

PETITIONER:
DR. J.N. BANAVALIKAR

Vs.

RESPONDENT:
MUNICIPAL CORPORATION OF DELHI AND ANR.

DATE OF JUDGMENT 21/09/1995

BENCH:
RAY, G.N. (J)
BENCH:
RAY, G.N. (J)
MAJMUDAR S.B. (J)

CITATION:
1996 AIR 326 1995 SCC Supl. (4) 89
JT 1995 (7) 105 1995 SCALE (5)509

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.N. RAY. J.

Leave granted.

Heard learned counsel for the parties.

This appeal is directed against order dated March 21, 1995 passed by the Division Bench of the Delhi High Court in Writ Petition No. 3995 of 1994. The appellant, Dr. Banavalikar is a doctor with specialisation in tuberculosis and chest diseases. The appellant joined the medical service under the Municipal Corporation of Delhi on 28.4.1980. The appellant was posted as Superintendent-cum-Senior Consultant in Tuberculosis in Rajan Babu T.B. Hospital, Delhi (hereinafter referred to as RBTB Hospital) on 31st March, 1989 on retirement of Dr. R.P. Bagchi from Municipal Service. Dr. Banavalikar at that time was holding the post of specialist Grade I (TB and Chest) in the said RBTB Hospital. In the letter posting the appellant as Medical Superintendent, it was specifically mentioned that he would get his own pay scale while holding the charge of Medical Superintendent. The appellant continued as Medical Superintendent of the said RBTB Hospital for about five and half years. The appellant was relieved from the charge of Medical Superintendent of RBTB Hospital. The appellant was intimated that he would continue to work as Senior Chest Specialist in the said hospital as before. The respondent No.2 Dr. Sudhakar Patnaik who was working as Medical Superintendent in I.D. Hospital was given the charge of Medical Superintendent in RBTB Hospital. It may also be indicated here the appellant was given ad hoc promotion to the post of Supertime Grade I (clinical) in the pay scale of Rs. 5900-6700 with effect from 1.6.1994 initially for a period of one year or till such time the post would be filled up on regular basis or till further orders whichever would be earlier. Such ad hoc promotion was given to the appellant while he was holding the dual charge of Medical

Superintendent and Specialist Grade I (TB and Chest) in the said RBTB Hospital.

The appellant challenged the order of his removal from the post of Medical Superintendent of RBTB Hospital by filing a writ petition under Article 226 of the Constitution of India before the Delhi High Court inter alia contending that the post of Medical Superintendent of RBTB Hospital had always been held by the Senior specialist in Tuberculosis and chest diseases and the appellant being the senior most specialist in Tuberculosis and chest diseases of the said hospital, was given the charge of Medical Superintendent with effect from March 31, 1989 on retirement of Dr. Bagchi. He had held the post of Medical Superintendent of RBTB till the impugned order of his removal from the post of Medical Superintendent and appointment of Dr. Patnaik to the said post was made. The appellant contended that in a specialist Hospital like RBTB Hospital, no one should be appointed as Medical Superintendent of the said Hospital who did not possess the specialisation in Tuberculosis and Chest diseases. The appellant contended that he being senior most chest specialist in the said hospital had been appointed to the post of Medical Superintendent of RBTB Hospital and there was no valid reason for his removal from the said post and appointing Dr. Patnaik who had specialisation in Pathology and who at the relevant time was holding the post of Medical Superintendent in the I.D. Hospital. The appellant also contended that the impugned order had resulted in his demotion without any basis. The writ petition, however, on contest, was dismissed by the Division Bench of the Delhi High Court inter alia on the finding that Dr. Patnaik was senior to the appellant in the cadre of specialist Grade I and senior most doctor used to be given the charge of Medical Superintendent and the post of Medical Superintendent had no separate scale of pay. It was also held by the High Court that the appellant had no legal right to continue as Medical Superintendent and if a person senior to him was appointed as Medical Superintendent, the appellant had no occasion to feel aggrieved.

At the hearing of this appeal. Dr. Dhaon the learned Senior counsel appearing for the appellant has contended that the post of Medical Superintendent in a hospital is a distinct post. The Medical Superintendent is in overall charge of the hospital and all the doctors including specialists in different specialities are under his administrative control in the matter of administrative decisions. Even if the post of Medical Superintendent in the hospital under the administration of Delhi Municipal Corporation has no separate scale out the incumbent of the said post is just entitled to his own scale of pay as a specialist with only a nominal special allowance, the Medical Superintendent enjoys a unique position in the administrative set up of the hospital and every one understands that the Medical Superintendent of the Hospital holds a position superior to all other doctors. The status and dignity attached to the post of Medical Superintendent and overall administrative control of the hospital exercised by the Medical Superintendent always give him a position which is superior and is held by common man superior to other doctors. Such superiority of the post emanates from the status, dignity and overall administrative control and the same is not referable to the scale of pay enjoyed by the Medical Superintendent. In this connection, Dr. Dhaon has referred to the decision of this Court in E.P. Rovappa versus State of Tamil Nadu (1974 (4) SCC 3). In the said decision, this court has indicated that the purpose of

declaration of equivalence of a non cadre post with a cadre post for the Indian Administrative Service is to ensure that public services are, in the discharge of their duties, not exposed to the demoralising and depraving effect of personal or political nepotism or victimisation or the vagaries of the political machine. The government must apply its mind to the nature and responsibilities of the functions and duties attached to the non cadre post and determine the equivalence. It has also been held that equal pay will by itself not be decisive of the equation of status and responsibility of the post.

Dr. Dhaon has referred to another decision of this Court in Vice Chancellor, L.N. Mithila University versus Dayanand Jha (1986 (3) SCC 7). While considering the power of the Vice Chancellor to transfer any teacher occupying a post in any department or college maintained by the University to any equivalent post in another department or college maintained by it, it has been indicated in the said judgment that in order to be equivalent, the posts in question must broadly bear the same characteristics and class. The true criterion for equivalence is the status and the nature of responsibility of the duties attached to the posts. The mere circumstance that the two posts are carried on the same scale of pay is not enough. Dr. Dhaon has submitted that RBTB Hospital is not a general hospital but a socialised hospital for the treatment of tuberculosis and chest diseases. For a long time in the past, the Medical Superintendent of the RBTB Hospital was invariably a doctor having specialisation in chest and tuberculosis diseases. As a matter of fact, the appellant, Dr. Banavalikar succeeded Dr. Bagchi as Medical Superintendent on his attaining the age of superannuation. The said Dr. Bagchi was also a senior specialist in tuberculosis and chest diseases. The Medical Superintendent controls the administrative set up of the entire hospital. In a specialised hospital like RBTB hospital, a person with specialised knowledge in the treatment of the patients suffering from tuberculosis and chest diseases who would be admitted in the said specialised hospital, is best suited for the post of Medical Superintendent, so that he would better appreciate the requirement of various departments of the hospital and would be able to coordinate with various departments more effectively and by overall supervision and control of the administration, may tone up the administration to its desired level. It is because of the felt need of a specialist in tuberculosis and chest diseases to man the sensitive post of Medical Superintendent that all along a specialist in tuberculosis and chest diseases had been made Medical Superintendent of the Hospital.

Dr. Dhaon has submitted that the appellant is not inefficient or incompetent to hold the post of Medical Superintendent. As a matter of fact, he had held the said post for about five years and a half. He has also earned promotion to supertime Selection Grade I during the later part of his tenure as Medical Superintendent. Dr. Patnaik is a pathologist and he had been holding the post of Medical Superintendent in I.D. Hospital. He has submitted that it is apparent that the concerned authorities desired to show favour to a person who is admittedly junior to the appellant by making him Medical Superintendent of I.D. Hospital and to accommodate such junior person. Dr. Patnaik had to be shifted from the post of Medical Superintendent of that Hospital to RBTB Hospital and by that process to relieve the appellant from the duties of Medical Superintendent.

Dr. Dhaon has submitted that the High Court has

highlighted the fact that the post of Medical Superintendent has no separate scale and the appellant has not suffered any change in his scale. Dr. Dhaon has submitted that equivalence of scale in two posts is not at all a decisive factor to determine the equivalence in status and responsibility of the posts in question as indicated by this court in the decisions of Rovappa (Supra) and Vice Chancellor of L.N. Mithila University (Supra). Dr. Dhaon has submitted that it does not require any imagination to hold that the post of the Medical Superintendent in the hospital is most prestigious and unique in status and responsibility. That apart, some special privileges like special allowance and entitlement to residential quarter are also available to the incumbent of the post of Medical Superintendent. The appellant has undoubtedly lost not only the special status of Medical Superintendent but also the other perks, which are special to the said post.

Dr. Dhaon has submitted that in the facts of the case, there was no compelling administrative exigency to shift out the appellant from the said post and to bring Dr. Patnaik a pathologist already holding the position of Medical Superintendent in another hospital. Dr. Dhaon has submitted that administrative decision will not only conform to the authority and power to take decision but should also conform to fairness in action. Dr. Dhaon has submitted that the High Court has unfortunately failed to appreciate the lack of fairness and reasonableness in the impugned action of removal of the appellant and being obsessed with the view that the appellant had no inherent right to continue in the said post of Medical Superintendent, has dismissed the writ petition.

Dr. Dhaon has submitted that the appellant is also a very senior specialist in the Health Department of Delhi Municipal Corporation. He has also a legitimate aspiration to get proper recognition from the concerned authorities in view of his long and meritorious service as a specialist. The impugned order can not but hurt his sentiments and feelings. It is quite evident that the status so long being enjoyed by him as Medical Superintendent has been lowered. Even if the authorities are competent to pass the impugned order the court should be satisfied that it was necessary because of a genuine administrative exigency to pass the impugned order. Dr. Dhaon has submitted that the respondent has failed to place materials to show the existence of a genuine administrative exigency to pass the impugned order. He, therefore submits that this appeal should be allowed and the impugned order should be set aside. According to him such order will not create any prejudice to Dr. Patnaik because by virtue of his seniority, he would hold the post of Medical Superintendent in another hospital.

Mrs. Shyamala Pappu, learned senior counsel appearing for the Municipal Corporation of Delhi has disputed the contentions of Dr. Dhaon. She has submitted that the appellant had not been demoted or reduced in rank. The post of Medical Superintendent is not a promotional post. The appellant was therefore never promoted to the said post of Medical Superintendent. The function of Medical Superintendent is purely administrative in nature and the senior most doctor automatically becomes the Medical Superintendent of the concerned hospital and performs the administrative duties attached to that post in addition to regular duties of the speciality to which such doctor is attached. The senior most doctor, who is asked to perform the duties of medical superintendent, continues to get his own pay scale as specialist. Such doctor however gets an

administrative allowance of Rs. 200/- per month for discharging the additional administrative duties of Medical Superintendent. Mrs. Pappu has submitted that there is only one integrated seniority list of specialists Grade I regardless of the fact whether the said specialist is a Medical Superintendent at any point of time. Mrs. Pappu has submitted that the appellant being senior most doctor in RBTB Hospital. When Dr. Bagchi had retired, was posted as Medical Superintendent of RBTB Hospital in his own pay scale which he was drawing as specialist Grade I. The appellant by virtue of his seniority was then not entitled to supertime Scale of specialist Grade I and some time in 1994 he was given such supertime scale on ad hoc basis.

Mrs. Pappu has submitted that the aforesaid fact clearly indicates that the post of Medical Superintendent has never been treated as a superior post in the integrated cadre of specialists Grade I. The appellant being senior most doctor in the hospital was holding the charge of Medical Superintendent besides performing his normal duties as specialist Grade I. Even though he was given the assignment of Medical Superintendent, his position in the integrated seniority list was maintained and he was not given the supertime scale in view of his alleged promotion to a superior post. It was only in 1994 when according to his seniority position. He became entitled to supertime scale, it was given to him on ad hoc basis.

Mrs. Pappu has submitted that a specialist is expected to treat the patients in a better manner by virtue of his expertise and specialised knowledge. The appellant being senior most specialist Grade I in the speciality of tuberculosis and chest diseases, is still holding the post of Head of the department which he had been holding even when Dr. Patnaik has been made Medical Superintendent of the Hospital. Similarly Dr. Patnaik being a specialist in Pathology has been discharging his duties as Pathologist despite the assignment of the duties of Medical Superintendent of the hospital.

Mrs. Pappu has submitted that although an allegation of malafide action by way showing favour to junior doctor by making him Medical Superintendent in I.D. Hospital and consequential shifting of Dr. Patnaik as Medical Superintendent of RBTB Hospital has been made, neither the person responsible for the alleged malafide action in showing favour to a junior doctor nor the said junior doctor was impleaded in the writ petition before the High Court or in the special leave petition before this court. No particular of such malafide action has also been indicated by the appellant. Hence, the contention about malice in fact to show favour to another doctor cannot be permitted to be raised.

Mrs. Pappu has also submitted that in the instant case, there was also no malice in law. There had not been any arbitrary and unreasonable action in bringing Dr. Patnaik as Medical Superintendent of RBTB Hospital. The administration of Delhi Municipal Corporation is required to look to the interest of all the hospitals and clinics under its control and interests of all the doctors under its are also to be looked into. Since the post of Medical Superintendent is not a promotional post and to a senior most specialist in a hospital the assignment of additional duties of Medical services as a routine measure or nominal monthly allowance over and above his regular pay is to be given, on overall consideration of administration of different hospitals Dr. Patnaik was posted in the RBTB Hospital and he being admittedly senior to the appellant was given the charge of

Medical Superintendent. Mrs. Pappu has submitted that the appellant is not permitted to dictate the policy decision of posting of doctors in different hospitals and clinics under the Municipal Corporation of Delhi. Mrs. Pappu has submitted that on previous occasions the specialists in chest diseases happened to be the senior most specialist in RBTB Hospital and as such they had been made Medical Superintendent. As a matter of fact the appellant being senior most specialist in the hospital at the relevant time when Dr. Bagchi had retired, was given the charge of Medical Superintendent even though in the integrated seniority list of specialist Grade I, he was junior to many. Mrs. Pappu has submitted that the perception of Dr. Banavalikar that only a specialist in chest diseases would be made Medical Superintendent in RBTB Hospital is not shared by the concerned authorities and there is also no basis for such contention. She has submitted that the appellant being Head of his department is quite free to guide and control the treatment of the patients and in the matter of treatment, the decision of the specialist and Head of the department prevails and there is no question of interference by the Medical Superintendent.

Mrs. Pappu has submitted that as the post of Medical Superintendent is not a promotional post, the assignment of duties of Medical Superintendent to the appellant when he was senior most specialist Grade I in the said hospital was made as a routine measure. Such assignment however has not conferred any vested right on the appellant to continue as a Medical Superintendent. The High Court has, therefore, rightly rejected the writ petition by holding that the appellant had no vested right to continue as Medical Superintendent. Mrs. Pappu has submitted that appellant can not challenge the policy of posting of different doctors in various hospitals and clinics under the control of the Municipal Corporation. In any event, in the instant case any allegation of malice in fact cannot be raised for the reasons already indicated. There is no material excepting vague and bald assertions as to unreasonable and unjust decision in bringing Dr. Patnaik as Medical Superintendent in RBTB Hospital. Such contention being absolutely without any basis and having been made by the appellant only in an attempt to continue as Medical Superintendent of RBTB Hospital, the High Court has not accepted such contention and in the facts of the case, the same should not be countenanced by this Court. She has therefore, submitted that any interference with the impugned order of the High Court is not warranted. The appeal therefore, should be dismissed.

After giving our anxious consideration to the facts and circumstances of the case, the materials on record and the respective submission of the learned counsel for the parties, it appears to us that there is no specific cadre post as Medical Superintendent of the hospital under the administration of Delhi Municipal Corporation. It is the positive case of the respondent-corporation that senior most specialist Grade I in a hospital is given the additional charge of Medical Superintendent of the Hospital. Such doctor in specialist Grade I performs his regular duties as specialist Grade I and also performs additional administrative duties as Medical Superintendent. Since post of Medical Superintendent is neither a separate cadre post nor the same is a promotional post, the concerned doctor remains in his own scale of pay as Grade I but for discharging additional duties as Medical Superintendent, he gets a special monthly allowance of Rs.200/-. The integrated seniority list in the cadre of specialist Grade I remains

unaffected by the assignment of the responsibilities and duties of Medical Superintendent on the Specialist Grade I. A senior most Specialist Grade I in a hospital even when made Medical Superintendent of that hospital carries his own scale of pay and his seniority position as Specialist Grade I. Precisely for the said reasons, the appellant Banavalikar, by virtue of his being seniormost specialist Grade I or RBTB Hospital when Dr. Bagchi, the then Medical Superintendent of the said hospital had retired, was made Medical Superintendent of the said hospital in 1989 although in the integrated seniority list of specialist Grade I he happened to be junior to many including the respondent No.2 Dr. Patnaik. In the letter appointing him as Medical Superintendent of RBTB Hospital, it was specifically mentioned that he would continue in his own scale of the specialists. It is a fact that until appointment of Dr. Patnaik as Medical Superintendent of RBTB Hospital in 1994, the appellant and the other predecessors in office of the Medical Superintendent of RBTB Hospital were specialists in tuberculosis and chest diseases. But the fact remains that all the said specialists in tuberculosis and chest diseases holding the post of Medical Superintendent of RBTB Hospital happened to be the seniormost doctors in the said Hospital. The appellant has contended that in RBTB Hospital which is not a general Hospital but a special hospital meant for treating patients suffering from tuberculosis and chest diseases, the concerned authorities consciously and intentionally appointed a specialists in tuberculosis and chest diseases as Medical Superintendent of the said hospital because such specialist is best suited for the post of Medical Superintendent in the said hospital. Such contention of the appellant has been seriously disputed by the respondents and according to the Municipal Corporation of Delhi, the function of the Medical Superintendent is purely administrative in nature and as such it is immaterial if the Medical Superintendent of RBTB Hospital does not possess any specialisation in tuberculosis and chest diseases. The contention of the respondent-corporation is that factum that the appellant and his predecessors in office of Medical Superintendent of RBTB Hospital were specialists in tuberculosis and chest diseases, was just a coincidence. The appellant has failed to produce any material to show that there had been any policy decision to select only a specialist in tuberculosis and chest diseases as Medical Superintendent of RBTB Hospital. The perception of the appellant and that of respondent-Corporation as to impelling necessity to select a specialist in tuberculosis and chest diseases as Medical Superintendent of RBTB Hospital are entirely different and in the absence of any rule or policy decision of the concerned authorities, the appellant can not insist on appointment of a specialist in chest diseases as Medical Superintendent of RBTB Hospital by way of implementation of a policy. In the absence of any rule or administrative policy decision, selection of Medical Superintendent of the hospitals under the Corporation remains a prerogative of the Corporation. We may also indicate that efficiency of a doctor in discharging the function of the Medical Superintendent will depend more on his administrative capability than on his skill and specialisation in a particular stream of medical science.

The appellant therefore, cannot be heard to contend that only a specialist in tuberculosis and heart diseases is to be made Medical Superintendent of RBTB Hospital and any departure from such appointment is per se unjust improper and arbitrary thereby warranting interference by this Court.

The High Court in our view, is justified in holding that the appellant had no vested right to continue as Medical Superintendent of the said Hospital simply because he was given the assignment of Medical Superintendent and allowed to hold the said office of Medical Superintendent for a long time. We may however, indicate here that the post of Medical Superintendent in a hospital is unique in status, dignity and responsibility more so when the incumbent not only discharges his functions as a specialist but also performs administrative control of the entire hospital. But as in our view, the appellant cannot claim as a matter of right to hold the office of Medical Superintendent which is not a promotional post or a post in a special cadre and as a specialist admittedly senior to the appellant in the integrated cadre of specialist Grade I has been given the assignment of Medical Superintendent of RBTB Hospital without affecting his position as the Head of the Department in his speciality, the appellant cannot challenge the appointment of Dr. Patnaik as Medical Superintendent in RBTB Hospital and consequential removal of the appellant as Medical Superintendent by contending that such appointment is per se illegal, improper, unjust and arbitrary.

Dr. Dhaon has however contended that even if the administration was competent to appoint Dr. Patnaik as Medical Superintendent by removing the appellant from the said post, the action of the respondent-Corporation must be consistent with reasonableness and fair play and informed by exigency of administration. Merely because the Corporation has authority to appoint Dr. Patnaik and remove the appellant, it will not be permitted to do so on its ipse dixit unconnected with any public purpose or genuine administrative exigency warranting such cause of action.

No exception can be taken to such contention or Dr. Dhaon as an abstract proposition of constitutional safeguard against arbitrary action on the part of Government and public bodies. There is no manner of doubt that administrative decision of government and public bodies will not only be consistent with the competence to take decision but such decision should also conform to fairness in action. Such fairness must be demonstrable with full transparency if a challenge of such action on the vice of arbitrariness or on the ground of mala fide is made. If the administration of a public body or a government takes a decision which can be demonstrated as lacking in reasonableness and fairplay or tainted with mala fide or arbitrariness, such administrative action even if made by a competent authority, offends the pervasive protection under Article 14 of the Constitution of India against mala fide and arbitrariness in the governmental action and action of the public bodies, in our view, the appellant would be entitled to ask for quashing the impugned action of his removal from the post of Medical Superintendent if it can be demonstrated to the satisfaction of the court that such action had been taken without any reasonable basis and not being informed by administrative exigency out merely on the caprice and ipse dixit of the concerned authority or being actuated by malafide intention. In that event, the consideration of the right of the appellant to continue in the post of Medical Superintendent will not be germane because having been lawfully appointed by the competent authority, the appellant cannot be removed by any illegal and improper action offending Article 14 of the Constitution. To be more precise, any action contrary to protection anshrined under Article 14 of the Constitution is per se void and not to be countenanced as existing.

In the facts and circumstances of this appeal, it is

not possible to hold that the impugned action in removing the appellant and appointing Dr. Patnaik is unfair or unjust or irrational or arbitrary or tainted with any malafide intention. The contention of the appellant that in order to accommodate a junior doctor as Medical Superintendent in I.D. Hospital, Dr. Patnaik had been moved out from the said hospital to replace the appellant as Medical Superintendent of RBTB hospital, is not only vague but lacks in particulars forming the foundation of such contention. Further, in the absence of impleadment of the junior doctor who is alleged to have been favoured by the course of action leading to removal of the appellant and the person who had allegedly passed malafide order in order to favour such junior doctor, any contention of malafide action in fact i.e. malice in fact should not countenanced by the Court. This appeal therefore, fails and is dismissed without any order as to costs.

Before we part, we may, however, indicate that the appellant having rendered long and useful service as a specialist Grade I and having been given supertime scale in the cadre of specialist Grade I in recognition of his meritorious service, cannot be blamed for having legitimate aspiration to hold the position of status and dignity, unique in the set up of a hospital, as Medical Superintendent. It is reasonably expected that the concerned authority will be alive to such legitimate aspiration of the appellant and will consider his case of appointment as Medical Superintendent whenever an occasion for such consideration would arise, dispassionately and without being influenced by the result of this appeal.