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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 12.12.2022

Judgment delivered on: 23.12.2022

+ **W.P.(C) 12100/2022, CM APPL. 36154/2022 & CM APPL. 52252/2022**

DR. ABHISHEK KUMAR

..... Petitioner

Through: Petitioner in person.

Versus

GOVT. OF NCT OF DELHI AND ORS.

..... Respondents

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. A writ petition has been preferred on behalf of the petitioner under Article 226 read with Section 227 of the Constitution of India challenging the order dated May 24, 2022 passed by the Central Administrative Tribunal (in short 'Tribunal') whereby the petition seeking following reliefs was dismissed:

“A. Quash the transfer Office order No. F.57-T & P/E-I LNH/995 Dated 14/09/2021 (Annexure A1) issued by Dr. Sunil Austin Francis (Addl. Medical Superintendent A) with the prior approval of the Dr. Suresh Kumar Medical Director, Lok Nayak Hospital and transfer Dr. Abhishek

Kumar to his speciality department (Department of Orthopaedics, Lok Nayak Hospital, Delhi).

B. Issue directions to Medical Director, Lok Nayak hospital and Dr Sunil Austin Francis, Addl. Medical Superintendent (A) to forward Dr Abhishek Kumar's (Applicant) application to Delhi Secretariat and LG Office for granting him equated teaching designation (Assistant professor) in Lok Nayak Hospital, Delhi."

2. In brief, as per the case of the petitioner, he is working as General Duty Medical Officer (GDMO), Lok Nayak Hospital since January 12, 2021 AND is an MBBS along with MS (Orthopaedics) with about six years experience in Orthopaedics surgery including teaching experience prior to joining Lok Nayak Hospital. The petitioner was appointed as Medical Officer in Delhi Medical Services and given a posting at Lok Nayak Hospital. The grievance of the petitioner is that despite his qualification, he was ill-treated/harassed by the senior doctors and Professor Orthopaedics Department on account of his alleged mis-behaviour on earlier occasions. Further, despite his representation, no action was taken against the concerned senior doctor and the petitioner was shifted from Orthopaedics Department and posted at Ramleela Maidan Covid Centre. Thereafter, vide order dated September 14, 2021, the petitioner was transferred to Accident & Emergency (A&E) Department, Lok Nayak Hospital but not at Department of Orthopaedics, Lok Nayak Hospital, Delhi. The aforesaid posting by the respondents is stated to have been made to harass and penalize the petitioner for highlighting the irregularities. It is claimed that as per Delhi Health Services Rules, the post graduate Medical Officers should be posted in the Department in which the Doctor holds the specialty and the same has been denied in the case of the petitioner. The respondents also refused to forward the application of the petitioner for granting him Equated Teaching

Designation (Assistant Professor) despite his eligibility, whereas cases of other doctors were forwarded. The representations and complaints were further referred in support of the averments.

3. As per the stand of the respondents before the Tribunal, the petitioner had been appointed as General Duty Medical Officer and joined his duties at Lok Nayak Hospital, Delhi w.e.f. January 12, 2021. Petitioner was initially posted in the Orthopaedics Department and later on, in view of pandemic and rising Covid cases, was posted at Ramleela Ground Special Covid facility along with four senior medical officers. On improvement of situation, the petitioner was posted back in Casualty Department (A & E) as per requirement. It was further submitted that General Duty Medical Officers can be posted at any Department as per requirement of the Hospital in public interest. Further, the allegations made by the petitioner against the Head of Department, Orthopaedics were investigated by the Inquiry Committee but no substance was found and the Committee was of the impression that the petitioner created the bogey of 'mental harassment' to him as a diversionary tactics to cover up his failure and lapses. The claim of the petitioner for his posting in the Orthopaedics Department is stated to be not tenable.

So far the Equated Teaching Designation (Assistant Professor) is concerned, it was submitted that the University had not approved even the prior list, which was forwarded vide letter dated October 04, 2017 and as such no further list has been forwarded as the matter is under consideration.

4. Having considered the stand taken by the petitioner as well as the respondents, the Tribunal noticed that the petitioner's application for grant of Equated Teaching Designation (Assistant Professor) could not be forwarded

due to the fact that Delhi University has not yet approved the prior list which was forwarded vide letter dated October 04, 2017 and there are no available guidelines from Delhi University for accepting the designation of Equated Teaching (Assistant Professor) for GDMO cadre working in Lok Nayak Hospital, Delhi. It was also observed that Lok Nayak Hospital, Delhi is attached with Maulana Azad Medical College which is already having its separate teaching cadre duly appointed through UPSC. The petitioner was stated to have worked in the Department of Orthopaedics, ESSI-PGIMASR from October 23, 2017 to May 02, 2020 for a period of less than three years and as such, was not in possession of minimum experience of three years after completing the Post Graduate Degree to be eligible for the post of Assistant Professor through UPSC. It was also observed that the petitioner being GDMO could be posted in any Department as per the requirement of the respondents. Taking note of the fact that interim relief claimed by the petitioner had been rejected vide order dated December 22, 2021, no merits were found in the claim of the petitioner for being posted in the Orthopaedics Department as a matter of right. It was accordingly observed that it is entirely up to the Hospital administration to decide posting of Medical Officers and General Duty Medical Officer as per the requirement and interest of the patients. The O.A. was accordingly dismissed.

5. Petitioner aggrieved by the aforesaid order passed by the Tribunal, reiterates the factual position and grounds taken before the Tribunal. It is urged that the impugned order passed by the Tribunal sets in a wrong precedent as it gives free will to authorities to post any Post Graduate and qualified Medical Officer with PG qualification out of Specialty Department

and waste his skills which is punitive in nature and against the interest of the patients. The career of the petitioner is stated to be adversely impacted by posting him in a Casualty Department as a referral doctor than utilizing his specialized surgical skills in the Department of Orthopaedics. The review application preferred by the petitioner is also stated to have been dismissed on July 12, 2022. The case of the petitioner is claimed to be similar to the earlier cases referred by the respondents to the University for granting Equated Teaching Designation. The findings of the Inquiry Committee are also stated to be biased since Dr. Manoj Kumar, who was dealing with the Inquiry Committee was junior to Dr. Vinod Kumar, HoD, Orthopaedics. It was further submitted that the Tribunal wrongly noticed that the petitioner was not in possession of minimum three years experience after completing Post Graduate degree to be eligible for the purpose of Assistant Professor. It was claimed that the petitioner is in possession of audio and video recordings for substantiating the behavior of the concerned officials. Reference was also made by the petitioner to communication from MCI vide letter dated October 26, 2015 regarding clarification of term 'Specialist and Consultant' as referred in PGMER, 2000, copy of guidelines for posting of Specialists/GDMOs in Delhi Health Services, copy of RTI reply regarding 'faculty vacancies' in Department of Orthopaedics, LNJP Hospital and copy of complaints regarding mental harassment made by the petitioner.

6. On the other hand, learned Standing Counsel for the respondents urged that the petitioner was appointed as GDMO vide UPSC advertisement No.01/2019, which stipulates the ordinary educational qualification as MBBS with compulsory rotating internship. The nature of duties as

reflected in the advertisement stipulates that candidates shall work in dispensaries and hospitals of NCT of Delhi and shall be primarily handling patients of various types in these hospitals and dispensaries for medical care. Further, the candidates can also be entrusted with the work including administrative and other related work as per exigencies of public service. The petitioner is stated to have joined only on January 12, 2021 and is yet to complete the probation of two years in January, 2023.

It was also urged that the petitioner was posted at LNH Annexe Covid Centre at Ramleela Ground on May 18, 2021 but he neither performed any duty nor reported in the hospital and, as such, a memorandum dated May 21, 2021 was issued to him. However, instead of joining the duties, the petitioner made a complaint of mental harassment against the HoD (Orthopaedics) to various authorities. Petitioner further sought medical leave on account of Covid-19 illness but failed to provide RTPCR report, valid RAT report, authorized prescription and medical certificate from a government hospital. Show-cause notice dated May 29, 2021 was accordingly issued for his unauthorized absence but the petitioner refused to join the duties. An enquiry is stated to have been conducted to look into the issues of unauthorized absence of the petitioner and the complaint given by him against Dr. Vinod Kumar, HoD (Orthopaedics). The Committee gave adverse findings against the petitioner but was inclined to take a compassionate view considering that the petitioner is a young officer and a fresh appointee.

It was further urged that GDMOs can be posted in any department as per requirement of the hospital in public interest and no discrimination was

made against the petitioner while posting him at Ramleela Ground Special Covid facility since four Senior Medical Officers were posted along with him. Further, on improvement of situation, the petitioner was posted back in the Casualty Department (A&E) as per requirement of the hospital administration. It was also pointed out that petitioner is now posted in STC, which mainly handles trauma cases every day and 08-10 patients of polytrauma (Multiple Organ) cases with fractures are operated in STC. Further, the surgical skills of the petitioner are utilized in the STC with orthopaedic intervention.

With reference to grant of Equated Teaching Designation (Assistant Professor), it has further been urged by the learned Standing Counsel for respondents that Delhi University had not yet approved the prior list which was forwarded vide letter dated October 04, 2017 and so far there are no established guidelines available from the Delhi University for accepting the designation of Equated Teaching Designation (Assistant Professor) for GDMO cadre working in Lok Nayak Hospital, Delhi. Further, the Lok Nayak Hospital Delhi, attached with Maulana Azad Medical College, is already having its separate teaching cadre duly appointed through UPSC and the grant of Equated Teaching Designation (Assistant Professor) for teaching cadre would also require the possession of minimum experience of three years after completing the post graduate degree to be eligible for the post of Assistant Professor through UPSC. It is also contended that the experience of petitioner as Senior Resident in the Department of Orthopaedics, ESSIPGIMASR from 23.10.2017 to 02.05.2020, is for a period of less than three years and, as such, petitioner does not possess the minimum experience of

three years after completing the post graduate degree to be eligible for the post of Assistant Professor through UPSC. It has been pointed out that the petitioner is liable to be transferred or posted anywhere in NCT of Delhi and cannot as a matter of right claim exclusive posting at Orthopaedics Department, Lok Nayak Hospital for being considered to Equated Teaching Designation of Assistant Professor.

7. Having considered the rival contentions, at the outset, it may be noticed that UPSC invited online recruitment applications by selection of General Duty Medical Officers (GDMOs) vide advertisement No.01/2019. **A clear stipulation was made in the advertisement regarding the age and educational qualifications of MBBS degree with compulsory rotating internship. It is imperative to note that nature of duties as referred in the advertisement reflected that the candidates shall work in the dispensaries and hospitals of NCT of Delhi and shall be primarily handling patients of various types in those hospitals and dispensaries for medical care. Further, they can be entrusted with working including administrative and other related work as per the exigencies of the public services.**

There is no dispute to the fact that the petitioner got selected through UPSC and was appointed as General Duty Medical Officer (GDMO) sub-cadre of DHS and posted initially at Lok Nayak Hospital on January 12, 2021 in the Orthopaedics Department. The petitioner is still under probation period of two years, which is to be completed on January 11, 2023.

8. Vide order dated May 18, 2021, the petitioner was posted at LNH Annexe Covid Centre at Ramleela Ground and a revised shift-wise roster for the Medical Officers posted as GDMO was issued along with other officers.

The petitioner made a complaint of mental harassment against the HoD (Orthopaedics) with the various authorities on May 21, 2021 which appears to be on account of his posting at Covid Centre in the light of the specific stand of the respondents that the petitioner neither performed any duty nor reported in the hospital and, as such, a memorandum dated May 21, 2021 was issued to him. One cannot lose sight of the fact that the petitioner availed medical leave on the ground of Covid-19 illness without annexing any report regarding Covid positive and claimed to be receiving treatment from a private practitioner. As such, even a show-cause notice dated May 24, 2021 was issued by the hospital administration for availing treatment from a private practitioner and not providing RTPCR/valid RAT report/authorized prescription and medical certificate from government hospital. The petitioner was also issued a show-cause notice on May 29, 2021 for his unauthorized absence from duties at LNH Annexe Covid Centre at Ramleela Ground informing him of disciplinary action for his gross misconduct under the DDMA Act, 2005 and CCA (Conduct) Rules, 1965. The petitioner responded the e-mail but refused to join the duties claiming Covid illness but without attaching any Covid positive report or RTPCR report as asked by the hospital administration. Thereafter, a reminder was issued to the petitioner through e-mail on May 31, 2021 by the hospital administration but in response to the e-mail dated May 31, 2021, the petitioner re-sent the mental harassment complaint made by him earlier on

May 21, 2021 against HoD (Orthopaedics). The petitioner only finally joined his duties in LNH Annexe Covid Centre at Ramleela Ground on August 06, 2021. The aforesaid stand taken by the respondents reflects that the petitioner appears to have failed to act as required during exigencies faced with Covid-19 pandemic and in case the petitioner was Covid positive, nothing restrained him from furnishing the relevant medical reports in support of the Covid-19 infection.

9. It may also be observed that on allegations levelled by the petitioner against Dr. Vinod Kumar, HoD (Orthopaedics), a three member Enquiry Committee was duly constituted by the Medical Director vide order dated June 10, 2021 consisting of Dr. Manoj Kumar, Director Professor (Orthopaedics)/Chairman, Dr. Anuj R Bhalotra, Director Professor/Member and Dr. S.A. Francis, Additional M.S. (A)/Member. The Committee was required to look into the issues raised by the petitioner in his complaint against Dr. Vinod Kumar, HoD (Orthopaedics) as well as the issue of unauthorized absence of the petitioner.

The findings of the Enquiry Committee are pertinent to be noticed and may be reproduced as it highlights that an attempt was made by a newly joined recruit in January, 2021 just over a period of five months to malign and make malicious allegations, which appear to be consequent upon his posting at LNH Annexe Covid Centre at Ramleela Ground and subsequent notices issued for failing to join the duty during Covid pandemic.

“That three members Committee keeping with the terms of the reference of the enquiry has arrived at the following unanimous recommendations after due deliberations:

- (1). *Given the facts that no authentic and verifiable evidence could be found prima facie on enquiry to prove that Dr. Abhishek Kumar (GDMO)*

actually suffered from alleged Covid-19 disease; his claim to seek medical leave on the grounds of alleged Covid-19 disease is unsubstantiated and deserve to be set-aside. His period of absence from duties be treated as un-authorized leave and disciplinary action may be initiated against him as per relevant CCS Conduct rules.

(2). Dr. Abhishek Kumar (GDMO) should be brought to justice by initiating disciplinary action against him under relevant CCS Conduct rules for lodging a false and malicious complaint against Dr. Vinod Kumar, Director Professor and HoD, Orthopaedics.

(3). Given the fact that Dr. Abhishek Kumar (GDMO) is a young officer, the Committee considers it prudent to accord him yet another opportunity to prove his innocence and clear himself of the cloud (of an invalid RAT report) that he has so unwisely brought himself under. The Committee recommends further investigation on the role played by Dr. Devinder Kumar, MBBS, the private practitioner who attended on Dr. Abhishek Kumar (GDMO), in not generating the SRF ID and notifying the alleged Covid-19 disease and also to ascertain whether alleged Covid-19 disease actually afflicted Dr. Abhishek Kumar (GDMO) or not. The enquiry may be handed over to the District Magistrate (DM) and other competent Central/ State regulatory authority monitoring the pandemic in the country under DDMA Act, to take the investigation to its logical conclusion in this regard.

(4). Since the committee is not equipped to ascertain the authenticity of the audio clipping (The evidence placed in his defence by Dr. Abhishek Kumar (GDMO) to the Committee and attached herewith in pen drive and its transcript-Annexure 21) with regard to its tampering, morphing, editing or any other unlawful activity under the I.T. Act, the matter, as such, qualifies for referral to the cybercrime cell of Delhi Police to take the investigation to its logical conclusion. However, considering that **Dr. Abhishek Kumar is a young officer and a fresh appointee, the Committee is inclined to take a compassionate view on this incident. It is recommended that instead of referring the matter to the cybercrime cell of Delhi police, Dr. Abhishek Kumar be given an option to withdraw his false allegations against Dr. Vinod Kumar and render an apology for unlawfully recording a telephone conversation with a senior doctor in an attempt to malign him and make false and malicious allegations. This option may be given to Dr. Abhishek Kumar (GDMO) without prejudice to any further action on the recommendations made at 1 to 3 above.**

10. The crux of the issue remains that GDMOs can be posted to any department considering the exigencies and interest of patients, and it could not have been claimed as a matter of right that petitioner could not be posted

at Ramleela Ground Special Covid facility in challenging situations being faced by the entire country. In the facts and circumstances, no *malafides* can be inferred against the respondents, since the posting of petitioner was made along with four other senior Medical Officers in Covid Centre considering the exigencies. Further, on improvement of the situation, the petitioner was posted back in the Casualty Department (A&E) as per the requirements of the hospital administration.

11. It may further be noticed that even as per the guidelines relied upon by the petitioner as well as the respondents, as issued by Health and Family Welfare Department, NCT of Delhi, all doctors are liable for transfer anywhere in NCT of Delhi in six Delhi Government hospitals with more than 250 beds and 21 Delhi Government hospitals with upto 250 beds. Merely because the petitioner possessed the Post Graduate qualifications in Orthopaedics with experience of senior resident, could have made much difference to claim as a matter of right for being assigned the duties in Orthopaedics Department at Lok Nayak Hospital. It needs to be kept in perspective that petitioner joined only as a GDMO, for which the requisite qualification was of MBBS with liability to be posted at any of the places, as reflected even in the advertisement. There appears to be a misconception in the mind of the petitioner that services of the petitioner were mandatorily liable to be utilized only in the Orthopaedics Department, Lok Nayak Hospital. The discretion vests with the administrative authorities considering the administrative exigencies and requirement of posting, though it may be desirable that the Medical Officers with PG Degree/Diploma/Specialization in Public Health/PSM/hospital

Administration may be posted in the department of their respective field of specialization to utilize their expertise. However, the overall guiding principle remains the exigencies, public interest and patient care, which the competent authority needs to assess. The organizational interest remains the uppermost consideration.

12. The respondents have also pointed out that the petitioner is posted in STC, which mainly handles trauma cases every day and 08-10 patients of polytrauma (multiple organ) cases with fractures are operated in STC and his surgical skills are utilized in the STC for orthopaedic intervention. The other Medical Officers/Senior Medical Officers having PG speciality are also stated to have been posted in LNH Casualty and STC.

13. It may also be apt to observe that the guidelines for transfer and posting of Specialists bearing No.F.7/Transfer/2014/H&FW/prsecyhfw/1940-1999 dated 22.08.2014 provides for redressal of grievances whereby the Human Resources Grievances Redressal Committee is envisaged with the Pr. Secretary/Secretary (Health & FW) as the Chairperson which would include two/three more senior doctors and an officer from the Services department as members for looking into the representations relating to the postings of GDMOs/Specialists upto and including those in SAG scale. The Committee is required to meet as frequently as the need arises.

The petitioner, as such, can always avail of the remedy of making a representation in case of any grievance relating to his posting.

14. It is well settled that transfer of a government servant, who is appointed to a particular cadre of transferable post from one post to another

is an ordinary incident of service. The norms generally framed by way of guidelines for regulating the transfer in administrative exigencies does not vest an immunity for transfer, unless it is shown that the transfer was not made in public interest but for collateral purposes with oblique motives. The transfer does not stand vitiated if the same has been made in exigencies of services and the courts should not interfere with transfer order which is made in public interest and for administrative reasons, unless the same is in violation of any mandatory statutory rule or on the grounds of *malafide*. The transfers are usually governed by the exigencies of the service and an employee has no fundamental right or a vested right to claim a transfer or posting of his choice.

We are also of the considered view that the integrity, work and conduct of a doctor also needs to be considered while making posting to a desirable place as the purpose remains the effective patient care and not that a new joinee may keep the entire department or the HoD entangled in frivolous complaints.

In the facts and circumstances, the transfer neither suffers from violation of any statutory rules nor can it be described as *malafide*.

15. Petitioner has next contended that his application for grant of Equated Teaching Designation (Assistant Professor) has not been forwarded by the respondents and prays for directing the respondents to forward the application to Delhi Secretariat and LG Office for granting the same. Reliance is also placed upon letter dated October 26, 2015 issued by Medical Council of India, which clarifies the term 'Specialist' and 'Consultant' and contends that the petitioner is entitled for grant of Equated Teaching

Designation (Assistant Professor) in view of PG qualification though he was recruited to the post of GDMO. The said clarification may be reproduced for reference:-

“The Medical Education Committee considered the letter dated 01/10/2015 receive from Dr. Maruti Sinha, Secretary Delhi Medical Officers Association with regard to clarification of term “Specialist and Consultant” as referred in PGMER,2000 along with Notification dated 16th March, 2005 and decision of the Executive Committee of the Council dated 23/11/2014.

It is clarified that all those doctors who possess post graduate qualification and have worked continuously in the department of their PG qualification in Institutions or Hospitals where with the affiliation from any University, teaching is being imparted should be considered eligible for grant of equated teaching designation irrespective whether they have worked on the cadre post of General Duty Medical Officer or, Specialist. Those who have the experience of working for a period not less than 18 years and 10 years shall be eligible to be equated as Professor and Associate Professor respectively in the department concerned. Those with experience of less than 10 years will be eligible to be equated as Assistant Profesor (Notification dated 16.03.2005). Only those GDMOs who do not have qualification and are performing rotational duty at different places will not be considered.”

16. To look into the contentions raised by the petitioner regarding grant of Equated Teaching Designation (Assistant Professor), it may be appropriate to notice the qualifications prescribed for Specialists Grade III Assistant Professor in CHS by USPC as juxtaposed to GDMOs in DHS as highlighted by the respondents:-

	Medical Officer (GDMO) in DHS	Specialist Grade III Assistant Professor in CHS
Age	32 years	40 years
Qualification	(i) A recognized MBBS qualification (ii) Completion of compulsory rotating internship.	(i) A recognized MBBS degree qualification (ii) Post-Graduate Degree in concerned speciality or Super-speciality.

Experience	----	At least three years teaching experience as Senior Resident or Tutor or Demonstrator or Registrar in the concerned speciality or, Super Speciality in a recognized teaching institution after obtaining the first Post Graduate Degree. NOTE: Teaching experience in any other post like the post of General Duty Medical Officer or Medical Officer shall not be considered for eligibility purpose for recruitment to teaching post.
Duties	Candidates shall work in the dispensaries and hospitals of the Govt. of NCT of Delhi and shall be primarily handling patients of various types in these Hospitals and dispensaries for medical care. However, they can, also be entrusted with other work including administrative and other related work as per exigencies of the Public Service.	(i) To impart theoretical and practical instructions to under-graduate/post graduate medical students; (ii) To conduct and guide research work in the speciality; (iii) to render patient care in the speciality; (iv) Any other duties that may be assigned by the authorities from time to time.

The same reflects that for the purpose of recruitment as Assistant Professor in CHS through UPSC, teaching experience as Senior Resident or

Tutor or Demonstrator or Registrar in the concerned speciality, after obtaining Post Graduate degree is at least three years.

Before examining the legal matrix, it may be observed that the Central Health Services Rules, 1996 ('CHS Rules, 1996' in short) framed and notified by the Central Government in exercise of the powers vested under Article 309 of the Constitution of India provide for four sub-cadres of the Central Health Services (CHS) namely, teaching sub-cadre, non-teaching sub-cadre, public health service sub-cadre and general duty Medical Officer sub-cadre. Hierarchy of posts in the teaching sub-cadre is that of Assistant Professor, Associate Professor and Professor and in the non-teaching sub-cadre, the hierarchy is Specialist Grade II (Junior Scale), Specialist Grade II (Senior Scale) and Specialist Grade I. As per Schedule V of the CHS Rules, 1996, essential qualifications would show that there is a difference in the requirements for teaching sub-cadre and non-teaching sub-cadre. For the teaching sub-cadre, the requirement is of three years teaching experience in the concerned speciality as lecturer/tutor/registrar/demonstrator/senior resident after the requisite post graduate qualification. In case of non-teaching sub-cadre, the requirement is three years experience in the concerned speciality after obtaining the post graduate degree or five years experience after obtaining post graduate diploma. The promotion to the higher post in the sub-cadres is as per the CHS Rules, 1996 and the doctors working in the teaching sub-cadre and non-teaching sub-cadre do not cross over to the other sub-cadre.

17. It may be noticed that Medical Council of India is a regulatory authority under Indian Medical Council Act, 1956 and is empowered to lay

down the norms and qualifications for teaching faculty in a Medical College, approve the establishment of Medical College and grant recognition to the degrees when attached to a University established in accordance with law.

The National Medical Commission in terms of Section 61 of the National Medical Commission Act, 2019 is the successor in interest of the Medical Council of India including its subsidiaries or owned trusts. Further, notwithstanding the repeal of Indian Medical Council Act, 1956, educational standards, requirements and other provisions of the Indian Medical Council Act, 1956 and the rules and regulations made thereunder shall continue to be in force and operate till new standards or requirements are specified under the National Medical Commission Act or the rules and regulations made thereunder.

Chapter VI of the National Medical Commission Act, 2019 deals with the recognition of medical qualifications and sub-Section (1) of Section 35 provides that medical qualifications granted by any university or medical institutions in India shall be listed and maintained by the Under Graduate Medical Education Board or the Post Graduate Medical Education Board as the case may be, in such manner as may be specified by the Regulations. Further, as per sub-Section (2) of Section 35, any University or Medical Institution in India which grants an undergraduate or postgraduate or super-speciality qualification not included in the list maintained by Under Graduate Medical Education Board or Post Graduate Medical Education Board, as the case may be, may apply to that Board for granting recognition to such qualification. The Act also provides for constitution of autonomous boards under overall supervision of the Commission to perform the functions

assigned to said boards, namely:-

- (a) the Under-Graduate Medical Education Board;
- (b) the Post-Graduate Medical Education Board;
- (c) the Medical Assessment and Rating Board; and
- (d) the Ethics and Medical Registration Board.

18. PGME Regulations, 2000 had been framed under Indian Medical Council Act, 1956 (referred to 'MC Act, 1956' in short) in exercise of power conferred by Section 33 read with Section 20 of the said Act which came into force on October 07, 2000. Regulation 2 of 2000 Regulations stipulates the duration of courses for post graduate medical education in a broad speciality. Clause (i) of Regulation 8 to the PGME Regulations, 2000 as amended upto August 10, 2016 provides that institutions recognised by MCI for running post graduate medical courses prior to the commencement of the Indian Medical Council (Amendment) Act, 1993 and those medical colleges recognised for running bachelor of Medicine and Bachelor of Surgery (MBBS) courses established by the Central Government for imparting post graduate medical education would be eligible for starting any post-graduate degree or diploma and higher speciality course. Further, clause (1A) of Regulation 8 stipulates that the Central Government can exempt any existing or proposed non-teaching institutions or specialist institution or autonomous bodies owned and managed by the Central Government/State Government from fulfilling the prescribed provision of having an undergraduate teaching facility and permit such institutions to start post graduate medical course.

19. Regulation 11 further lays down the requirement for teaching facilities and may be aptly reproduced as amended:-

"11.1 Staff-Faculty

(a) A clinical department or its unit training candidates for broad or super specialities, shall have a minimum of three full time faculty members belonging to the concerned disciplines of whom one shall be a Professor, one Associate Professor/Reader/and one Astd. Professor/Lecturer, possessing the qualification and experience prescribed by the Medical Council of India;

Provided that the second or subsequent additional unit may be headed by an Associate Professor.

Of these faculty members only those who possess a total of eight years teaching experience, out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining post-graduate degree, shall be recognized as post- graduate teachers.

(b) In each department, training candidates for super specialities, there shall be a minimum of three faculty members with requisite post-graduate qualification and experience-one Professor, one Associate Professor/Reader and one Assistant Professor/Lecturer, with at least two of them holding the degree of D.M./M.Ch. in the concerned discipline.

Of these faculty members only those who possess eight years teaching experience out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining the higher speciality degree shall be recognised as post-graduate teachers:

Provided that in the case of super speciality courses which are being newly instituted relaxation of qualification and experience of post-graduate teachers may be granted by the Medical Council of India for sufficient cause.

(c) In addition to the faculty staff, the strength of Residents/Registrars/Tutors/Demonstrators, as well as technical and other para medical staff shall be as per the staff strength prescribed for 50 or 100 or 150 students in the "Minimum Requirements for 50/100/150 MBBS Admissions Annually Regulations.

(d) Consultants of specialists who have the experience of working for a period of not less than 18 years and 10 years in the teaching and other general departments in the institution or hospitals, not attached to any medical college, where with the affiliation from any university, post graduate teaching is being imparted as contemplated under sub-regulation (1A) of regulation 8, shall respectively be eligible to be equated

as Professor and Associate Professor in the department concerned. The requisite experience for equating a consultant or specialist working in the super-speciality department of the said institution or hospitals as Professor and Associate Professor shall respectively be 16 years and 8 years. Consultants or Specialists having post graduate degree qualification, working in such an institution or hospital, who do not have the said period of experience, shall be eligible to be equated as Assistant Professor in the department concerned."

"Provided that such conferment of the nomenclature of designation/status of post graduate medical teachers shall be awarded only to those many number of consultants in the concerned hospital/institution so as to fulfil the minimum requirement for imparting Post Graduate Medical education to the sanctioned annual intake of the respective Govt. hospital/institute."

20. Regulation 11.1 of said Regulations referred to above pertains to requirements of teaching faculty etc. and provides that clinical department or unit training candidates for broad or super specialities shall have minimum of three full time faculty members belonging to concerned disciplines of whom one shall be Professor, one Associate Professor/Reader and one Assistant Professor/Lecturer possessing the qualification and experience prescribed by the Medical Council of India. Further, of these faculty members, only those who possess eight years teaching experience, out of which at least five years teaching experience as Assistant Professor/Lecturer gained after obtaining post graduate degree, shall be recognised as post graduate teacher.

It is also important to notice that clause (a) to (c) of Regulation 11.1 as initially promulgated led to unworkable difficulty for the existing post graduate institutions exempted under Clause (1A) of Regulation 8 of PGME Regulations, 2000 as they did not have a teaching sub-cadre and thus, could not meet and satisfy the requirement of requisite number of Associate Professors/Readers or Assistant Professors/Lecturers, and as such, faced de-

recognition and closure. Faced with the aforesaid conflict, Clause (d) to Regulation 11.1 was added by way of amendment by Post-Graduate Medical Education (Amendment) Regulations, 2005 with effect from March 16, 2005.

Thus, by virtue of clause (d) to Regulation 11.1, the institutions imparting post graduate teaching under sub Regulation (1A) to Regulation 8 and not any other institution, could by equating of specialists or consultants who had 18 or 10 years of experience be eligible for equating with Professor and Assistant Professor and those working in super speciality department of the said hospital with 16 years and 10 years as Professor and Associate Professor. Consultant or Specialists having post graduate degree qualification working in such institution or hospital, who do not have the said experience would be eligible for equating as Assistant Professor. However, by virtue of proviso to clause (d) to Regulation 11.1 added by notification dated November 17, 2009, such conferment of nomenclature of designation/status of post graduate medical teacher is restricted to only those many consultants, so as to fulfil the minimum requirement. Excessive designations under garb of clause (d) to Regulation 11.1, as such, are impermissible under the proviso though it may not be a one-time exercise.

21. The issue related to grant of Equated Teaching Designation came for consideration in judgment passed by Delhi High Court in Writ Petition (Civil) No.7049/2005 (*Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India & Others*) on November 09, 2016, wherein notification dated March 15, 2005 issued by Medical Council of India was challenged being repugnant and contrary to

law on account of violation of Minimum Qualification of Teachers Regulations, 1998 ('MQT 1998 Regulations' in short). Also, the second issue related to the interpretation of aforesaid notification and subsequent orders issued pertaining to other notification. A prayer was also made that Guru Gobind Singh Indraprastha University be restrained from equating non-teaching specialists and consultants at Safdarjung Hospital and Ram Manohar Lohia Hospital with Professors and Associate Professors as they do not possess the requisite and mandated qualification prescribed by the Recruitment Rules for said posts.

22. It is pertinent to note that ***Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India and Others (supra)***, did not deal with the violation of the proviso to Clause (d) to Regulation 11.1 with reference to the designations made in excess or beyond the requirement since the same required factual examination with regard to the requirement under PGME Regulations, 2000 as well as the intake of students in the post-graduate courses, strength of the non-teaching and teaching sub-cadres etc. The challenge primarily related only to 'teaching cadre' and 'non-teaching' cadre of CHS.

With reference to the contention of the petitioners therein that there is a conflict between Regulation 11.1(d) of the PGME Regulations, 2000 and CHS Rules, 1996 framed under Article 309 of the Constitution, it was held that both operated under different fields and it would be incorrect and wrong to hold that by the said designations or equivalence granted for the purpose of PGME Regulations, 2000, the Consultants and Specialists become members of the teaching sub-cadre or become entitled to promotions in the

teaching sub-cadre. It was further held that the equivalence or designation does not amount to a transfer or change in the sub-cadre and the teaching and non-teaching sub-cadres remain distinct and cannot intermingle. The following conclusions drawn in para 35 of the judgment may be reproduced for reference:-

“35. In view of the aforesaid reasoning, we would record our conclusions as under:-

- (i) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 treats Consultants or Specialists having the requisite experience not attached to medical colleges but post-graduate institutions covered by Sub- Regulation 1A to Regulation 8 as Professors, Associate Professors and Assistant Professors. The petitioners are unable to establish and show that clause (d) to Regulation 11.1 is illegal or bad in law. On the other hand, the respondents have been able to show and establish the reason and cause why the aforesaid clause was enacted by the MCI. The object and purpose were to allow and permit post-graduate courses already in existence should not close down and stop pursuant to the promulgation of PGME Regulations, 2000.*
- (ii) Clause (d) of Regulation 11.1 of the PGME Regulations, 2000 is not in conflict with the CHS Rules in any manner. The teaching and non-teaching cadres remain distinct and separate. Consultants and Specialists in the non-teaching sub-cadre continue to remain members of the said cadre and are not entitled to occupy posts meant exclusively for the teaching sub-cadre. The PGME Regulations, 2000 and CHS Rules operate in different fields and the equivalence granted for the purpose of the PGME Regulations, 2000 would not affect members of the teaching sub-cadres as it does not amount to transfer or change in sub-cadres.*
- (iii) Clause (d) to Regulation 11.1 of the PGME Regulations, 2000 does not postulate one-time exception and there can be subsequent designations as long as there is a shortage of Professors, Associate Professors or Assistant Professors belonging to the teaching sub-cadres.*
- (iv) Designations for the purpose of clause (d) to Regulation 11.1 of the PGME Regulations, 2000 can be only awarded to Consultants and Specialists who fulfil the minimum requirement for imparting post-*

graduate medical education to the sanctioned annual intake in the respective government institutions/hospitals and cannot exceed the said numbers. Violation of the proviso and the question whether there are excessive designations has not been raised and argued before us. The petitioners have stated that this is not a subject matter of the present writ petition and has been raised in other writ petition pending in the High Court. We have, therefore, not examined the factual matrix and the question whether there has been a violation of the proviso to Regulation 11.1(d) of the PGME Regulations, 2000."

23. Reverting back to the facts of the present case, the petitioner was recruited as GDMO through UPSC and is yet to be confirmed. As per service conditions, the petitioner is liable to be posted as specified in the advertisement in hospitals and dispensaries under the Government of NCT of Delhi. As such, the petitioner as a matter of right cannot claim a posting only at Orthopaedics Department, Lok Nayak Hospital despite possessing PG qualification and in fact also stood transferred to LNH Annexe Covid Centre at Ramleela Ground and was subsequently posted at Casualty Department (A&E). As such, the petitioner's posting 'may' or 'may not' continue with institution or hospital wherein post graduate teaching is being imparted.

It may further be noticed that in ***Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of India and Others (supra)***, the issue related to grant of Equated Teaching Designation pertaining to 'Specialists' and 'Consultants' under 'non-teaching cadre' attached to the hospitals imparting post graduate teaching since considerable period and the same appears to have been taken as one time measure to overcome the embargo in the light of clause (a) to (c) of Regulation 11.1 of PGME Regulations, 2000. Though, it has been held in ***Faculty Association, Maulana Azad Medical College and Associated Hospital Vs. Union of***

India and Others (supra) that Regulation 11.1 of PGME Regulations does not postulate one time exception but it needs to be kept in perspective that award of Equated Teaching Designation shall be only to those many consultants and specialists in the concerned hospital/institution so as to fulfil the minimum requirement for imparting Post Graduate medical education to the sanctioned annual intake of the respective government institution/hospital and cannot exceed the said number. The ‘teaching’ and ‘non-teaching’ designations have specific connotation, and posts are created considering the specific requirements of the ‘teaching’ and ‘non-teaching faculty’ employed in the hospital/institution. The Equated Teaching Designation cannot be granted oblivious of said requirement as contemplated under proviso to Clause (d) of Regulation 11.1 of PGME Regulations, 2000, failing which the purpose of having ‘teaching’ and ‘non-teaching’ designations would be obscured. In view of aforesaid legal position, the petitioner who belongs to GDMO cadre, cannot be automatically granted Equated Teaching Designation and authorities relied by petitioner are of little assistance to further his case.

24. The judgment passed by the Central Administrative Tribunal even in case of **Dr. Maruti Sinha Vs. Union of India**, OA No.84/2017 on July 17, 2017 as relied by the petitioner is also distinguishable since the applicant therein claimed that she had been teaching PG students and DNB trainees for over 17 year and posts were sought to be filled at teaching faculty at newly established Medical College at Hindu Rao Hospital on contract basis. The Tribunal in the aforesaid case, however, did not advert to assessment of criteria as provided in proviso to Clause (d) of Regulation 11.1 of PGME

Regulations, 2000.

25. In the aforesaid factual and legal position, the equation of post of Assistant Professor/Associate Professor on the basis of PG qualification needs to be considered if there is shortage of Assistant Professor/Associate Professor belonging to the teaching sub-cadre and on the basis of qualifications, experience and related facts pertaining to the respective applicants. Further, the same is a matter of policy subject to Rules, Regulations and policy decision to be taken by the competent authority in this regard. The petitioner, who is posted as GDMO and yet to be confirmed has no vested right to be granted Equated Teaching Designation as Assistant Professor and cannot be deemed to be discriminated, as claimed.

In view of above, the prayer of the petitioner, who is still on probation, for grant of Equated Teaching Designation (Assistant Professor) can only be considered by the competent authority based upon the policy decision, guidelines and provisions of PGME Regulations, 2000 as amended from time to time. Since no decision appears to have been taken even in respect of the earlier applicants, no adverse inference can be drawn on account of non-forwarding of the application for want of final decision and guidelines. Considering the facts and circumstances, the respondents shall forward the case of the petitioner for consideration in accordance with policy decision, as and when taken in this regard, as per applicable Rules and Regulations and keeping in perspective the assessment as per proviso to Clause (d) of Regulation 11.1 of PGME Regulations, 2000.

The order passed by the Tribunal is modified to the aforesaid extent.

Writ petition is accordingly disposed of. Pending application, if any, also stands disposed of.

**(ANOOP KUMAR MENDIRATTA)
JUDGE**

**(V. KAMESWAR RAO)
JUDGE**

DECEMBER 23, 2022/A/sd

