

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3504 of 2016

- Dr. C.S.Mohabey S/o Shri M. M. Mohabey, Aged About 59 Years Working as In- Charge Chief Medical And Health Officer, Rajnandgaon, Tahsil & District Rajnandgaon, (Chhattisgarh)

---- Petitioner

Versus

1. State of Chhattisgarh, Through The Secretary, Department of Health, Govt. of Chhattisgarh, Mahanadi Bhavan, P.O. Rakhi, Naya Raipur, Distt. Raipur, (Chhattisgarh)
2. The Driectorate of Health Services, Through Director, Health Services, Raipur, (Chhattisgarh)
3. Dr. Mithilesh Chaudhari, In- Charge District Malaria Officer, Rajnandgaon, Distt. Rajnandgaon, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri M.P.S. Bhatia, Advocate
For Respondent/State	:	Shri B. Gop Kumar, Dy. Advocate General

Hon'ble Shri Justice Manindra Mohan Shrivastava
Order On Board

01/02/2017

1. The petitioner has challenged the order dated 24/07/2016 (Annexure P/1) by which the petitioner has been transferred from Rajnandgaon to District Hospital, Durg. The main ground of challenge to impugned order is though that the petitioner was earlier promoted to the post of Specialist Anesthesia, though on ad hoc basis, vide order dated 28/01/2011 which remained in force till the date of passing of the impugned order, the petitioner is sought to be reverted to the lower post Medical Officer in the process of his transfer.
2. In this case, the State Government has filed its return. The fact that the petitioner was promoted as Medical Specialist (Anesthesia), though on ad hoc basis vide order dated 28/01/2011, could not be disputed by the State. On the last date of hearing this Court had allowed the State to seek instruction and

State if the promotion order dated 28/01/2011 was withdrawn or cancelled on or before passing of the impugned order of transfer dated 24/07/2016. The State counsel is not in a position to give specific reply in the Court that the ad hoc promotion of the petitioner was ever cancelled.

3. It is, therefore, apparent that the petitioner is continuing as Medical Specialist (Anesthesia) and he could be transferred in that capacity only against a vacant post in any hospital.
4. It appears that the State has now realised that the petitioner is entitled to be posted as Specialist which has led to passing of an order dated 14/12/2016 (Annexure R-9) filed by the State along with additional return. This order seeks to modify and clarify the earlier order dated 24/07/2016 by which the petitioner's designation has been corrected as Medical Specialist (Anesthesia).
5. In view of the aforesaid development and that the State has now clarified its earlier order, I am of the opinion that this writ petition may be disposed of with clear direction that the petitioner shall be allowed to join against the post of Medical Specialist (Anesthesia) in District Hospital, Durg and as long as his ad hoc promotion continue, he shall be treated as Medical Specialist and paid salary as Medical Specialist only. The petitioner shall now proceed to join in District Hospital, Durg as Medical Specialist (Anesthesia). The petitioner's transfer shall only be treated in his capacity as Medical Specialist not a Medical Officer.

Sd/-
(Manindra Mohan Shrivastava)
Judge