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CAT/7/1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 518/97
T.A. No.

199

15.4.1997

DATE OF DECISION

Dr. (Mrs.) V.K. Bhola

Petitioner

Shri B.S. Oberoi

Advocate for the Petitioner(s)

Versus

DG, ESIC & Ors.

Respondent

Shri G.R. Nayyar

Advocate for the Respondent:

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

The Hon'ble

1. To be referred to the Reporter or not?

yes

2. Whether it needs to be circulated to other Benches of the Tribunal?

X

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

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Central Administrative Tribunal
Principal Bench

O.A. 518/97

New Delhi this the 15th day of April, 1997

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Dr. (Mrs) V.K. Bhola,
W/o Dr. R.P. Bhola,
R/o M-30, Saket,
New Delhi-17. ... Applicant.

By Advocate Shri B.S. Oberoi.

Versus

1. Director General,
Employees State Insurance Corporation,
Panchdeep Bhawan,
Kotla Road,
New Delhi.
2. Dr. (Mrs) Harmohinder,
Director (Medical) Delhi,
E.S.I.C. Hospital,
Basai Darapur Ring Road,
New Delhi.
3. Dr. A.K. Duggal,
ESI Headquarters,
Panchdeep Bhawan,
New Delhi. ... Respondents.

By Advocate Shri G.R. Nayyar.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 being aggrieved by the order passed by the respondents dated the 3rd March, 1997 promoting her to the Senior Administrative Grade (Rs.5900-6700) but posting her to Calcutta as Zonal DMC (East Zone). The applicant has impugned this order transferring her to Calcutta.

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2. The learned counsel for the applicant has submitted that by the impugned order the applicant has been singled out for transferring her to Calcutta after giving her the promotion. In this regard, he has drawn attention to the earlier Office Orders Nos 350/86 dated 4.8.1986, 15/92 dated 11.2.1992 and 396/94 dated 22.8.1994. By the Office Order No. 495/94 dated 25.10.1994, the applicant has been promoted to the Senior Administrative Grade in the scale of Rs.5900-6700 and posted as Deputy Medical Commissioner (East Zone), Calcutta which had been declined by her at that time. The applicant has submitted that the respondents have issued the impugned promotion-cum-transfer order on mala fide grounds which are also discriminatory and against the policy being followed by the respondents in the matter of posting and transfer. Shri B.S. Oberoi, learned counsel, has submitted that normally the respondents do not transfer the senior persons on promotion. Certain allegations have also been made against Respondent 2 who is stated to be opposed to the applicant. Reference has also been made to certain incidents which took place in 1981 and 1986 to show that Respondent 2 had become inimical towards the applicant and while doctors who were junior to the applicant had been made incharge of dispensaries, she was relegated to a lower position in the hospital. The learned counsel has further submitted that taking these instances together, it would amount to mala fide and arbitrariness on the part of the respondents in passing the impugned promotion-cum-transfer order dated 3.3.1997. The learned counsel has also submitted that since there was no time to file a representation, he has filed this application immediately on receipt of the impugned order on 5.3.1997.

3. The respondents have filed a reply and we have also heard Shri G.R. Nayyar, learned counsel. Respondent 2 who is the Director (Medical) with Respondent 1 has also filed an affidavit in which she has submitted that she was not even aware of the applicant being promoted and posted till the order dated 3.3.1997 was received by her. The applicant has filed a rejoinder to the reply filed by the respondents in which she has stated that it is not possible that the impugned transfer order has been passed without the knowledge of Respondent 2 who is the senior most Medical Officer in the ESI Corporation. The respondents have taken a preliminary objection that while the impugned order had been passed on 3.3.1997, the applicant has moved this application in the Tribunal on 5.3.1997 and, therefore, the same is not tenable having regard to the provisions of Section 20 of the Administrative Tribunals Act. Shri Nayyar has also submitted that if the matter is to be taken up on the various instances detailed in the O.A., he may be granted sometime to file a detailed reply as the short reply was only with regard to the interim relief prayed for. He has also relied on the judgement of the Supreme Court in State of Punjab Vs. Joginder Singh Dutt (JT 1993 Suppl. 485). In respect of the various allegations made by the applicant regarding mala fides and arbitrariness which are in any case denied by the respondents, the learned counsel has submitted that the applicant cannot deny that in the past she has been given her promotions on the due dates. He has, therefore, submitted that there is no substance in these allegations. He has further submitted that the applicant has an all India transfer liability and since her joining the service with the/ in 1972, respondents

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she has been posted in ~~Delhi~~ Delhi or near about. Therefore, ~~now~~, he has submitted that this application may be dismissed or the applicant may be directed to file a ~~suitably~~ representation which will be duly considered by the respondents.

4. I have carefully considered the pleadings and the submissions made by the learned counsel for both the parties.

5. It is settled law that normally the Tribunal or the Court should not interfere in the matter of posting and transfer of the employees who are under the administrative control of the respondents. From the materials on record, *prima facie*, it cannot be stated that there has been any *mala fide* action on the part of Respondents 1 and 2 to warrant any interference in the matter at this stage. The applicant has filed this application immediately after the impugned order dated 3.3.1997 has been issued by Respondent 1 without making any representation or request to the respondents to reconsider the matter. However, one relevant fact in favour of the applicant is that even in 1994 when she was promoted and posted to Calcutta by the Office Order No. 495/94 dated 25.7.1994, she had declined to go on transfer and consequently the promotion. This is a matter which the respondents ought to look at sympathetically. Therefore, having regard to the provisions of Section 20(1) of the Administrative Tribunals Act, 1985, I am of the view that this application is premature and accordingly decline to go into the merits of the case at this stage. Accordingly, there will be no necessity for the respondents ^{now} to file a detailed reply/ as the preliminary objection taken by them is allowed.

6. In the above facts and circumstances, the application is dismissed as premature under Section 20(1) of the Administrative Tribunals Act, 1985 leaving it open to the applicant to make a suitable representation to the respondents to reconsider her posting to Calcutta on promotion. If such a representation is made, the respondents shall dispose it of expeditiously taking into account the observations made above. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)

Member(J)

'SRD'