

**Dated : July, 2009**

**BEFORE THE LOKAYUKTA, DELHI  
Justice Manmohan Sarin**

**Complaint No. C-179/Lok/2009/**

In the matter of :

Dr. Yadu Lal, through Sh. Parveen Kumar, Authorized Representative

Complainant

Vs.

Ms. Kiran Walia, Minister of Health & family Welfare and

Sh. J.P. Singh, Pr. Secretary, Department of Health, GNCTD.

Respondent

**ORDER**

1. This is a complaint preferred by Dr. Yadu Lal, former Medical Superintendent of Sushruta Trauma Centre. He is presently posted as an Orthopaedic Surgeon in Director Health Services (DHS) without any specific assignment. Petitioner/Complainant prays for an inquiry against the respondents, who are described as Public Functionaries. He also seeks quashing and cancellation of the orders transferring him as Orthopaedic Surgeon in DHS and status quo to be maintained till the pendency of investigation into his complaint.

Petitioner alleges that the Public Functionary Respondents have abused their position to cause him undue harm. Respondents were actuated by improper motives of doing undue favour to other persons, who have been given preferred postings, while victimizing him.

2. At the outset, it may be noticed that out of the two Respondents, the Respondent No. 2 being a civil servant is not a Public Functionary within the meaning of Section 2 (m) of the Delhi Lokayukta & Upalokayukta Act 1995, hereinafter referred to as the Act. Hence, the complaint against him is without jurisdiction.

Even against Respondent No. 1 who is a Public Functionary, it has to be prima facie demonstrated by the Petitioner that the averments in the complaint contain actionable "allegation" within the meaning of Section 2 (b) of the Act.

3. Let us examine the petitioner's case as set out in the complaint.

(i) Petitioner claims to have excellent credentials and academic record, having an MBBS & M.S. (Orthopaedics) from Delhi University and a degree in Spinal Surgery from Sheffield, U.K.

(ii) Petitioner claims to be falsely & wrongly blamed for the alleged death of a 5 year old girl, in shuttling between hospitals for treatment. It is alleged that the CT Scan was not working in the Trauma Centre, where petitioner was posted as Medical Superintendent. Petitioner relies on press reports which he claims have unjustly blamed him for the tragedy and shortcomings in the Trauma Centre. The press reports are based on the briefings of the Minister, Respondent No.1 and quote her extensively.

(iii) Sh. Parveen Kumar, Authorized Representative of Dr. Yadu Lal submitted that the petitioner has been unfairly treated by transferring him to an insignificant posting without specific assignment, while his juniors have been placed in senior positions. The transfer in these circumstances was stigmatic. The acts of Respondent Minister would fall within "acting against the norms of integrity expected of Public Functionaries of that class.

It is urged that the Newspaper reports which are based on the briefing of the Minister suffer from factual errors and unfairly blame the petitioner for the tragedy. Petitioner himself had complained about the non functional equipment and deficiency of staff in the hospital for which he is sought to be blamed. He relies on an order dated 24.10.07, passed by the Ministry of Health & Family Welfare, whereby the power of effecting postings & transfers of Senior Administrative Grade Officers of Central health Service had been delegated to Secretary, Health & Family Welfare. The Petitioner's transfer by the Respondent Minister is also assailed as being beyond her competence. It is alleged to be an abuse of power.

4. For comprehending the ambit of the jurisdiction of the Lokayukta in relation to the complaint as filed, it would be necessary to refer to the definition of “allegation” in the Act :-

Section 2 (b) “Allegation” in relation to a Public Functionary means by affirmation that such public functionary in capacity as such (i) has failed to act in accordance with the norms of integrity and conduct which ought to be followed by the Public Functionaries or the class to which he belongs.

(ii) has abused or misused his position to obtain any gain or favour to him self or to any again of favour to himself or to any other person or to cause loss or undue harm or hardship to any other person. (iii) was actuated in the discharge of his functions as such Public Functionary by improper or corrupt motives or personal interest. (iv) Allegation of corruption, favour, nepotism or lack of faithfulness. (v) is or has at any time during the period of his office been in possession of pecuniary resources or property disproportionate to his known sources of income whether such pecuniary resources or property are held by the Public Functionary personally or by any member of his family or by some other person on his behalf.”

5. Let us consider whether the complaint as filed together with the press reports in the light of submissions made constitutes an “allegation” within the ambit of Section 2 (b) of the Lokayukta & Upalokayukta Act 1995. This was the case of the death of a young girl allegedly on account of shuttling between hospitals in West Delhi without treatment being provided. The absence of treatment is stated to be on account of non functional equipment and non availability of trained doctors & specialists. The matter was widely reported in the media. The Trauma Centre where the Petitioner was posted as Medical Superintendent was inspected by the Minister and the Health Authorities. The Petitioner’s grievance emanates from the press reports which allegedly are based on briefings by the Respondent No.1 Minister and which blame him. Further factum of his transfer is claimed to be stigmatic.

As per one of the news report, the Medical Superintendent of Sushruta Trauma Centre, Dr. Yadu Lal i.e the petitioner has been removed after two surprise inspections by the Minister of Health and Officers of the Health Department who found the hospital in a mess. The Health Minister i.e Respondent No. 1 is quoted in another report as having said “ we were shocked to find that the CT Scan machines were not functioning, the lone

neurosurgeon's contract was over and was never renewed, they had no radiologist and shocking still was the fact that their blood bank's licence has expired".

In yet another report, the Respondent No. 1, Minister called it a case of gross negligence. The Minister is quoted as having said " I will look into the case in detail and ensure that the responsibility is fixed. We want to put the system in place to ensure such incidents do not take place."

Lastly, she is quoted as having said "Exigencies sometime demand that we move officers from one place to the other, we have been thinking of changing the existing Medical Superintendent for quite sometime, but we are yet to find the suitable replacement".

The Petitioner may have a legitimate grievance against the press reports blaming him for the short comings and deficiencies in Trauma Centre without giving his version of having complained about deficiency of staff and non functioning of the equipment.

Without apportioning responsibility, one thing is clear that the Trauma Centre was in a sorry state of affairs. There was absence of the radiologist & neurosurgeon. The child had died in shuttling between hospitals without treatment and there was public outcry in the media. In such circumstances, if the authorities and the Minister wish to take corrective actions to streamline administration and petitioner is transferred out, it can not be considered that the Minister has acted against the norms of integrity. Further, no fault can be found with the statement of the Minister expressing her resolve to put the system in place in a case where timely medical aid had not been provided.

The petitioner can not make a grievance out of the same without any punitive action in an inquiry or otherwise having been taken against him. There are no specific allegation of malafides or particulars thereof given. Transfer and postings are an incidence of exigency of service. The exercise of such powers by the authorities may be questioned on grounds which are well settled eg. transfer being contrary to the norms or rules if any laid down or being vitiated by malafides. In this case, as noticed, no specific particulars or allegations of malafide are made. No opinion on the merits of the averments made in the complaint is being expressed lest it may prejudice the petitioner in case he chooses to avail of any other legal remedy. Besides the forum for challenging any administrative action of transfer would not be before the Lokayukta which

is concerned with an inquiry into “allegations” as defined u/s 2 (b) of the Act. The meaning of the expression “norms of integrity” can not be stretched so far as to cover the present facts and circumstances. Besides the order of transfer may be assailed in appropriate forum if so admissible in Law.

**The complaint is dismissed as not maintainable** and falling outside the ambit of “allegation” within the meaning of Section 2 (b) of the Delhi Lokayukta & Upalokayukta Act, 1995.

-sd/-

**Justice Manmohan Sarin**  
**Lokayukta**