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

+ **Date of Decision: 08.01.2019**

% **W.P.(C.) No. 9292/2017 & C.M. No. 37983, 37985/2017**

NORTH DELHI MUNICIPAL COPORATION Petitioner

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan &
Ms. Shiva Pandey, Advs.

versus

DR. SURESH CHAND ARUN & ORS.Respondents

Through: Mr. N.S. Dalal Advocate for R-1.
Mr. Naresh Kaushik and Mr. Omung
Gupta, Advocate for R-2.

W.P.(C.) No. 9298/ 2017, C.M. No. 37998, 38000/2017

NORTH DELHI MUNICIPAL COPORATION Petitioner

Through: Ms. Mini Pushkarna, Standing
Counsel with Ms. Swagata Bhuyan &
Ms. Shiva Pandey, Advs.

versus

ASHOK KUMAR RAWAT & ORSRespondents

Through: Mr. N.S. Dalal, Advocate for R-1
Mr. Shanker Raju and Mr. Nilansh
Gaur, Advocates for R-2
Mr. Rajeev Sharma, Advocate for R-
3.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

1. North Delhi Municipal Corporation (NDMC) has preferred these writ petitions to assail the common order passed by the Central Administrative Tribunal (CAT) in Original Application Nos. 2370/2012 and 1154/2012 dated 16.03.2017. The said Original Applications had been preferred by Dr. Ashok Kumar Rawat (Respondent in WP(C) 9298/2017) and Dr. Suresh Chand Arun (Respondent no.1 in W.P.(C) 9292/2017). The other private respondents in W.P.(C) 9298/2017 are Dr. Lallan Ram and Dr. G.R. Chaudhary, who were impleaded as party respondents before the Tribunal. By the impugned order, the Tribunal has allowed the aforesaid OAs. The directions issued by the Tribunal in the common impugned order read as follows :

“12. In the conspectus of the discussions in the foregoing paras, we issue the following directions to the respondents :

(a) The respondents shall consider the inter-se seniority of GDMO-I (PH) as on 27.07.2007 as they existed in the combined cadre of GDMO-I jointly for GDC and PHC.

(b) The respondents shall draw a draft seniority list of GDMOs-I (PH) in terms of (a) supra in conjunction with the RRs for the post of GDMO-I (PH). The note contained in rule-11 shall be strictly applied for preparation of the seniority list.

(c) The draft seniority list prepared as per (b) supra, shall be

circulated to all the concerned Doctors inviting their objections, if any, and after disposal of the objections received, the final seniority list shall be prepared.

(d) In accordance with the final seniority list of GDMO-I status of the various Doctors working in the PHC against various, would be notified by the respondents thereafter.”

2. The subject matter pertains to the issue of seniority amongst the Medical Officers viz. GDMO – I working in the Public Health Department of the Municipal Corporation(s) of Delhi. The Medical Officers, on whose OAs, the impugned directions have come to be issued by CAT, were appointed by the Municipal Corporation of Delhi, as it earlier existed. Their appointments were made in pursuance of the Delhi Municipal Corporation Health Service Recruitment Regulations, 1982, in short, 'the Regulations 1982', in and by virtue of the powers vested with the Commissioner under Section 98 of the DMC Act, 1957 in short 'the Principal Act'. Here, it would suffice to say, prior to the commencement of the Regulations 1982, those officers of Central Health Service, who opted or were retained in the Delhi Municipal Corporation Health Service, were deemed to have been appointed by the erstwhile Corporation at the initial constitution stage.

3. It appears that till about the year 2007, the Central Establishment Department (CED) of the erstwhile Corporation had been supervising and controlling the affairs of the Medical Officers appointed in its Health Department – be they of General Duty Cadre, or Public Health Cadre, for all

purposes, including, postings, transfers and promotions from the lower grade to the higher. It emerges from the record that the age of superannuation of doctors in Public Health sub-cadre came to be enhanced from 60 to 62 years w.e.f. 18.11.2006 vide the corrigendum dated 30.04.07 in consonance with the directions/orders issued by Govt. of India. Here, it would suffice to note that at that relevant point of time, the affairs of the Corporation were substantially supervised by the Central Govt.

4. One Dr. Bhagwan Das, who was working in Public Health sub-cadre, agitated the issue of his date of superannuation. He claimed that he had been working in the Public Health sub-cadre since 1993. He claimed that he had served in the said sub-cadre for 14 years till he was retired at the age of 60 years – by treating him as belonging to the General Duty sub- cadre, on 31.07.2007. The matter reached this Court in WP(C) 2906/2010 ***Municipal Corporation of Delhi vs. Dr. Bhagwan Das***. This Court held that said Dr. Bhagwan Das was entitled to superannuate at 62 years. The operative part of the said judgment of the Co-ordinate Bench of this court is, as under :

"The Tribunal had rejected the plea of the petitioner on the ground that the Recruitment Rules for General Duty Officer Grade-I, Public Health in para-11 categorically contemplates that the officers appointed on transfer had to exercise option to be inducted in public health cadre within one year failing which the officer concerned shall be deemed to have opted for the public health cadre automatically. It was noticed by the Tribunal that once the respondent by a conscious decision of the MCD had been inducted on transfer in public health cadre

and the respondent had not exercised his option after one year, he had been automatically inducted in the health sub cadre, where he worked till the time of his superannuation, therefore, the plea that the respondent was not inducted in public health cadre could not be accepted.

Regarding the applicability of Corrigendum in case of the respondent, the Tribunal after perusing the recruitment rules and the Corrigendum, held that there was not any requirement for formation of a Screening Committee and applicability of the Corrigendum only subject to recommendation of the Screening Committee. Considering the penalty imposed on the respondent, it was also held that there was no reasonable nexus between the penalty imposed and the applicability of the Corrigendum enhancing the age of retirement from 60 to 62 years w.e.f. 16th November, 2006 for the Doctors working in the public health sub cadre of Municipal Corporation of Delhi.

.....
.....
Learned counsel for the petitioner has impugned the order of the Tribunal primarily on the ground that if the Corrigendum and the recruitment rules are considered, the enhancement of the age of superannuation of Doctors in the public health sub cadre was subject to the recommendation of the Screening Committee. The recruitment regulation for the post of General Duty Officer Grade-I (Public Health) is as under:-

11. In case of rectt. By promotion/deputation/transfer grades from which promotions/deputation/transfer to be made

Transfer: (i) General duty Officer Gr.-I

(General Duty)

(ii) Failing (i) above General Duty Officers Grade-II with 5 years regular service in the grade: and

b) possessing the requisite post graduate have acquired two years back in case of degree holders and 4 years back in the case of Diploma Holders.

Note:- The Officers appointed on transfer shall have to exercise option within one year

from the date of appointment whether he/she wants to serve in the public health Cadre or to go back to the General Duty Cadre. In case no option is filed within the stipulated period, the Officers concerned shall be deemed to have opted for the Public Health Cadre automatically.

The petitioner cannot dispute that the respondent was inducted on transfer in public health cadre and he had also not exercised his option after one year and consequently, automatically he was inducted in health cadre. Therefore, the plea of the learned counsel for the petitioner that the respondent was not inducted in the public health cadre cannot be accepted. If the respondent was in public health cadre, why the Corrigendum dated 30th April, 2007 will not be applicable to him has not been satisfactorily explained by the learned counsel for the petitioner. The said Corrigendum without carving out any exception, stipulates that the age of superannuation of Doctors

in public health cadre of MCD is enhanced from 60 years to 62 years w.e.f. 16th November, 2006.

The respondent attained the age of superannuation after 16th November, 2006, therefore the respondent was entitled to have his age of superannuation enhanced to 62 years. On the basis of recruitment rules, it cannot be inferred that this enhancement of age of superannuation from 60 to 62 years was subject to the recommendation of any Screening Committee. Consequently, the plea of the petitioner that the name of the respondent was not recommended by the Screening Committee for the applicability of Corrigendum dated 30th April, 2007 cannot be accepted. In the circumstances, the finding of the Tribunal cannot be faulted by the petitioner.

.....
....."

5. Taking note of the judgment in **Dr. Bhagwan Das** (supra), the Corporation constituted a screening committee for considering the induction/transfer of Medical Officers of the General Duty cadre to Public Health cadre and this screening committee in its meeting held on 21.04.2011 recommended the doctors working in General Duty Cadre for induction/transfer into Public Health Cadre, from the dates mentioned against each of them, as per the list provided. The

recommendation so made resulted into issuance of the office order dated 10.06.2011, which culminated into passing of the office order dated 18.04.2012 in pursuance of the resolution No. 1236 dated 27.02.2012, purportedly, passed by the erstwhile Corporation. This office order, in effect, was in question before CAT. It is relevant to take note of the subject communication in its entirety. It reads, as under :

*"MUNICIPAL CORPORATION OF DELHI
Central Establishment Department,
22nd Floor, Dr. S.P. Mukerjee Civic Centre,
J.L. Nehru Marg, Delhi-110002*

No.: Supt.(M)/H.C.(M)-III/CED(M.Cell)/2012/1192

Dated: 18.04.2012

OFFICE ORDER

1. The case for induction of the following Medical Officers in the public health cadre was placed before the Screening Committee. The matter was considered by the Screening Committee. In view of the existing RRs the Screening Committee recommended for induction in to the public health cadre. Accordingly, they were inducted vide office order

issued bearing No. Supt.(M)/H.C.(M)-III/CED (M.Cell)/ 2011/ 2677 dated 10.06.2011 under the orders of the competent authority.

2. Further, the placement/promotion in respect of these medical officers of the public health cadre was placed before the Screening Committee. The matter has been considered by the Screening Committee and in view of existing RRs, Memorandum of Settlement signed by 'JACSDO' on 10.4.1989, Govt. of India O.M. No. 45013/13/90 CHS.V. dated 14.11.99 and provisions of the DACP Scheme for Medical Officers of CHS dated 5.4.2002, as adopted, by Corporation, and Govt. of India O.M. No. 45012/2/2008/CHS. V dated 29.10.2008 and subsequent O.M No. A-45012/2/2008-CHS.V (Part-I) dated 12.5.2009, the Screening Committee decided that as per provision contained in above orders/circulars, the promotions may be given to doctors inducted in Public Health Cadre on the pattern of GDMO Cadre, prior to implementation of DACP scheme on 5/4/2002, and, w.e.f. 5/4/2002 on the pattern of Non Teaching Specialists and Public Health Cadre of CHS. After due deliberations, the Screening Committee in its meeting held on 17.11.2011 recommended for Placement/Promotion of the Medical Officers inducted in Public Health Cadre to Higher Scales on Ad-hoc basis as per the instruction/orders on the subject & the DACP Scheme.

3. The recommendations were placed before the Corporation routed through the Appointments, Promotions, Disciplinary & Allied Matters Committee for approval. The Corporation vide Resolution No. 1236 dated 27.02.2012 has approved the Placement/Promotion of following Medical Officer of Public Health Cadre w.e.f. the date mentioned against them and as per the details given in the table here under:-

Sr. No.	Date of Induction in PH Cadre as GDO-I(PH)/Spl. Gr.-II (PH)	Date of Induction in PH Cadre	Date of grant of Supertime Gr-II/ Spl. Gr-II (PH-Sr.Scale)	Date of grant of NFSG/Spl.G r-I(PH)	Date of grant of SAG
1.	Dr. Ajay Kumar Bansal	07-Dec-88	7-Dec-94	05-Apr-02	05-Apr-09
2.	Dr. Kama Kumar Chaudhary	01-Jul-90	1-July-92	05-Apr-02	05-Apr-09
3.	Dr. Mrinal Kanti Pal	01-Jul-92	01-Jul-94	05-Apr-02	05-Apr-09
4.	Dr. Nihar Ranjan Dass	01-Jul-92	01-Jul-94	Deferred	—
5.	Dr. B.K. Hazarika	03-Jul-93	03-Jul-99	05-Apr-02	05-Apr-09
6.	Dr. Vijay Prakash	27-Jun-95	27-Jun-01	05-Apr-02	05-Apr-09

7.	<i>Dr. Bhagwan Dass (Rtd.)</i>	<i>15-Nov-95</i>	<i>15-Nov-97</i>	<i>05-Apr-02</i>	_____
8.	<i>Dr. Suresh Chandra Arun</i>	<i>01-Jul-96</i>	<i>01-Jul-98</i>	<i>01-July-02</i>	<i>01-Jul-09</i>
9.	<i>Dr. Kranti Kumar Bhalla</i>	<i>11-Jun-97</i>	<i>11-Jun-99</i>	<i>11-Jun-03</i>	<i>11-Jun-10</i>
10.	<i>Dr. Lallan Ram</i>	<i>09-Aug-98</i>	<i>5-Apr-02</i>	<i>09-Aug-04</i>	<i>09-Aug-11</i>
11.	<i>Dr. Om Prakash</i>	<i>01-Jul-00</i>	<i>01-Jul-02</i>	<i>01-Jul-06</i>	_____
12.	<i>Dr. Goma Ram Chaudhary</i>	<i>20-May-01</i>	<i>20-May-03</i>	<i>20-May-07</i>	_____
13.	<i>Dr. Pramod Kumar Verma</i>	<i>01-Jul-01</i>	<i>01-Jul-03</i>	<i>01-Jul-07</i>	_____
14.	<i>Dr. Kunwar Singh Rawat</i>	<i>01-Jul-02</i>	<i>01-Jul-04</i>	<i>01-Jul-08</i>	_____
15.	<i>Dr. Gur Charan Singh</i>	<i>01-Nov-02</i>	<i>01-Nov-04</i>	<i>01-Nov-08</i>	_____
16.	<i>Dr. N.R. Tuli</i>	<i>01-Jul-03</i>	<i>01-Jul-05</i>	<i>01-Jul-09</i>	_____
17.	<i>Dr. Ashok Kumar Rawat</i>	<i>01-Jul-04</i>	<i>01-Jul-06</i>	<i>Deferred</i>	_____

18.	<i>Dr. D. Soma Shekar</i>	<i>31-Oct-05</i>	<i>31-Oct-07</i>	<i>31-Oct-11</i>	—
19.	<i>Dr. Rajesh Kumar Rawat</i>	<i>01-Jul-06</i>	<i>01-Jul-08</i>	<i>Deferred</i>	—
20.	<i>Dr. J.L. Chaudhary</i>	<i>01-Jul-07</i>	<i>01-Jul-09</i>	—	—
21.	<i>Dr. Ajay Handa</i>	<i>01-Jul-08</i>	<i>01-Jul-10</i>	—	—
22.	<i>Dr. Vivekanand Bhagat</i>	<i>01-Jul-08</i>	<i>Deferred</i>	—	—
23.	<i>Dr. Deepak Mittal</i>	<i>01-Jul-09</i>	<i>Deferred</i>	—	—
24.	<i>Dr. Shyambir Singh</i>	<i>01-Jul-09</i>	<i>Deferred</i>	—	—

Further, the Corporation has also been resolved that as most of these doctors are in receipt of higher scales of pay under the DACP Scheme, they shall be granted benefit of pay protection under FR 22(a)(2) read with FR 22(a)(3).

Dr. J. L. Chaudhary had opted out the Public Health Cadre and requested to be reverted back to the GD Cadre vide his application dated 26.12.2011. The Competent Authority allowed his reversion to the GD Cadre Vide Officer Order No.A.O. (Eestt.)-IV/CED (M)/H.C.(M) III/(Medical)/2012/380

dated -1-Feb-2012. Therefore, name of Dr. J.L. Chaudhary is hereby, deleted from the above recommendation of placement/promotion of Medical Officer of Public Health Cadre.

This issues with the approval of the competent authority.

Sd/-"

6. It appears that various doctors working as GDMO –I in the General Duty Cadre started discharging functions related to Public Health, after acquiring the requisite PG qualification in public health, namely. Though these doctors from the General Duty Cadre were posted in the Public Health cadre, there was no formal induction or transfer of these doctors in the Public Health Cadre.

7. It appears that, for the first time, the process of formal appointment to the Public Health Cadre – by way of transfer of medical officers of the General Duty Cadre, was undertaken in the year 1987, when 4 officers were transferred to the post of GDMO-I (Public Health) on regular basis with effect from 18.03.1987 and were put on probation for a period of 2 years. The office order dated 11.07.1989 issued by the Central Establishment Department of the MCD, in so far as it is relevant, reads as follows:

“ OFFICE ORDER

*On the recommendations of the UPSC vide their letter NO.F.3/30(7)/86-AUIV dated 18 March 1987, **the Corporation***

vide its resolution No.825 dated 28 November 1988 has approved the appointment of the following medical officers to the post of General Duty Officer Grade – I (Public Health) in the pay scale of Rs. 3000- 4500 on regular basis by transfer in the order stated with effect from 18 March 1987 on probation for a period of two years:-

1. Dr. Sat Pal
2. Dr. N.K. Yadav
3. Dr. K.N. Tewari
4. Dr. Kuldeep Dogra

2. *The above officers appointed on transfer shall have to exercise option within one year i.e. by 20 December 1989 whether they want to serve in the Public Health Cadre or to go back to the General Duty Cadre. In case, no option is filed within the stipulated period, the officers concerned shall be deemed to have opted for the Public Health cadre automatically.” (emphasis supplied)*

8. We may, at this stage itself, observe that such like transfers, and consequential orders were not issued in respect of those GDMO-I Officers of the General Duty Cadre, who were posted to the Public Health cadre only on account of the fact that they had acquired public health post graduation degree or diploma and, who, otherwise, fulfilled the eligibility norms for appointment to the Public Health Cadre.

9. On 30.10.1996, the MCD issued circular inviting applications for filling up the posts of GDMO – I (Public Health). This circular contained a pertinent clause in paragraph 3, which reads as follows:

“3. It is clarified that the candidature of the Medical Officers working on the post of General Duty Officer Grade –I(Public

Health) on ad hoc/ current charge or any other working arrangement will be considered only on receipt of their application in response to this circular.”

10. From the said circular and, in particular, clause 3 thereof, it is evident that the MCD did not consider the ad hoc/ current charge posting of the medical officers in the Public Health cadre as appointment/ induction into the Public Health cadre in terms of the Recruitment Rules for the post of GDMO – I (Public Health). Thus, the service rendered by a GDMO – I (General Duty) in the Public Health cadre on an informal/ ad hoc/ current charge basis did not vest such an officer with a right to claim that he had been “transferred” to the Public Health cadre, or that, since he had not exercised his option to go back to the General Duty Cadre, he stood absorbed in the Public Health cadre.

11. Pertinently, there was no challenge raised by any of the General Duty cadre officers, who were posted to the Public Health cadre on an informal ad hoc – current charge basis, to paragraph 3 of the circular dated 30.10.1996 since it was never perceived by anyone, that such informal ad hoc – current charge in the Public Health cadre was by way of a formal transfer to the said cadre from the General Duty cadre.

12. Pertinently respondent No.2 – Dr. Lallan Ram also applied in response to the said circular. He had been posted to the Public Health cadre on 09.08.1994. However, correctly understanding his status as a substantive officer of the General Duty Cadre, who had only been informally posted (and not transferred) to the Public Health cadre, and while accepting the condition imposed in paragraph 3 of the circular dated 30.10.1996, he made

his application for transfer to the Public Health Cadre vide application dated 26.11.1996. He also followed up his application with representations and reminders sent on 11.09.2000, 19.04.2001, 12.06.2003, 13.07.2005, 20.12.2006 etc.. In none of these representations or reminders, Dr. Lallan Ram claimed that he stood inducted into the Public Health Cadre from the date of his initial informal posting on 09.08.1994, and he did not claim his seniority in the Public Health Cadre from the said date.

13. We may now refer to some other relevant facts.

14. A Screening Committee, to consider the transfer of GDMO-I from the General Duty Cadre to GDMO in the Public Health Cadre was held on 26.07.2007. The minutes of the Screening Committee are placed on record, which show that on the date of consideration of the issue by the Screening Committee, there were 23 posts of GDMO-I in the Public Health Cadre. It referred to circulars dated 11.01.2007 and 17.03.2007 regarding absorption of medical officers working in the GDMO cadre i.e. General Duty cadre, to the Public Health cadre. In response to the circulars, 31 applications were received.

15. The Screening Committee found 8 officers fit for induction into the Public Health Cadre which included Dr. Ashok Kumar Rawat – the original applicant in O.A. No. 2370/2012, and Dr. Suresh Chand Arun – the original applicant in O.A. No. 1154/2012. So far as respondent No.2 and respondent No.3 herein i.e. Lallan Ram and G.R.Chaudhary are concerned, they too were found fit for induction into the Public Health Cadre but they were placed lower in the assessment undertaken by the Screening Committee. Dr.

Suresh Chand Arun was placed at serial No.1; Dr. Ashok Kumar Rawat was placed at serial No.4; Dr. Lallan Ram was placed at serial No.5, and; Dr. G.R. Chaudhary was placed at serial No.7.

16. Consequent upon the recommendations of the Screening Committee, the MCD issued a circular dated 27.07.2007 communicating induction of 8 officers, including Dr. Suresh Chand Arun, Dr. Ashok Kumamr Rawat, Dr. Lallan Ram, and Dr. G.R. Chaudhary as GDMO – I in the public health cadre.

17. Thereafter, as noticed above, the decision in **Dr. Bhagwan Dass** (supra) was rendered by this Court on 30.04.2010.

18. As a consequence of the decision in the case of Dr. Bhagwan Das (supra), the petitioner M.C.D issued the office order dated 10.06.2011. This office order makes the following pertinent observations.

(i).....*However, no such formal transfer of any GDMO – I to PH Cadre was processed prior to the year 2007. Previously the GDMO –I, holding required qualification in PH field were posted in the PH Cadre posts.....*

(ii) *A meeting of the Screening Committee was held on 26.07.2007. Out of the 31 application received, 20 medical officers were found eligible for consideration for transfer to the PH cadre. The Screening Committee considered the matter and orders were issued for induction (transfer) of 8 doctors to the*

PH cadre vide No. AO(E)-II/CED(M)/2007/20723 dated 27.07.2007 and 7 doctors were recommended "Fit" on completion of certain formalities. 4 doctors were under currency of RDA and their decision was directed to be kept under Sealed Cover. One doctor, Dr. Bhagwan Dass was found "Not Fit" in view of his running under currency of penalty. As Dr. Bhagwan Dass was not formally absorbed/ inducted in the Public Health Cadre, he was treated as GDMO/General Duty Cadre and was served notice of retirement at the age of 60 years, as admissible to the General Duty Cadre medical officers. Consequently, he was made to retire on 31.07.2007 after attaining the age of 60 years....."

(iii) Dr. Bhagwan Dass filed Court case against the said notice of retirement in the High Court which was transferred to CAT as TA No. 275/2009. The Ld. CAT decided the matter in favour of Dr. Bhagwan Dass by an order, directing that "However, once the applicant by a conscious decision of the MCD has been inducted on transfer in public health cadre having not exercised his option after one year has been automatically inducted in the health cadre"

(iv) "... In so far as rejection for enhancement of age is concerned the screening committee rejected it on the ground that the applicant has not been inducted in service and also has been imposed two penalties. We do not find any stipulation in

the recruitment rules as to formation of a screening committee for a specific year of changing the cadre, which is automatic by failure to exercise of option of one year.”

(v) *The Hon’ble High Court after hearing the arguments of both the parties at length ‘dismissed’ the said petition on the ground that .. “since, Dr. Bhagwan Dass had worked in the Public Health Cadre as DHO for more than 14 years, thus, he is entitled for all benefits as admissible in the PH Cadre”*

(vi) *Accordingly, Dr. Bhagwan Dass was inducted in the PH Cadre w.e.f. 26.7.2007 alongwith the consequential benefits in compliance of orders of the Ld. Cat as well as of the Hon’ble High Court of Delhi.....*

(vii) *In view of the above order of the Ld. CAT and observation of Hon’ble high Court, it is perceived that the Hon’ble Courts have upheld the transfer to the Public Health Cadre to have taken place from the date of posting to the PH Cadre posts, if the doctor has not exercised his option to return back to GD Cadre within one year of his posting.*

(viii) *In view of the above mentioned orders of the Hon’ble Courts, if the Medical Officer who is posted on a post pertaining to PH Cadre does not submit his unwillingness to continue on such a post, he is deemed to have been inducted into the PH Cadre. Therefore, all such Medical Officers, who*

full fills the required eligibility norms and are posted in the PH stream for more than one year, becomes eligible for absorption in the PH Cadre, if the officer has not requested for his repatriation to GD Cadre within one year. (emphasis supplied)

19. On the basis of the aforesaid reasoning, the Screening Committee of the MCD recommended the date of induction/ transfer of the Medical Officers to the Public Health Cadre. The names of the Medical Officers inducted/ transferred to the Public Health Cadre, and the dates from which they were treated as so inducted, were also tabulated in the same office order. In the said list, the Original Applicant – Dr. Ashok Kumar Rawat was shown at serial No.17 – having the date of posting in the Public Health Cadre as 30.04.2002, whereas Dr. Lallan Ram and Dr. G.R. Chaudhary were shown at Serial Nos. 10 and 12, having dates of posting in the Public Health Cadre as 09.08.1994 and 24.04.1997. The Original Applicant – Dr. Suresh Chand Arun was shown at serial No.8 with his date of posting in the Public Health Cadre as 17.09.1992. A perusal of the said tabulation shows that there is no uniform pattern discernable. The date of posting in the Public Health Cadre was not based on seniority either in the GDMO-II (General Duty) or GDMO-I (General Duty) cadres. The petitioner does not even claim that the said postings were made on the basis of seniority cum eligibility i.e. as and when the GDMO-II or GDMO-I acquired post graduation degree or diploma in Public Health Cadre, they were posted according to their seniority in the Public Health Cadre. Thus, the postings in the Public Health Cadre were fortuitous and random. Moreover, these postings, as aforesaid, were mere postings, and there was no conscious

decision taken by the MCD to transfer the Medical Officers to the Public Health Cadre in terms of the Recruitment Rules.

20. The Office Order dated 10.06.2011 – which was a recommendation by the Screening Committee (which was impugned by the Original Applicants before the Tribunal) led to the issuance of the impugned orders dated 09.02.2012 and 18.04.2012 (which too were assailed by the Original Applicant before the Tribunal).

21. The Tribunal negated the reliance placed by the Corporation on the decision of this Court in **Dr. Bhagwan Das** (supra) to justify its conduct. The Tribunal held that the issue involved in **Dr. Bhagwan Das** (supra) was with regard to the age of superannuation of Dr. Bhagwan Das, and the issue did not relate to *inter se* seniority and promotion in the Public Health Cadre.

22. The submission of learned counsel for the petitioner before us, is again centered on the decision of the Division Bench in **Dr. Bhagwan Das** (supra). It is argued that this Court has held that posting is equivalent to transfer under the Recruitment Rules, and the Supreme Court has dismissed the Special leave petition of the Corporation.

23. From our discussion aforesaid, it is evident that formal induction/ transfer into the Public Health Cadre took place only on two occasions, namely, in the year 1987 in respect of 4 Medical Officers vide office order dated 11.07.1989 with effect from 18.03.1987, and thereafter vide a Circular dated 27.07.2007 when 8 Medical Officers, including the two original

applicants and two private respondents, namely Dr. Lallan Ram and Dr. G.R. Chaudhary were transferred/ inducted into the Public Health Cadre.

24. Apart from these two formal exercises undertaken by the petitioner, it appears that only informal/ ad hoc postings were given to the GDMO-I of the General Duty Cadre, who acquired the Public Health post graduate degree or diploma and became eligible for consideration for transfer in terms of the Recruitment Rules.

25. A perusal of the decision in **Dr. Bhagwan Dass** (supra) shows that the Division Bench chose not to interfere with the order passed by the Tribunal in exercise of its extraordinary writ jurisdiction on the premise, that Dr. Bhagwan Dass had been posted to the Public Health Cadre in the year 1993, after he had obtained his diploma in Public Health in 1990. He had continuously been posted in the Public Health Cadre till the age of his superannuation i.e. 31.07.2007 when he attained the age of 60 years. Thus, only on account of the fact that he had continuously been serving in the Public Health Cadre for 14 long years, this Court chose not to interfere with the impugned order. A perusal of the said decision shows that the Division Bench has not addressed the issue as to what would be the situation, if a Medical Officer of the General Duty cadre were simply to be posted – and not transferred to the Public Health cadre, which is the preferred method of recruitment to the Public Health Cadre under the Recruitment Rules. The note to the said Recruitment Rules reads “***Officers appointed on transfer shall have to exercise option within one year from the date of appointment whether he/ she wants to serve in the public health Cadre or to go back to***

the General Duty Cadre. In case no option is filed within the stipulated period, the Officers concerned shall be deemed to have opted for the Public Health Cadre automatically. ” (emphasis supplied)

26. The Division Bench proceeded on the basis that the petitioner Dr. Bhagwan Dass “*was inducted on transfer in Public Health Cadre*”. The ratio of their decision has to be understood in the context of the factual basis on which the Court has rendered its decision. Thus, there is no binding precedent emerging from the decision in **Dr. Bhagwan Das** (supra) that even a mere ad hoc “posting” tantamounts to “transfer” – which is the preferred method of recruitment in the Public Health cadre. Thus, the respondents Dr. Lallan Ram and Dr. G.R. Chaudhary cannot be placed higher to the two original applicants viz Dr. S.C. Arun and Dr. Ashok Kumar Rawat merely because they may have been posted in the Public Health cadre at an earlier point of time, which posting was fortuitous. It is only when officers are formally transferred in terms of the Recruitment Rules for the post of GDMO-I (Public Health) that, in terms of the Recruitment Rules, absorption would take place if they opt not to go back to the General Duty Cadre within a period of one year of such transfer. If no transfer has taken place, and mere informal posting, or ad hoc placement of the officer is the reason of the officer serving in the Public Health Cadre, the mere expiry of the period of one year would not lead to automatic absorption of the Medical Officer concerned in the Public Health Cadre.

27. As noticed above, the postings in the Public Health Cadre were fortuitous. Such fortuitous postings could not possibly be made the basis of

drawing the seniority of officers in the Public Health Cadre and, thus, the seniority, as it existed in the General Duty Cadre had to be respected within the batch of officers, who were formally transferred to the Public Health Cadre.

28. We may observe that the observation made by the Tribunal in paragraph 10 of the impugned order – to the effect that it can be assumed that, *de facto* the Public Health Cadre came into existence after the notification dated 07.03.2007 is not correct in as much, as, vide Office Order dated 11.07.1989, 4 Medical Officers were transferred on regular basis to the Public Health Cadre due to selection on the recommendations of the UPSC.

29. However, the said erroneous observation does not impinge of the correctness of the view taken by the Tribunal. Thus, we do not find any merit in the present petition and the impugned order does not call for interference.

30. The petition is dismissed leaving the parties to bear their respective costs.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

JANUARY 08, 2019