



**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**O.A. No.061/335/2020 Date of decision: 03.6.2020
M.A. No.061/480/2020**

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**

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Nirmala Devi, age 52 years, D/o Late Sh. Anant Ram, R/o 30/2 Camp Road, Talab Tillo, Jammu.

...APPLICANT

BY: SH. M.K. BHARDWAJ, SR. ADVOCATE, ALONG WITH SH. GAGAN KOHLI, ADVOCATE, FOR THE APPLICANT.

VERSUS

1. U.T. of Jammu and Kashmir, through Commissioner/Secretary to Govt. Health Department, Civil Secretariat, Jammu.
2. Director, Health Services, Jammu.

...RESPONDENTS

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. The O.A. was received through e-mail during Covid-19 pandemic and heard through video conferencing with the consent of learned counsel for the applicant.
2. The applicant is before this Court impugning order dated 30.4.2020, whereby she has been transferred from UHC Talab Tilo to CMO Doda.
3. Heard Sh. M.K. Bhardwaj, Sr. Advocate, along with Sh. Gagan Kohli, counsel for the applicant via video conferencing.
4. Learned counsel argued that earlier also applicant suffering from certain ailments was sought to be transferred against



which, she submitted a representation. A Medical Board was constituted to examine her health conditions and on the recommendation dated 26.12.2016 made by the said medical board, she was posted at the present place of posting. Now, she has again been transferred without considering the fact that she is not fit for posting at a hilly area like Doda. Learned counsel submitted that despite the fact that earlier also a medical board was constituted, which opined that she is not fit for transfer to a hilly area, the respondents have passed impugned order, therefore, the same be set aside.

5. Learned counsel clearly stated that pursuant to the impugned transfer order, the applicant has not been relieved so far and she is still working at UHC Talab Tilo, therefore, it is prayed that pending O.A., operation of the impugned order be stayed.
6. Further, learned counsel submitted that applicant also prayed that she be given liberty to submit a representation, against the impugned order, within a period of two days and respondents be directed to decide the same expeditiously and till then operation of the impugned order be stayed.
7. We have given our thoughtful consideration to the entire matter.
8. It is settled law that transfer is an incidence of service and no person has a right to claim that he/she be posted at a particular place for all times to come and Court can interfere only when the transfer is illegal, arbitrary and suffers from malice. In the present case, it is seen from the order dated 26.12.2016 that when the applicant was earlier transferred to



Doda, a Medical Board was constituted and on its recommendations, her transfer was cancelled and she was posted at the present place of posting. By way of the present impugned order, she has again been sought to be transferred to Doda.

9. We find merit in the contention of learned counsel that this time the respondents have passed impugned order without assessing health condition of the applicant as she has already been declared medically unfit to be posted at Doda by the Medical Board. Therefore, it seems that the order has been passed without considering earlier report of the Medical Board.
10. We do observe that the applicant has not annexed the earlier medical report by Medical Board based upon which she was retained at Jammu vide order dated 26.12.2016. We also note that it is not mandated that a Medical Board is to be constituted prior to decision of transfer of an individual employee.
11. We also observe that even as per the submission made in the application, the applicant is continuing at Jammu since May 2012 in view of her own request on medical grounds. Thus, she is continuing at her present place of posting for the last over eight years.
12. However, we note that as per the submission of the applicant's counsel, she is yet to be relieved from her present place of posting.



13. In the wake of the above noted facts, coupled with the statement of the learned counsel for the applicant, we are of the opinion that at the first instance, let the respondents reconsider the case of the applicant by deciding her representation. Therefore, as requested, we permit the applicant to file a representation within three days from today. On receipt of such representation, the competent authority is directed to decide the same in accordance with law and policy, by passing a reasoned and speaking order within ten days. Order so passed be duly communicated to the applicant.

14. Though as per the impugned order, applicant was directed to report for further duties immediately but as per statement of learned counsel for the applicant, she has not yet been relieved and is continuing at the present place of posting.

15. In view of all above, we direct the respondents to maintain status quo till they take a decision on her representation.

16. The O.A. along with M.A. stands disposed in the above terms.

17. Disposal of the O.A. in the above terms will not be construed as an expression of any opinion on the merits of the case. No costs.

(AJANTA DAYALAN)
MEMBER (A)

Date: 03.6.2020.
Place: Chandigarh.

(SANJEEV KAUSHIK)
MEMBER (J)

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