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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5732/2016, CM Nos. 23650-23652/2016

SANJIV CHATURVEDI

..... Petitioner

Through: Mr. Colin Gonsalves, Sr. Adv. with
Mr. Fidel Sebastian, Adv. with
petitioner in person.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Sanjay Jain, ASG with
Mr. Jasmeet Singh, CGSC with
Ms. Aastha Jain, Mr. Sumit Mishra
and Ms. Gayatri Aryan, Adv. for
UOI / R1.
Mr. R.K. Gupta, Adv. and Mr. A.K.
Singh, Adv. for R-2/AIIMS
Mr. R.V. Sinha and Mr. A.S. Singh,
Adv. for R-3/CVC.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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27.06.2016

CM No. 23651-23652/2016

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

W.P.(C) 5732/2016

1. The challenge in this writ petition is to the order passed by the Central Administrative Tribunal (Tribunal in short) dated June 3, 2016 in OA 1887/2015 and M.A 3288/2016 whereby the Tribunal (as per the majority view) dismissed the OA filed by the petitioner. The challenge in the OA 1887/2015 was to the memorandum dated May 15, 2015 and order dated April 1, 2015. The petitioner also sought certain directions. Vide memorandum dated May 15, 2015 the respondent No.2, herein has directed that all files requiring approval/signature of the Dy. Director (Admin.) and/or the Director shall invariably be routed through the Chief Administrative Officer. That apart, it was stated that in the disciplinary proceedings/vigilance matters, the Chief Administrative Officer shall submit files in consultation with the Senior Administrative Officer, Vigilance Cell. Insofar as order dated April 1, 2015 is concerned, the same was issued by the respondent No.1 appointing Sh. Manoj Jhalani (respondent No. 4) as CVO of the Institute.

2. The primary submission made by Mr. Colin Gonsalves, learned Senior Counsel for the petitioner is that in terms of order dated June 23, 2011, issued by respondent No. 1, the post on which the petitioner has been

appointed would primarily entail the following job descriptions:-

- (a) To exercise management and control of the Institute;*
- (b) To co-ordinate with multi disciplinary experts;*
- (c) To co-ordinate and manage infrastructure projects and ensure timely completion.*

3. He states, that by the impugned memorandum dated May 15, 2015, the respondent No.2 has made the post on which the petitioner was working as defunct, as the respondent No.2 has made all the files movement only through Chief Administrative Officer. This memorandum is in total contradiction/contempt of order dated June 23, 2011, passed by the respondent No.1 regarding job description of the post of Dy. Secretary for which Institute was not empowered to overrule. He states, that affidavits have been filed by the respondents saying that they are implementing the work order dated June 23, 2011. He referred to page 18 of the paper-book, which is part of the order of learned Member (A) dated May 17, 2016, wherein a direction was given to the respondents to assign the work to the applicant attached to the post of Dy. Secretary, AIIMS strictly in accordance with OM dated June 23, 2011. Despite that, the same has not been implemented. He has also referred to the said order to highlight the conduct

of the respondents and the exemplary work done by the petitioner. That apart, Mr. Gonsalves has filed a list of dates to refer to the allegations of mala fides at page 217 and 296. He states, that it is because of the initiative of the petitioner, action against the Director of the Institute has been initiated. He attacks the order of Member (Judicial) at page 84 of the paper book to contend that the same is not tenable in view of the detailed reasoning given by the Member (A) in his order dated May 17, 2016. That apart, he also attacks the order dated June 3, 2016 of the third Member (Judicial), who considered the matter on a reference made, wherein according to Mr. Gonsalves, he has clearly erred in not considering in proper perspective the reference made to him. He states, that the third learned Member has clearly erred in overlooking the fact, vide the impugned memorandum dated May 15, 2015 the respondents have denied the responsibility of the post of the Dy. Secretary on which he was appointed and were under an obligation in view of order dated June 23, 2011 to give the responsibility commensurating with his status. He would rely upon the judgment of the Supreme Court in the case of *P.K. Chinnasamy vs. Govt. of Tamil Nadu and ors (1987) 4 SCC 601*.

4. On the other hand, Mr. Sanjay Jain, learned ASG would state that the

OA filed by the petitioner was totally misconceived and an afterthought. He would state that the order dated June 23, 2011 was a general order issued at the time of creation of the post of Dy. Secretary in the respondent No.2 organisation. He would state, that pursuant to his appointment a memorandum dated July 7, 2012 was issued wherein the petitioner was allocated the work by the Director in accordance with Regulation 11 of AIIMS Regulations 1999 including the duties of the CVO till further orders. The said order is at variance with the office memorandum dated June 23, 2011 but has been accepted by the petitioner. He states, the Regulations, which have been framed in exercise of powers under Section 29 of the AIIMS Act, 1956 with the approval of the Central Government inter-alia stipulates that the Director being in-charge of the administration of the Institute, shall allocate duties to the officers and employees of the Institute and shall exercise such supervision and executive control as may be necessary subject to the Rules and the Regulations. In other words, it is his submission that the power under Rule 11 of the AIIMS Regulations has not been disputed by the petitioner. That apart, he refers to memorandum dated November 5, 2012 at page 90 of the paper-book whereby the work of general section was given to Mr. Attar Singh, Chief Administrative Officer.

Similarly, he refers to the office memorandum dated August 14, 2014 whereby the charge of CVO, AIIMS has been given to the Joint Secretary and CVO, Ministry of Health and Family Welfare, respondent No.1. According to him, the said memorandum/office memorandum have never been challenged by the petitioner. That apart, even the memorandum dated August 2015 page 94 and memorandum dated December 2, 2015 have never been challenged by the petitioner. He states, that it is not a case where the petitioner is without any work. In terms of memorandum July 7, 2012, the petitioner continues to do the work allocated to him at serial No.4 of the said memorandum. He would support the order of the Member (Judicial) at page 84-85 of the paper book and the order of the third learned Member, Member (Judicial) dated June 3, 2016 to contend that the same are in conformity with Regulations and the position of law. That apart, Mr. Jain would state that the allegations of mala fides are without any basis. He states, the fact that the request of the petitioner for change of cadre from Haryana to Uttarakhand has been allowed and the petitioner has been granted leave from the period 29.6.2016 to 27.8.2016 is itself a sufficient indication that the allegations of mala fides are unsustainable. According to him, the request of the petitioner for continuation of deputation for a further period of three months has been

rejected by the respondents vide order dated June 22, 2016, which order is under challenge in a separate OA before the Tribunal. He seeks the dismissal of the writ petition. He would rely upon the judgment of the Supreme Court in the case reported *as 2003 2 SCC 632 P.U. Joshi and ors vs. Accountant General, Ahmedabad and ors and connected appeal*.

5. Mr. R.K. Gupta learned counsel appearing for the respondent No.2 would submit that the challenge in the writ petition is limited to the allocation of work. According to him, the challenge to the order dated April 1, 2015 on the issue of removal of the applicant from the post of CVO is concerned, the Tribunal at page 73 has not considered the issue, in view of the pendency of the same in PIL No.6393/2015 in this Court. That apart, he states that the petitioner is not entitled to any relief.

6. In the rejoinder, Mr. Colin Gonsalves has clarified that in the PIL the petitioner is not a party. In any case, it is his plea that the challenge is primarily related to his allocation of work.

7. Having considered the submissions made by learned counsel for the parties, it is noted that Regulation 11, which is reproduced as under, empowers the Director as the Head of the Department to allocate the duties to the officers and the employees of the Institute. The said position under

the Regulations is not disputed by the petitioner.

“11. Staff of the Institute

(1) There shall be a chief executive office of the Institute who shall be designated as the Director of the Institute and shall, subject to such rules as may be made by the Central Government in this behalf, be appointed by the Institute.

(2) The Director shall act as the Secretary to the Institute as well as the Governing Body.

(3) The Director shall exercise such powers and discharge such functions as may be prescribed by regulations or as may be delegated to him by the Institute or the President of the Institute or by the Governing Body or the Chairman of the Governing Body.

(4) Subject to such rules as may be made by the Central Government in this behalf, the Institute may appoint such number of other officers and employees as may be necessary for the exercise of its powers and discharge of its functions and may determine the designations and grades of such other officers and employees.

(5) The Director and other officers and employees of the Institute shall be entitled to such salary and allowances and shall be governed by such conditions of service in respect of leave, pension, provident fund and other matters as may be prescribed by regulations made in this behalf.”

8. After the office memorandum dated June 23, 2011 was issued, which

is general in nature a specific memorandum dated July 7, 2012 was issued allotting duties to the petitioner including the responsibility as CVO by the Director in exercise of power under Regulation 11 of AIIMS Regulations. The said order has been accepted by the petitioner. The subsequent memorandums dated November 5, 2012, August 14, 2014, August, 2015 (page 94), December 2, 2015, whereby some of the duties allocated to the petitioner were sought to be taken away, remained unchallenged. The memorandum dated May 15, 2015 is in conformity with the earlier memorandums issued including the memorandum dated January 10, 2012 which also remained unchallenged. Challenging memorandum dated May 15, 2015, appears to be an afterthought. The office memorandum dated June 23, 2011 reveals the broad job description/requirement of the post of Dy. Secretary in respondent No.2 which would not preclude or take away the right of the Director under the AIIMS Regulations 1999 to allocate such duties to officers and employees of the Institute as may be necessary. It is conceded by Mr. Gonsalves that the petitioner is discharging duties relatable to the one shown at serial No.4 of memorandum dated July 7, 2012. If that be so, the judgment relied upon by Mr. Gonsalves of the Supreme Court in the case of *P.K.Chinnasamy (supra)* would not be applicable inasmuch in

the said case, officer on his transfer to Madras, was not given any posting and work commensurate with his status. It was in the said background, the Supreme Court has held that it would not be appropriate to continue an officer against a post and provide no work to him and yet pay him out of the consolidated fund, and directed the respondent to give the appellant in the said case a proper posting and extract work from him. We also note, that the following were the terms of the reference made to the third Member.

“Whether the claim of the applicant for allocation of work to him in accordance with initial allocation or work order dated 7.07.2012 read with OM dated 23.6.2011 is legally sustainable in view of Regulation 11 of the AIIMS Regulations 1999, made in exercise of the powers conferred by Section 29 (1) of the AIIMS Act 1956 on deviation in work allocation to the applicant as Dy. Secretary through subsequent withdrawal of work vide orders dated 5.11.2012, 15.5.2015 and 2.12.2015 rendering effective work left with the applicant only relating to Pension and Hindi Section can be interfered with by the Tribunal under judicial review in the factual background of the case in view of the reply filed by the respondent-AIIMS claiming that they are strictly following the OM dated 23.6.2011 in letter and spirit?”

9. Noting the terms of the reference, we agree with the conclusion of the Member (Judicial) in his order dated June 3, 2016, wherein the learned Member after considering the various judgments relied upon by the parties has in para 19 (page 66) concluded as under:-

“19. In view of the aforesaid decisions of the Hon’ble Apex Court that the scope of judicial review in matters of transfer of a Government servant to an equivalent post without adverse

consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any statutory provisions. In the present case, the issue is not even the transfer from one place to another, but the same is only allotment of work, in the same post and in the same place which admittedly not having any adverse consequence on the service or career prospects or rank or pay of the applicant. Further, no grounds, as mentioned in the aforesaid decisions or the reasons mentioned by the Hon'ble Administrative Member, were found to be considered or proved, to take exception to the normal rule. On the other hand, the respondents specifically empowered to allot or change the duties of its employees/officers, by way of an unambiguous Regulation."

10. We do not see any merit in the petition. The same is dismissed.

CM No. 23650/2016

In view of the order passed in the writ petition, the application is dismissed as infructuous.

V. KAMESWAR RAO, J
(VACATION JUDGE)

I.S.MEHTA, J
(VACATION JUDGE)

JUNE 27, 2016/ak