

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01236/2019

DATED THIS THE 26TH DAY OF FEBRUARY, 2020

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Amith Kiran Menezes,
Aged 34 years,
Working as Nursing sister
@ ESICMC PGIMSR & MH
S/o John menezes
Saraswathi B 1-Bethel,
No. 409, 4th floor,
Valagerahally, Kengeri 560 059

....Applicant

(By Advocate Ms Akkamahadevi Hiremath)

Vs.

1. Union of India,
Ministry of Labour & Employment,
Government of India, Nirmal Bhavan,
New Delhi 110 011, Represented by its Secretary

2. Employees State Insurance Corporation,
Hqrs. Office, Panchadeep Bhavan,
C.I.G. Marg, New Delhi 110 002,
Represented by its Director General

3. The Additional Commissioner & Regional Director
ESIC, Binnypet, Mysore Road, Bangalore 560 023

4. The Dean,
ESIC & PGIMSR & Model Hospital
Rajajinagar, Bangalore 560 010

5. Deputy Director (Med Admn)
ESIC & PGIMSR & Model Hospital
Rajajinagar, Bangalore 560 010

.....Respondents

(By Shri M.V. Rao, Counsel for the Respondents)

O R D E R (ORAL)
(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. There are settled matters in industrial employment policy all over the world. One is that, in transfer, generally it is the person who has most station seniority will have to be transferred first and not the junior-most. Apparently we had passed an interim order on 15.11.2019, which we quote:

"Sl. No.(S2)2
CVS(MA)
15.11.2019

Heard. Issue notice to the respondents by 'dasti'. The applicant to take out notice and have it served on the respondents within seven days next and produce appropriate evidence for having done so.

Respondents are directed to file a short reply on the question of interim relief raised by the applicant. They can also file detailed reply within four weeks and in that case applicant can file rejoinder within two weeks thereafter.

We have gone through the application filed vide Annexure A1. 25 persons have been transferred from Bangalore and posted to Gulbarga. We also find vide Annexure A3 dated 05.12.2018 that the respondents had issued a transfer policy in respect of Nursing and Paramedical Staff vide Para 2(b)(iii) wherein it is stated as follows:

2(b)(iii) Outstation Rotational transfer shall be considered on the basis of the least number of outstation rotational posting completed during the preceding ten (10) years and seniority in the cadre amongst those officials who have completed three (3) years at the current location including the lower cadre. An official who may have completed three years at the current location and is junior-most but has completed more number of outstation rotational posting during the preceding ten (10) years shall not precede the senior in transfer under this category. However, where number of outstation posting is equal, the junior shall precede in the list for consideration of transfer.

A rotation transfer not completed for any purpose except in public interest shall not count towards number of rotation transfer completed.

Subsequently vide Annexure A2, Circular dated 23.05.2019, the draft transfer policy in respect of Nursing and Paramedical Staff which was published on 29.01.2019 has been taken as final.

The relevant portion of this Transfer Policy is in para 2(b)(i) & 2(b)(v). Certain reference to the liability of transfer for longest stay in the same place considering Karnataka State as a whole is also mentioned vide same policy 2(b)(ii). In the revised policy, the respondents have brought in the concept of junior-most person with the longest stay being liable for transfer leaving out the persons in the seniority list who are senior but probably with longer stay in the place as against the junior most. This is clearly against all the canons of justice and this Tribunal has consistently held that when rotational transfer policy is implemented, normally the persons with the longest stay in the place will be the first to be moved out. This has been reiterated several times and while we acknowledge that the respondents have every right to transfer of the applicants as they are liable for such transfer, at the same time, the logic and rationale for revising the policy within a period of one month appears to be not clear. Further in this case, the transfers have been done in the mid academic year and the applicant has also stated that his son is studying in UKG. There have been any number of instances where this Tribunal has interfered in such matters especially when such transfers have been done during the mid academic year.

Shri.M.V.Rao, learned counsel has opposed the grant of any interim order and would cite Office Order No.70 of 2019 dated 08.11.2019 where similarly placed persons have been transferred from Gulbarga to Bangalore and in the same order we can see that officials from 01 to 31 have been transferred on their own request before the expiry of three years of tenure at the present place of posting and are not entitled for TA/DA and joining time. In the entire list only one official at Sl. No.32 has completed more than three years of tenure at the present place of posting. Therefore, it is obvious that such persons who were earlier transferred to Gulbarga are being brought back to Bangalore before the end of the normal period of three years for such out station posting as mandated by the transfer policy of the respondents and to accommodate these persons, applicants and similarly placed are being moved out.

Therefore, so far as the applicant is concerned, Annexure A1 is stayed till the next date of hearing.

Post on 28.11.2019.”

2. Thereafter we had sought clarification from the respondents on these points we have raised. Apparently it appears that there was a policy in

relation to the normal industrial policy all over the world that senior-most go first and then junior will go. This is in contradistinction with rules relating to retrenchments. In retrenchment, it is the junior who will go first and the senior will remain. Apparently this policy was being followed by the concerned department but then somehow one change was made in the policy to bring in the junior instead of senior. Without any doubt, the law follows certain stream of operation which call for uniformity, multilateral operation and certainty. If the rules of certainty are to be breached, that can only be with significant reasoning and logic behind it. We wanted to know whether there is a logic in their decision, that is why we had written a detailed interim order and called upon the respondents to answer. But then respondents do not seem to have any answer on that but they have just taken a decision to substitute junior with senior. Without any doubt, this is wrong, arbitrary and illegal and against the Constitutional expectations of the employees. In other words, just because one person is an employee of the State, he will not cease to be a citizen. The rights which are available against non-arbitrariness are equally available to him which is protected under the Article 309 to 312 of the Constitution of India. Therefore, the impugned orders are hereby quashed. We direct and issue a mandate that the policy shall be that the senior will go first and then the junior will go. We will allow the respondents to re-arrange the matters according to this mandate in accordance with the law.

3. The OA is allowed to this limited extent as stated above. No order as to costs.

(C.V. SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/01236/2019

Annexure A1	Copy of the Office Order dated 08.11.2019
Annexure A2	Copy of the Circular dated 29.01.2019
Annexure A3	Copy of the Transfer Policy of 2018
Annexure A4	Copy of the common reply dated 03.06.2019 by the Transfer Policy Committee
Annexure A5	Copy of the seniority list dated 23.08.2018
Annexure A6	Copy of the seniority list dated 11.01.2019

Annexures referred in reply statement

Annexure R1	Copy of the Office Order dated 30.08.2018
Annexure R2	Copy of the Office Order dated 08.11.2019
Annexure R3	Copy of the Office Order dated 12.11.2019
Annexure R4	Copy of the Office Order dated 01.08.2019
Annexure R5	Copy of the draft seniority list of nursing sisters as on 31.08.2019
Annexure R6	Copy of the draft seniority list of ANS as on 31.08.2019
Annexure R7	Copy of the communication dated 26.06.1998

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