

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Writ Petition No.27574 of 2017

DATED:04-09-2017

Between:

Dr. P. Surendra ... Petitioner

And

The Union of India
Rep. by its Secretary to Government of India
Ministry of Health & Family Welfare
Nirman Bhavan
New Delhi
and others ... Respondents

COUNSEL FOR THE PETITIONER: Mr. T. Koteswara Rao

COUNSEL FOR THE RESPONDENTS: Mr. G. Venkateswarlu,
for Mr. K. Lakshman,
Assistant Solicitor General



THE COURT MADE THE FOLLOWING:

ORDER: (per the Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Order dt.17.5.2017 in O.A. No.021/00404 of 2017 on the file of the Central Administrative Tribunal, Hyderabad Bench (for short, "the Tribunal), is assailed in this writ petition.

2. We have heard the learned counsel for the parties and perused the record.

3. The petitioner is working as Chief Medical Officer of Central Government Health Scheme (CGHS). A charge memo was issued against him on 05.05.2010, based on which an enquiry was conducted leading to the passing of order dt.03.01.2013 of compulsory retirement of the petitioner. He has challenged the said order by filing O.A. No.1100 of 2013 before the Tribunal. It appears that the said O.A. was allowed and the order of compulsory retirement was set aside by the Tribunal while directing the respondents to pass a speaking order, after considering the grounds taken by the petitioner in the O.A. The respondents have filed W.P. No.41050 of 2015 against the said order. During the pendency of the said writ petition, a purported speaking order was passed on 12.7.2016 revoking the orders dt.3.1.2013 and 7.6.2013 imposing penalty of compulsory retirement of the petitioner, subject to the outcome of W.P. No.41050 of 2015. It was, however, directed in the said order that the petitioner is deemed to be under suspension from the date of the original order dt.3.1.2013 and shall continue to remain under suspension until further orders. Later, a separate order was passed on 09.05.2017. It is stated therein that the petitioner's suspension was revoked with effect from 6.4.2017 vide order dt.11.4.2017 and that he is posted in the newly established Wellness Centre at CGHS, Agartala, under the CGHS Shillong with immediate effect. Feeling aggrieved by the said posting order, the

petitioner has filed O.A.No.021/00404 of 2017. The said O.A. was dismissed by the Tribunal giving the petitioner liberty to make a representation to the respondents for his transfer from Agartala to Hyderabad. The Tribunal further observed that though there are eight vacancies at Hyderabad to accommodate the petitioner, his duty is to first report for work at the place to which he is transferred and then make a representation as to what may be his personal problems as held by the Supreme Court in *S.C. Saxena v. Union of India*¹.

4. When the writ petition came up before us on 18.8.2017, we have expressed our *prima facie* view that the transfer of the petitioner, without there being a strong reason, to a remote place of Agartala when at least five or six vacancies are available in Hyderabad, is not only harsh but also wholly unjustified, and adjourned the case at the request of the learned counsel for the respondents for instructions as to whether the petitioner could be accommodated in one of the existing vacancies in Hyderabad. On 28.8.2017, the date to which the case was adjourned, we have again adjourned the case to today at the request of the learned counsel for the respondents. Today, at the hearing, the learned counsel submitted that he has not received any instructions.

5. The facts narrated above would show that the petitioner has not been transferred due to administrative exigencies. Indeed, in *stricto sensu* the case did not involve transfer of the petitioner. It is a case of posting of the petitioner to a remote place on revocation of his suspension. Mr. T. Koteswara Rao, learned counsel for the petitioner, placed before us a copy of the 'Note' furnished to his client under the Right to Information Act, 2005 regarding the reasons for his transfer.

¹ (2006) 9 SCC 583

Paragraph 4 of the said Note would show that the petitioner has been posted at CGHS, Agartala, as desired by the Director, CGHS.

6. While ordinarily an employee cannot question his transfer made on administrative grounds, he can however question the action of the employer in transferring and posting him at a far off place, if the same is actuated by malice or extraneous reasons. The background of the case suggests that the petitioner was subjected to disciplinary proceedings. Though the Tribunal has set aside the order of compulsory retirement, till a contempt case was filed by the petitioner no further action was taken by the respondents. Obviously under the threat of contempt, the order of compulsory retirement was revoked subject to the outcome of the writ petition filed by the respondents. In this background, we find merit in the submission of the learned counsel for the petitioner that on account of prejudice developed by the Director, CGHS, the petitioner has been posted at a far off place, though there are about eight vacancies available in Hyderabad. The learned counsel for the respondents stated that at the time of suspension of the petitioner, he was working at Kanpur. Even if the petitioner was working at Kanpur, unless strong reasons exist to post him at a remote place, such as Agartala, the impugned action of the respondents is liable to be viewed as being mala fide. While dismissing the O.A., the Tribunal suggested that the petitioner may first join duty at the transferred place and then make a representation. Admittedly the petitioner has joined at the transferred place. Though more than once opportunity was given to the respondents by this Court to post the petitioner at a nearer place, they have not availed this opportunity. Having succeeded at least for the time being in the litigation, the

petitioner cannot be subjected to further harassment by being posted at a remote corner of the country.

7. In the above view of the matter, the posting order dt.9.5.2017, of the respondents is set aside. The impugned order of the Tribunal is also consequently set aside. The respondents are directed to consider the case of the petitioner for posting him at Hyderabad or in any vacancy existing in the five States of Southern India, within two weeks from the date of receipt of this order.

8. The writ petition is accordingly allowed.

As a sequel to allowing the writ petition, W.P.M.P. No.34262 of 2017 shall stand disposed of as infructuous.



C.V. NAGARJUNA REDDY, J

M.S.K. JAISWAL, J

04-9-2017

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