDIA & ANR.

.....Petitioners

Through : Mr. Kirtiman Singh, CGSC with
Ms. Prerna Shah Deo, Mr. Waize
Ali Noor, Mr. Gyanesh Bhardwaj
and Mr. Akshay Sehgal, Advocates

Versus

DR. MALTI GAUTAM

.....Respondent

Through : Respondent in person.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. The present writ petition challenges the correctness of the order dated 16.04.2014 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') in O.A. No. 16/2014 whereby the Tribunal allowed the said O.A. filed by the respondent.
2. The facts of the present case are that the respondent was appointed as a Medical Officer in the Central Health Service (CHS) through an exam conducted by the Union Public Service Commission (UPSC) in 1984. Thereafter, the respondent was promoted to the

rank of Chief Medical Officer w.e.f. 25.04.1993. The respondent was granted the status of CMO (NFSG) w.e.f. 05.04.2002 and has been working on the same post since then. While the respondent was working as CMO (NFSG), Central Government Health Services, Delhi, the respondent was transferred to Rural Health Training Center (RHTC), Najafgarh, New Delhi vide order dated 13.12.2011. Questioning the said transfer order, she preferred O.A. No. 29/2012. The Tribunal by its order dated 25.01.2012 disposed of the said O.A., without interfering with the transfer order dated 13.12.2011, thereby giving liberty to the respondent to make a representation and on receipt of such representation, the petitioners were directed to pass a speaking order thereon.

3. In pursuance to the aforesaid orders of the Tribunal, the petitioner considered the representation of the respondent and passed a speaking order vide Office Memorandum dated 06.03.2012, rejecting her request. Thereafter, the respondent further filed O.A. No. 852/2012 wherein vide order dated 01.04.2013, the Tribunal directed the petitioners to complete the investigation with regard to complaints pending against the respondent in a reasonable period, and to consider the request of the respondent for transfer thereafter.
4. The respondent made representation for TA/DA claim dated 05.04.2013, 09.04.2013 & 11.04.2013. The reply received by respondent from Rural Health Training Centre, Najafgarh, New Delhi relating to the claim of TA/DA for attending duty at PHC, Palam stated as:

“As per TA/DA rules of Govt. of India, there is no provision for granting TA/DA for attending the duties on regular daily basis for which transport allowance is paid to govt. servants.”

5. The respondent thereafter filed O.A. 16/2014 before Central Administrative Tribunal wherein the Tribunal vide order dated 16.04.2014 directed the petitioners to pay Travelling Allowance on temporary transfer as per applicable Rules to the respondent.
6. Mr. Kirtiman Singh, learned counsel appearing on behalf of the petitioners submits that the order passed by the Tribunal is unjust, illegal, arbitrary and is based upon assumptions and presumptions.
7. The counsel for the petitioners contends that the transfer of the respondent is not a temporary transfer and the rules applicable for Transfer Allowance on transfer do not provide for TA/DA on transfer from Head Quarter to the station on deputation. He further clarified that even if it is a temporary transfer as per interpretation of the respondent, TA/DA is not admissible unless the transfer results in change of residential address of the respondent.
8. The alternate submission of Mr. Kirtiman Singh is that even if the aforestated transfer is a temporary transfer, the respondent is not entitled to TA/DA as it is not applicable unless the transfer results in change of residential address of the respondent. To substantiate his argument learned counsel for the petitioners has relied on SR 116(15) of the Supplementary Rules, as per which, no Travelling allowance is payable if the transfer is within the same station, which may or may not involve a change of residence. The relevant portion of the said Rule is extracted as follows:

“(15) T.A. for journeys on transfer within the same station or to a station at a distance of not more than 20 km. - In case of transfer within the same station or within a short distance from the old headquarters which may or may not involve a change of residence, it has been decided as under:

(a) For transfer within the same station:

(i) No traveling allowance will be admissible if no change of residence is involved.

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NOTE.-For the purposes of this order, the term "same station" will be interpreted to mean the area falling within the jurisdiction of the Municipality or Corporation, including such of suburban Municipalities, notified areas or cantonments areas or cantonments as are contiguous to the named municipality, etc.”

9. The counsel for the petitioners further relied on Supplementary Rule 115(5) (a) (i) as per which, an employee would not be liable to paid travelling allowance when the transfer is within the same station and there has been no change of residence.
10. On the converse, Dr. Malti Gautam respondent appearing in person has urged that there is no illegality in the order passed by the Tribunal and that as to why TA/DA due to the petitioners should not be released in her favour. The respondent further submitted that the petitioner itself passed the speaking order on the representation of the respondent stating that the respondent’s transfer was temporary. The operative part of the order dated 1.4.2013 in O.A. No. 852/2013 relied upon by the respondent herein is reproduced below:

“12. In these circumstances and for the aforesaid reasons, the OA is devoid of any merit and accordingly the same is dismissed. However, since the respondents themselves stated that the transfer of the applicant is until further orders, i.e., temporarily till the complaints against the applicant are investigated, the respondents are directed to complete the said exercise within a reasonable period, and to consider the request of the applicant for transfer thereafter. No order as to costs.”

11. We have heard learned counsel for the petitioners and respondent as well and considered their submissions. We have also carefully examined the impugned order passed by the Central Administrative Tribunal. It is the case of petitioners that the respondent is not entitled to any TA/DA as the transfer dated 13.12.2011 is not a temporary transfer, rather it is a routine transfer in public interest by the Competent Authority. The short point which comes up for consideration before this Court is as to whether the transfer of the respondent to Rural Health Training Center (RHTC), Najafgarh, New Delhi vide order dated 13.12.2011 can be considered as temporary transfer. It would be useful to reproduce paras 7, 8, 9 and 10 of the judgment of the Central Administrative Tribunal in O.A. No. 16/2014 dated 16.04.2014 which read as under:

“7. Para-12 of the order of the Tribunal in OA No.852/2012 dated 01.04.2013 is reproduced below:-

“12. In these circumstances and for the aforesaid reasons, the OA is devoid of any merit and accordingly the same is dismissed. However, since the respondents themselves stated that the transfer of the applicant is until further orders, i.e. temporarily till the complaints against the

applicant are investigated, the respondents are directed to complete the said exercise within a reasonable period, and to consider the request of the applicant for transfer thereafter. No order as to costs.”

8. It is clear from the above that the respondents themselves stated before the Tribunal that the transfer of the applicant was until further orders, “i.e., temporarily till the complaints against the applicant are investigated.” We have also perused the impugned communication dated 13.12.2011 at Annexure-A/2 which also specified transfer until further orders and Para-4 (i) of the OM dated 06.03.2012 at Annexure-A/3 which reads as under:-

“(i) Dr. Malti Gautam should report to Director, RHTC, Najafgarh immediately for the reasons that she has already been relieved from CGHS, Wellness Centre, Daryaganj from where she has been transferred consequent upon receipt of complaints against her by Addl. Director(HQ), CGHS, Delhi. As the complaints are under investigation, she has been transferred “until further orders” i.e. temporarily. Besides, there are vacancies at RHTC, Najafgarh and, therefore, her transfer is also in public interest.”

9. According to the OM of the respondents themselves, the transfer is temporary till the complaints are under investigation. In view of above, we are not inclined to accept the contention of the respondents being made now and as stated in the counter affidavit because both in the earlier round of litigation in OA No.852/2012 as well as OM dated 06.03.2012 at Annexure-A/6, they have clarified that the applicant had been temporarily transferred.

10. In view thereof, we find no reasons as to why the applicant should be denied the benefit of TA as

admissible under the rules to Government servants on temporary transfer. Accordingly we direct the respondents to ensure that the admissible TA on temporary transfer is paid to the applicant as per applicable rules within a period of 12 weeks from the date of receipt of a copy of this order.”

12. At the outset, before delving into the merits of the case, it is pertinent to mention the law in this regard in order to construe the terms “**Transfer**” and “**Temporary Transfer**”.

T.A. on Transfer

““Transfer” means the movement of a Government servant from one headquarter station in which he is employed to another such station, either-(a) to take up the duties of a new post, or (b) in consequence of a change of his headquarters.”

Temporary Transfer –

(a) Every transfer which is for the period not exceeding 180 days is considered as Temporary Transfer. The transfer order should specify whether it is a regular transfer or temporary transfer not exceeding 180 days. Journeys from headquarters to the station of deputation will be treated as on tour for regulating TA and full DA for a maximum of 180 days will be allowed.

(b) If a regular transfer initially made is revised as temporary transfer, the transfer T.A. already drawn should not be changed to the disadvantage of the official.

(c) If a temporary transfer initially made for a period not exceeding 180 days is revised as regular transfer, full transfer T.A. will be admissible adjusting the TA drawn but the daily allowance drawn for the days of halt till the date of issue of order will not be so adjusted.”

13. In view of the aforesaid, we are of the considered opinion that in the facts and circumstances of the present case, the transfer order

issued by the Ministry of Health & Family Welfare dated 13.12.2011 cannot be regarded as temporary transfer. It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service that the Appointing Authority has a wide discretion in the matter. The Government is the best Judge to decide how to distribute and utilise the services of its employees and therefore, it is admissible if it is in the public interest and not at one's request. In the instant case, the respondent had been transferred to Rural Health Training Centre, Najafgarh, New Delhi as is also done in the case of other CHS officers in public interest. The order relied upon by the respondent does not expressly state that it is a temporary transfer not exceeding 180 days. It is a well settled law that in order to take the plea of "Temporary Transfer" the transfer should be for a period not exceeding 180 days which in the present writ petition has been exceeded and the same has not been specified in the order. If the authorities mean a temporary transfer, then they are certainly at liberty to do so by passing a suitable order of temporary transfer, which cannot be extended beyond 180 days for which an official is entitled to TA/DA subject to other rules however, the office order pertaining to the respondent does not refer to temporary transfer.

14. In the facts and circumstances of the case and for the reasons stated hereinabove, the impugned order directing the petitioner to pay for travelling allowance as admissible under the rules to a Government servant on temporary transfer is not sustainable and is accordingly quashed and set aside.

15. For the reasons stated hereinabove, we set aside the impugned order of the Tribunal and consequently, the present writ petition is allowed. No costs.

SANGITA DHINGRA SEHGAL, J

G.S.SISTANI, J

OCTOBER 30, 2015

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