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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1887/94

New Delhi: November 30, 1994

HON'BLE MR.J.P.SHARMA, MEMBER (J),
HON'BLE MR.S.R.ADIGE, MEMBER (A).

Mrs. K.Mendiratta,
w/o Shri K.K.Mendiratta,
r/o 6896, Beriwalan Bagh,
Pul Bangash, Azad Market,
Delhi-110006.Applicant.

By Advocate Shri M.M.Kalra.

VERSUS

1. Govt. of National Capital Territory
of Delhi,
Delhi

(service to be effected through its
Lt. Governor, Delhi).

2. The Directorate of Health Services,
Saraswati Bhawan,
'E' Block, Connaught Place,
New Delhi.

(Service to be effected through
its Director).

By Advocate Shri O.N.Trisal,

JUDGMENT (ORAL)

By Hon'ble Mr.J.P.Sharma, Member (J)

The applicant is working as Auxilliary Nursing Midwife since 1973 (as stated by the respondents in para 4 of the reply) but the applicant's counsel placed before us a Memo which goes to show that she was appointed as ANM since 1970. It appears that in July, 1988, upon the transfer of Mrs. Jasmine, Physiotherapist, the post of Physiotherapist in Dr. N.C.Joshi Memorial Hospital, fell vacant. Vide Order 28.7.88, the applicant was posted in the Physiotherapy Department till such time a suitable substitute could be available. It was further stated in the said order that her services can be utilised elsewhere. It also appears that the applicant is nick named as Kamla Sharma.

2. The grievance of the applicant is that the Govt. of NCT of Delhi had transferred her by order dated 24.9.93 from the present place of posting to report to CMO, West Zone. On the representation of the applicant, the orders were not carried out and was kept pending. By order dated 30.8.94, the applicant had been directed to join and report for duties to CMO, West Zone. The applicant did not represent against this order and filed the present application on 14.9.94 praying for the grant of the relief that the aforesaid order of transfer dated 30.8.94 be quashed.

3. A notice was issued to the respondents who contested the application and filed their reply to which the applicant had also filed rejoinder. No interim relief was granted to the applicant and the prayer was rejected by order dated 20.10.94.

4. We have heard Shri M.M.Kalra, learned counsel for the applicant and Shri O.N.Trisal, learned counsel for the respondents at a considerable length.

5. The contention of the learned counsel for the applicant is that the transfer order is malafide in the sense that the applicant has exercised her right for payment of the salary as Physiotherapist on which she was made to work vide order dated 28.7.88. Shri Kalra argued that there is motive behind this order and the transfer of the applicant is not on administrative ground but is malice in law.

6. Learned counsel for the respondents argued that this is a simple order of transfer and

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that the applicant had already worked till July, 1988 in the Physiotherapy Department. The order of transfer is not punitive in nature. The Tribunals are not to interfere in the matters of transfer if they are passed on the administrative ground and in the exigencies of the services. The law on the point has been laid down by the Hon'ble Supreme Court in the catena of judgments. The learned counsel for the respondents has referred to the case of 'B. Vardha Rao Vs. State of Karnataka' - 1986(4) SCC 131; the recent decisions in the cases of 'Shilpa Bose Vs. Union of India-1991(17) ATC 935 and the case of Union of India Vs. Dr. S.L. Abbas-1993(25) ATC 844 in which the Hon'ble Court has elaborately laid down the circumstances where the High Court and Tribunals can interfere in the order of transfer. It has also been laid down that it is for the employer to post an employee to the place of his choice. The orders of transfer cannot be challenged unless they are arbitrary or malafide. In fact, the applicant was never appointed as Physiotherapist. It is another matter that she was made to discharge the functions on the post as Physiotherapist. The transfer order of the applicant or the withdrawal of the applicant from the post cannot be said malice in law or malice in fact. The respondents are not eager to retain the applicant on the post on which she was never appointed. She had been working as ANM and when Ms. Jasmine vacated the post, she was posted to Physiotherapy Department. The contention of the learned counsel for the applicant is that no substitute of Ms. Jasmine had joined till the time the applicant was transferred from there and as such the applicant cannot be withdrawn from that post.

The applicant has no lien to that post. The withdrawal of the applicant from that post is within the discretion of the authorities. In the order dated 28.7.88, it is specifically stated that the applicant can also be made to work elsewhere. It, therefore, does not come within the purview of malafide exercise of power by the administration.

7. We also find from the record that there have been some complaints filed by the applicant against certain staff members of N.C.Joshi Memorial Hospital. It is for the administration to discipline the staff and to manage in the manner that the indiscipline may be controlled or nipped in the bud. If the applicant has been withdrawn, it is for the administration to see that the discipline is maintained. The Tribunal cannot sit as an appellate authority to judge the decision of the administration.

8. Learned counsel for the applicant also stressed that the departmental enquiry file of the applicant was necessary for perusal to decide the issue regarding the malafide nature of transfer. We are not persuaded by that contention. The disciplinary proceedings, if any, will take their own course. It is the primary concern of the administration to effect the transfers of the employees at the place of their choice. The applicant has been transferred within the zone of Delhi and only the place of posting i.e. N.C.Joshi Memorial Hospital to West zone is being changed and she has to report for duty in the CMO Office.

9. However, the applicant's counsel during

the course of the argument also placed certain humanitarian grounds for consideration but these cannot be taken as the grounds to challenge the order of transfer. We leave the matter to be opened to the applicant to make a representation to the respondents to consider the same but the rejection of the representation or giving favourable decision in favour of the applicant will not give any fresh opportunity to either of the parties.

10. The present application is, therefore, dismissed as devoid of merit, leaving the parties to bear their own costs.

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(S.R. ADIGE)
MEMBER (A)

J. Sharma

(J.P.SHARMA)
MEMBER (J)

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