



2024 :DHC:9919-DB



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

Date of decision: 20.12.2024

+ **W.P.(C) 17598/2024 & CM 74876/2024**

ASHOK KUMAR SHARMAPetitioner

Through: Mr.Manoj Joshi, Adv.

versus

UNION OF INDIARespondent

Through: Mr.Nitinjya Chaudhry, Sr.Panel
counsel with Mr.Mohit Joshi,
GP with Mr.Rahul Mourya,
Adv., UOI.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the Order dated 19.11.2024 passed by the Central Administrative Tribunal (in short 'CAT'), Principal Bench, New Delhi in OA no.4180 of 2024 titled *Ashok Kumar Sharma v. Ministry of External Affairs, Through its Secretary*, dismissing the Original Application filed by the petitioner herein.
2. By the Original Application, the petitioner had challenged the Order dated 11.10.2024 passed by the respondent whereby he had been recalled/transferred from the Consulate General of India (in short, 'CGI'), Birgunj to the Headquarters at New Delhi.
3. It was a case of the petitioner that the petitioner joined the



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Ministry of External Affairs in the year 1996 and thereafter, has been transferred to various foreign assignments. He was last transferred to the CGI, Birjung on 21.07.2024. In August/September, 2024, he contracted viral fever which downgraded his health. The panel Doctor at Birjung advised him to return to India as there was a weeklong Dusshera vacation and no specialist Doctor would be available at the said CGI facility during those vacations. Thereafter, the petitioner immediately, informed his office, however, his application was not processed between 08.10.2024 till 10.10.2024. This forced the petitioner to address his grievance to the Head of Chancery, who approved his leave for 45 days from 11.10.2024 to 15.11.2024 for taking proper treatment in India. When he returned to India, the petitioner made a complaint to the Joint Secretary (AD) in the Ministry of External Affairs and also sent the same to the Joint Secretary (AD) and Director, ADP on the callous and unemotional treatment at the hands of the Head of Chancery of CGI, Birjung in lingering his application for coming to India to take treatment. The petitioner claims that in response thereto, the Impugned Order dated 11.10.2024 was passed by the respondent thereby recalling the petitioner to India from his posting at CGI, Birjung.

4. The learned counsel for the petitioner submits that the Impugned Order invoked Clause 8(3) of the Annexure – XII of the Indian Foreign Service (Pay, Leave, Compensatory Allowance and other Conditions of Service) Rules, 1961 (in short, 'ILPS(PLA)'). He



submits that the said Clause empowers the Government to recall the officer only on the ground that the officer has been or may become unable to perform his duties efficiently or fully or where the expenditure that has been or may be incurred on his or his family's medical or hospital treatment, is unduly large. He submits that in the present case, none of these conditions were met inasmuch as, the petitioner was fully capable of discharging his duty and also there was no expenditure that was incurred by the respondent on the treatment of the petitioner.

5. He further submits that there have been other officers, details of whom have been given in paragraph 19 of the writ petition, who though are suffering from ailment, however, have not been recalled and their medical expenses are being borne by the respondent.
6. Issue notice.
7. Notice is accepted by Mr.Nitinjya Chaudhry, learned counsel on behalf of the respondent.
8. He submits that in the present case, the petitioner is suffering from *Liver Cirrhosis* and had not been attending office since 22.08.2024 due to his poor health. He has been suffering not only from the liver disease but also from kidney disease and increase in *Creatinine level* beyond permissible levels. The CGI, Birgunj being a small town, proper medical facilities are not available there. It is for this reason, that taking into account the health of the petitioner, the Order dated 11.10.2024 was passed recalling him to the Headquarters.



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9. We have considered the submissions made by the learned counsels for the parties.
10. In the present case, it is not denied by the petitioner that he is suffering from Liver Cirrhosis and increase in Creatinine level beyond permissible levels, that is, also a kidney disease. Though he was transferred to CGI, Birgunj on 21.07.2024, he has been on leave because of his medical condition since 22.08.2024, that is, almost after a month of his joining. It is also admitted by the petitioner that the Doctors at Birgunj had advised him to travel to India for proper medical treatment. We are informed that Birgunj is a small town in Nepal and proper medical facilities are not available there.
11. In these circumstances, if the respondent has exercised its powers under Clause 8(3) of the abovementioned Rules, we find no infirmity or *mala fide* in the same.
12. The Tribunal has also considered the medical record and the above circumstances in dismissing the Original Application filed by the petitioner. We find no reason to interfere with the same.
13. Accordingly, the petition along with the pending application is dismissed.

NAVIN CHAWLA, J

SHALINDER KAUR, J

DECEMBER 20, 2024
RN/VS