

**Reserved****CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR****Original Application No.200/00489/2019**Jabalpur, this Thursday, the 05<sup>th</sup> day of March, 2020**HON'BLE MR. NAVIN TANDON, ADMINISTRATIVE MEMBER****HON'BLE MR. RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Smt. Kankan Nanaji, aged about 53 years, W/o Shri Sanjay Nanaji, presently posted as Staff Nurse, at Beedi Worker Dispensary, Waraseoni, Balaghat (M.P.), R/o Ward No.13, Balaghat, District – Balaghat (MP) 481001.

**-Applicant****(By Advocate – Shri N.K. Salunke)****V e r s u s**

1. Union of India through the Secretary, Ministry of Labour & Employment, Shram Shakti Bhawan, Rafi Margh New Delhi – 110006.

2. Director General (Labour Welfare), Ministry of Labour & Employment, Room No. 9-10, Jaisalmer House, Maan Singh Road, New Delhi – 110006.

3. Welfare Commissioner (Headquarter) Labour Welfare Organization, Jaisalmer House, Mansingh Road, New Delhi – 110006.

4. Welfare & Cess Commissioner, Labour Welfare Organization, O/o 7978, Shantikunj, South Civil Lines, Jabalpur (M.P) 482001

**-Respondents****(By Advocate – Shri N.K. Mishra)***(Date of reserving order : 28.02.2020)***ORDER****By Navin Tandon, AM.**

The applicant is aggrieved by her temporary attachment to Central Hospital, Sagar from Beedi Worker Dispensary, Waraseoni.



**2.** The applicant has submitted as under:

**2.1** She was initially appointed as Staff Nurse on 11.09.1990.

**2.2** She is performing her duty with dedication since 2007 when she was posted at Beedi Worker Dispensary, Waraseoni.

**2.3** She was transferred from Waraseoni to Satna in public interest on 29.09.2014. The transfer order was challenged before this Tribunal by way of OA 200/1024/2014. This Tribunal quashed the said transfer order vide order dated 16.04.2015 (Annexure A-2).

**2.4** Vide order dated 24.04.2015, she was temporarily attached to the office of respondent No.4. Again she approached this Tribunal in OA 200/446/2015, where stay was granted.

**2.5** Respondent No.4 issued order dated 23/24.06.2015 (Annexure A-3) without prior approval of respondents Nos.2 and 3 transferring her to Sagar. This Tribunal again set aside the transfer order vide order dated 10.07.2015 (Annexure A-4) in OA 200/446/2015.

**2.6** Respondents have preferred WP No. 12811/2015 in Hon'ble High Court of Madhya Pradesh at Jabalpur against the order of the Tribunal in OA 200/446/2015, which is still pending. She is continuing at Beedi Worker



Dispensary, Waraseoni by order dated 14.09.2015 (Annexure A-5) in W.P. 12811/2015.

**2.7** Now she has been transferred to Central Hospital, Sagar in the garb of temporary attachment vide orders dated 29.05.2019 (Annexure A-1).

**3.** The applicant has prayed for the following relief:

“8.1 That this Hon’ble Tribunal may be pleased to quash order dated 29/05/2019 (Annexure A/1) being illegal and arbitrary.

8.2 That this Tribunal may be pleased to direct respondents to allow applicant to continue on her duty, on her post, at Beedi Worker Dispensary, Waraseoni, Balaghat and duly release her salary.

8.3 That this Hon’ble Tribunal may grant any other relief which this Tribunal deem fit in the aforesaid facts and circumstances, in the interest of justice.”

**4.** This Tribunal granted interim relief on 12.06.2019 by staying the order dated 29.05.2019 (Annexure A-1) and the applicant was allowed to continue at the present place of posting, i.e. Waraseoni till further orders. However, on 30.07.2019 the stay was vacated by this Tribunal.

**5.** The legal battleground then shifted to Hon’ble High Court of Madhya Pradesh. The applicant challenged the said stay vacation dated 30.07.2019 in Hon’ble High Court in MP No. 4214/2019. Hon’ble High Court passed two separate orders on the same day i.e. 29.08.2019 in WP No. 12811/2015 (Annexure A-14) and in M.P. No. 4214/2019 (Annexure A-15).



**5.1** In WP No. 12811/2015, Hon'ble High Court dismissed the petition by Union of India upholding the order dated 10.07.2015 (Annexure A-4) passed by this Tribunal in OA 200/446/2015.

**5.2** In MP 4214/2019, the matter was remitted back to the Tribunal. However, the order of this Tribunal dated 30.07.2019 in this O.A was set aside.

**6.** The applicant is presently continuing in Waraseoni as per orders dated 29.08.2019 (Annexure A-15) in MP No. 4214/2019 of Hon'ble High Court.

**7.** In the intervening period, the applicant filed two Contempt Petitions, which were closed after orders were complied with. Applicant also filed MA 200/811/2019 for amending the Original Application, basically to implead the present occupant of the post of respondent No.4, which has not been allowed.

**8.** The relevant submissions of the respondents, filed in stay vacation application as well as in parawise reply are as under:

**8.1** The applicant is posted at Waraseoni for last 12 years.

**8.2** There are six vacancies in Central Hospital, Sagar, whereas there is none at Waraseoni.



**8.3** There are large number of beneficiaries (around 2 lakh) at Central Hospital, Sagar as compared to Beedi Worker Dispensary, Waraseoni.

**8.4** The impugned attachment order has been issued in administrative exigency.

**9.** Heard the arguments of learned counsel of both the parties and perused the pleadings available on record.

**10.** Learned counsel for the applicant brought our attention to the impugned order dated 29.05.2019 (Annexure A-1) wherein the applicant has been attached at Central Hospital, Sagar. While endorsing a copy to the applicant, it has been written “This attachment order is subject to outcome of your case”. It was explained that this refers to WP No. 12811/2015 filed by the respondents in Hon’ble High Court and was pending at relevant time. The said WP has been dismissed on 29.08.2019 (Annexure A-14). Now that the WP has been dismissed, this attachment order has no legs to stand on.

**11.** Learned counsel for the respondents submitted that the Department is facing acute shortage of Nurse at Central Hospital, Sagar where there are about 2 lakh beneficiaries. The attachment order has been made by an authority competent to do so. The transfer has been done in administrative exigency.



## FINDINGS

**12.** Perusal of the orders of this Tribunal in OA 200/1024/2014 dated 16.04.2015 (Annexure A-2) and OA 200/446/2015 dated 10.07.2015 (Annexure A-4) clearly show that the transfer orders have been quashed because the same have been issued by an authority who was not competent to do so. Hon'ble High Court in its order dated 29.08.2019 in WP 12811/2015 (Annexure A-14) has affirmed this analysis of this Tribunal.

**13.** Learned counsel for the respondents repeatedly averred that now respondent No. 4 is competent to order transfer of staff of the category of applicant within their region.

**14.** Hon'ble Apex Court in a catena of judgments have held that transfer is an incident of service and Courts/Tribunals should not interfere unless the transfer is vitiated by malafide, ordered by an authority not competent to do so or in violation of any statutory rules.

**14.1** Hon'ble Apex Court in **Union of India and others vs. S.L. Abbas**, 1994 SCC (L&S) 230 has held:

*“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the*



*guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.”*

**14.2 In the matters of State of U.P and others vs. Gobardhan Lal, (2004)**

11 SCC 402, Hon’ble Supreme Court has held:



*“7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.*

*8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own*

*decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.*

**9.** *The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understanding of the prevailing circumstances as disclosed from some write ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any Authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities effecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the concerned authorities, the Courts and Tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons, when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the Courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights of parties.”*

**15.** From the above, it is abundantly clear that the respondents are within their rights to transfer anybody from one place to another in administrative



exigency by following due process. Going by the part history in the present case, it is appropriate to emphasise that the transfer order need to be issued by an authority competent to do so.

**16.** The impugned order dated 29.05.2019 (Annexure A-1) has attached the applicant to Central Hospital, Sagar as a temporary measure. The remarks “this attachment order is subject to outcome of your case” does indicate that there was a legal impediment in transferring the applicant. Now that the pending WP 12811/2015 has been decided on 29.08.2019, there is no such impediment. As of now, the applicant is posted at Waraseoni, as the earlier transfer order dated 23/24.06.2015 has been quashed by this Tribunal and Hon’ble High Court has upheld the same.

**17.** The impugned order dated 29.05.2019 itself explains that one Mrs. Sulochana Naidue at Central Hospital, Sagar is going to superannuate on 31.05.2019 and therefore, the applicant is being attached at Sagar. In the pleadings as well as arguments, the respondents have been able to demonstrate the administrative exigency. The administrative authority is definitely within his rights to attach anyone within his jurisdiction to another place in administrative exigency. The labour welfare hospitals are to be run by the respondent department making best use of resources available.



Therefore, we do not find anything illegal or irregular on the part of the respondents in issuing such an order.

**18.** The applicant has expressed a doubt that under the garb of temporary attachment, she is being transferred to Central Hospital, Sagar. We have considered the matter. To allay the fears of the applicant, we impose an upper limit of three months of temporary attachment in this specific order dated 29.05.2019.

**19.** Even at the cost of repetition, we would like to reiterate what has been held by this Tribunal in OA 200/1024/2014 and by Hon'ble High Court in WP 12811/2015 that this order will not come in the way of the Competent Authority to pass a fresh transfer order, in case of administrative exigency.

**20.** The O.A is accordingly disposed of. No costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**

**(Navin Tandon)**  
**Administrative Member**

am/-

