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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9189/2014

% *Judgment dated 17th September, 2015*

GOVT. OF NCT OF DELHI & ANR. Petitioners

Through : Mr.Anuj Aggarwal and Ms.Niti Jain,
Advs. along with Ms.Madhu K. Garg,
Special Secretary, Department of Health,
and Mr.Kapil Agnihotri (LA).

versus

D K SATSANGI & ANR. Respondents

Through : Mr.S.D. Singh and Ms.Surabhi Shukla,
Advs. for respondent no.1.
Mr.Vikram Jetly, Adv. for respondent
no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. With the consent of counsel for the parties, present writ petition is set down for final hearing and disposal.
2. Present petition has been filed by petitioners under Articles 226 and 227 of the Constitution of India seeking a direction to quash the Order dated 27.10.2014 (hereinafter referred to as the "*impugned order*") passed by Central Administrative Tribunal (hereinafter referred to as the "*Tribunal*") in O.A.No.948/2014.
3. The necessary facts of this case, as per the petition, are that vide communication dated 22.4.2013 the Government of India, Ministry of Health and Family Welfare, informed that it has decided that powers to

fill up administrative posts to run the Hospitals under the Government of NCT of Delhi be delegated to the Government of NCT of Delhi. Consequently, a Screening Committee was constituted to suggest names of Doctors of GB Pant Hospital. The Committee suggested the names of three Doctors including Dr.S.K. Khanna, being first in the order of merit. The Government of India issued orders of his appointment as Director of GB Pant Hospital. Aggrieved by the order of appointment of Dr.S.K. Khanna, Dr.D.K. Satsangi, respondent no.1 herein, filed an OA No.1870/2013 before the Tribunal. The Tribunal, vide Order dated 29.1.2014, set aside the appointment of Dr.S.K. Khanna on the ground that the approval at the competent level i.e. Minister of Government of India had not been taken for delegation of power which amounted to relaxation of provision of CHS Rules, 1996. Direction was also issued to respondent no.1 to pass orders in conformity with CHS Rules, 1996, with the approval of competent authority.

4. After the passing of the order dated 29.1.2014 by the Tribunal, the UPSC vide its communication dated 1.4.2014, informed Ministry of Health and Family Welfare that since the post of Director, G.B.P. Pant Hospital, is borne on the cadre of CHS, for which the cadre controlling authority is the Ministry of Health and Family Welfare, the powers cannot be delegated to Government of NCT of Delhi for making appointment to the said post in view of the provisions of clause 2(b) and clause 11 of the CHS Rules.
5. In the meanwhile, the controlling authority took steps to fill up the post of Director G.B. Pant Hospital. The Government of NCT of Delhi vide its OM dated 19.2.2014, in order to facilitate proper and professional selections for key positions in the hospital administration, constituted a senior officers' screening committee to suggest required suitable names of Directors/Medical Superintendent of various hospitals under the

Department of Health and Family Welfare, Government of NCT of Delhi. Thereafter respondent no.1 challenged the OM dated 19.2.2014 by filing another O.A. being No.948/2014, wherein the Tribunal while issuing notice on 20.3.2014, held that any appointment in pursuance to the impugned communication will be subject to the outcome of the O.A. Meanwhile upon recommendation by the Screening Committee, the Health Ministry approved the appointment of Dr.Sanjay Tyagi, as the Director of G.B. Pant Hospital, order whereof was issued on 6.5.2014.

6. The Tribunal vide impugned Order dated 27.10.2014, directed the Union of India to ensure that the post of Director, G.B. Pant Hospital, New Delhi would be filled up in accordance with Central Health Service Rules 1996 within a period of six weeks and the appointment of Dr.Sanjay Tyagi to the post in question would be treated only as an officiating basis. This has led to the filing of the present writ petition by the petitioners herein.
7. Mr.Aggarwal, learned counsel for the petitioners, submits that the impugned order passed by the Tribunal is perverse and illegal. Counsel further submits that the Tribunal has failed to take into account that in fact the competent authority i.e. Government of India, Ministry of Health and Family Welfare, has appointed Mr.Sanjay Tyagi as Director, G.B. Pant Hospital, on 06.05.2014 after due approval of the Ministry of State and Family Welfare. It is further contended that this appointment has been made by the competent authority and not by the Government of NCT of Delhi by exercising the powers delegated by the Government of India vide letter dated 22.04.2013. It has also been contended that the Tribunal has failed to appreciate that prior to taking a decision with regard to appointment of Dr.Sanjay Tyagi as a Director, the Government had considered the list of all the eligible SAG Officers, as per their seniority. Another submission made by Mr.Aggarwal is that, that the Tribunal has

failed to appreciate that relaxation of Rule 17 under CHS Rules 1996 would have no application to the facts of the present case as Dr.Sanjay Tyagi is already a Director/Professional (Cardiology) in the SAG cadre, having appointed through a duly constituted DPC held under the CHS Rules 1996. Counsel also contends that the Tribunal has unnecessarily placed reliance on the note sheets filed by respondent no.1.

8. Mr.Jetly, learned counsel appearing on behalf of respondent no.2, Union of India, submits that after the Office Memorandum dated 19.2.2014 passed by Delhi Government was quashed by the Tribunal by an order dated 29.01.2014 in OA No.1870/2013, the Central Government has given additional charge to one Dr.D.K. Tempe, Dean, Maulana Azad Medical College, by a communication dated 9.12.2014. Mr.Jetly further submits that although the power to appoint a Director was delegated to the Government of NCT of Delhi but after the order passed by the Tribunal in O.A.No.1870/2013 dated 29.01.2014, the powers so delegated were quashed and both, the Delhi Government and the Union of India, have accepted the judgment of the CAT passed in OA No.1870/2013 as the same has not been assailed. It is further contended that since the Tribunal has correctly analysed the rule position, respondent no.2 had decided to strictly follow the procedure laid down as per the CHS Rules 1996 for appointment of a Director of G.B. Pant Hospital.
9. Mr.S.D. Singh, learned counsel appearing for respondent no.1, submits that there is no infirmity in the order passed by the Tribunal and in fact the grounds raised in this writ petition by itself would show that the petitioner herein admits that the power to appoint a Director of G.B. Pant Hospital vests with the Central Government. Counsel further submits that once the Tribunal had quashed the communication delegating the power from Central Government to the Delhi Government the appointment made

thereto cannot be sustained.

10. We have heard learned counsel for the parties and carefully impugned the order passed by the Central Administrative Tribunal. The short question, which arises for consideration, is whether the power to appoint Director of G.B. Pant Hospital vests in the State Government or the Central Government. As per the CHS Rules 1996 an appointment to the post of Director is to be made on the basis of recommendations of the Selection Committee mentioned in Schedule 4 of the said Rules. It would be useful to reproduce the definition of 2(a) and (b):

“2. Definitions : In these rules, unless the context otherwise requires:

(a) “Commission” means the Union Public Service Commission;

(b) “Controlling Authority” means the Government of India in the Ministry of Health and Family Welfare.”

11. It would also be useful to reproduce Rule 17, which reads as under:

“17. Power to relax.

Where the government is of the opinion that it is necessary or expedient so to do, it may, by order, for reasons to be recorded in writing, and in consultation with the Commission, relax any of the provisions of these rules with respect to any class or category of persons.

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*(I) Teaching Specialist Sub-Cadre floating posts
(Director/Professor/Dean/Director/Medical
Superintendent/Additional Medical Superintendent/Principal)*

xx xx xx

(b) *G.B. Pant Hospital, New Delhi.*

1.	<i>Neurology</i>	<i>05</i>
2.	<i>Cardiology Surgery</i>	<i>05</i>
3.	<i>Neuro Surgery</i>	<i>05</i>
4.	<i>Psychiatry</i>	<i>05</i>
5.	<i>Cardiology</i>	<i>08</i>
6.	<i>Anaesthesiology</i>	<i>06</i>
7.	<i>Gasto-entrology</i>	<i>05</i>
8.	<i>Microbiology</i>	<i>05</i>
9.	<i>Radio-diagnosis</i>	<i>05</i>
10.	<i>Pathology</i>	<i>05</i>
11.	<i>Bio-Chemistry</i>	<i>05</i>
12.	<i>Surgery</i>	<i>02</i>
13.	<i>Gastro-Intestinal Surgery</i>	<i>01</i>
<i>TOTAL</i>		<i>62</i>

xx xx xx

Schedule –IV

II. Teaching Specialist Sub-Cadre posts
(a) (Senior Administrative Grade)

- (i) *Chairman/Member, Union Public Service Commission - Chairman*
- (ii) *Secretary or his nominee, M/o Health and Family Welfare - Member*

*(iii) Director General of Health Services or his
nominee -Member*

*(iv) One Departmental Officer nominated by the Secretary,
M/O Health and Family Welfare -Member”*

12. The Tribunal in the impugned order has extracted the recommendation of the Screening Committee. Reading of the Rules would show that the recommendation of the Screening Committee is not as per the Rules and in fact the same is in disregard to the position as per the Rules.
13. A bare reading of the grounds raised by the petitioner in this writ petition would show that there is no dispute that the power to appoint a Director vests with the Government of India and it is the case of the petitioner that the Director was in fact appointed by the Government of India and not by the GNCTD. The position, however, stands reversed today when the Union of India itself has accepted the order passed by the CAT in O.A.No.1870/2013 in which communication delegating the power to GNCTD stands quashed.
14. During the course of hearing, Mr.Jetly has submitted on instructions that Dr.Sanjay Tyagi was appointed without following the due procedure prescribed as per the CHS Rules. Counsel further submits that the judgment of the Tribunal stands accepted and by a communication dated 9.12.2014, which is reproduced below, Dr.D.K. Tampi has been given the additional charge and this communication has been issued after following the due process of law and complying with the Rules:

“N.C-18011/10/2014-CHS-III
GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
(CHS Division)

Nirman Bhawan, New Delhi – 110 108

Dated : the 9 December, 2014

ORDER

Pursuant to the order of Hon'ble CAT, Principal Bench, New Delhi dated 27th October, 2014 in O.A.No.948/2014 filed by Dr.D.K. Satsangi, Dr.D.K. Tempe, Dean, Maulana Azad Medical College is given additional charge of Director G.P. Pant Hospital, New Delhi in place of Dr.Sanjay Tyagi with immediate effect and until further orders.

2. This issues with the approval of Competent Authority.
3. Their charge relinquishment/assumption reports may be sent to this Ministry.

(Lalit Kumar)

Under Secretary to the Government of India

Phone: 23062550

E-mail : lalit.kr@nic.in

To

1. The Principal Secretary, Government of National Capital Territory of Delhi, Health & Family Welfare Department, 9th level, A-Wing, Delhi Secretariat, I.P. Estate, New Delhi.
2. Dr.D.K. Tempe, Dean, Maulana Azad Medical College, New Delhi.
3. Dr.Sanjay Tyagi, Director, G.B. Pant Hospital, New Delhi.
4. CHS-V Section/Order register.
5. NIC for uploading the order in the Ministry's website."

15. In our view since it has not been disputed by the petitioner that the power to appoint Director vests with the Union of India and the Director is to be appointed as per the CHS Rules the controlling authority having been defined as the Government of India, Ministry of Health and Family Welfare, the Director can only be appointed by the Government of India.
16. Accordingly, we find no infirmity in the impugned order passed by the Tribunal, wherein the Tribunal has simply issued the directions to the Union of India to ensure that the post of Director, G.P. Pant Hospital, New Delhi, is filled up in accordance with the Central Health Service Rules, 1996. This writ petition is without any merit and the same is dismissed. Interim order dated 22.12.2014 stands quashed. Union of India will comply with the directions passed by the Tribunal as expeditiously as possible, but not later than six weeks from today.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

SEPTEMBER 17, 2015

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