

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 1408/90.

Date of decision: 25-11-1994

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

1. Umed Singh,
S/o Shri Sant Ram,
Resident of Village Shahbad,
Mohammadpur, Delhi-110045.
 2. Satish Kumar,
son of Shri Bhaget Ram,
F-204, Village & P.O. Mahipalpur,
Delhi-110 037.
 3. Surinder Kumar,
S/o Shri Prabhu Dayal,
151, Rajnagar,
Safdarjang Enclave, Delhi.
 4. Narender Kumar,
S/o Shri Dewan Chand,
Resident of GH 5 & 7, Flat No. I,
Pashim Vihar, Delhi.
 5. Kamal Kumar,
S/o Chottu Ram,
108, Raj Nagar, S.J.H. Staff Quarters,
New Delhi-29.
- .. Applicants

(Mrs.F.K. Gupta, Advocate)

versus:

1. Union of India,
Through the Secretary,
Ministry of Health and Family Welfare,
Nirman Bhawan, New Delhi.
 2. Medical Superintendent,
Safdarjung Hospital,
New Delhi.
 3. Medical Superintendent,
Lady Harding Medical College and
Sucheta Kirplani Hospital,
New Delhi.
- .. Respondents

(By Advocate Shri M.L. Verma)

O_R_D_E_R (ORAL)

[Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial)] 7

This application has been filed under Section
19 of the Administrative Tribunals Act, 1985 by 5

applicants against the Orders dated 11.9.1989 and 27.6.1990 (Annexures A-3 and A-4).

2. The brief facts of the case are that the applicants were appointed as Nursing Attendants at the Safdarjung Hospital vide Order dated 22.12.1987 (Annexure A-1) on a purely ad hoc basis. Their appointment has apparently been continued on the same basis from time to time.

3. The Office Order dated 11.9.1989 had been issued in pursuance of the order by the Ministry of Health and Family Welfare letter No. X11029/22/88, dated 31.7.1989. By this order, it was stated that consequent upon the transfer of 30 bedded drug D- Addiction Centre from Safdarjung Hospital to Smt. Sucheta Kriplani Hospital, New Delhi, the following members of the staff working in Safdarjung Hospital appointed against the posts sanctioned from the Drug-D-Addiction Programme are hereby transferred to Smt. Sucheta Kriplani Hospital, New Delhi, w.e.f. 18.9.1989. The list of members of the staff includes the 5 applicants at S.Nos. 13, 14 and 16-18. After this order was passed, the 5 applicants worked in the drug D- Addiction Centre which was functioning from Smt. Sucheta Kriplani Hospital. Subsequently, the impugned order dated 27.6.1990 was passed transferring the applicants from the Department of Psychiatry under which the drug D- Addiction Centre comes to other Departments of the Hospital.

4. The applicants have sought quashing of the transfer orders dated 11.9.1989 and 27.6.1990. They

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have requested for posting back to the Safdarjung Hospital, New Delhi.

5. The learned counsel for the applicant submits that the applicants had been appointed as Nursing Attendants against the posts sanctioned for the drug D-Addiction Centre. Therefore, they have to be only posted in this Centre which is now attached to Smt. Sucheta Kripalani Hospital, failing which they should be transferred back to the Safdarjung Hospital. Mrs. Gupta also states that since the respondents have admitted in their reply that the work in the Centre had reduced, there was no necessity for issuing the impugned order dated 20.6.1990 whereby the 5 applicants were transferred from the Department of Psychiatry to other departments while placing 4 other persons at S.Nos. 7-10 in the same order to the Department of Psychiatry. She also places reliance on the averment made by the respondents in para 4.2 of their reply that there are separate cadres in the 3 Hospitals for Nursing Attendants and that the applicants had been recruited against the posts sanctioned for the Centre.

6. Shri M.L. Verma, learned counsel for the respondents, has stated that the application needs to be dismissed on the following grounds, namely, -

- (i) The applicants had been appointed as Nursing Attendants on purely ad hoc basis and are continued in the same capacity.
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He relies on the Order dated 11.9.1989 which is in pursuance of the Ministry of Health and Family Welfare Order dated 31.7.1989. From this Order, according to the learned counsel, since the posts sanctioned for the drug D-Addiction Programme, are transferred along-with the incumbents to Smt. Sucheta Kripalani Hospital, which is a policy matter, the applicants cannot question when they are further transferred within the departments of the Hospital. The respondents have stated in their reply that the posts of Nursing Attendants and Safaiwala are transferable from one Ward/Unit/Department to other Wards/Unit/Departments in the Hospital as a matter of routine.

- (ii) Relying also on the various judgments mentioned in para 1 and 2 of the reply and the decisions of the Hon'ble Supreme Court in Shilpi Bose v. State of Bihar [AIR 1991(78)SC 533] and Union of India and Others v. S.L. Abbas [(1993) 25 ATC 844] he submits that since no allegation of malafide or violation of statutory rules have been proved by the applicant, this Tribunal ought not to interfere.

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- (iii) learned counsel for the respondents also relies on the judgment of this Tribunal in A.R. Waje and Others v. Secretary Ministry of Defence, Govt. of India (80m) [1991 (17) ATC 757]. In this case the Tribunal has observed as follows :-

" in a case of this nature where certain posts are transferred from one organisation to another under the same Ministry, and the persons holding the posts are transferred, the question of equation of the post in the organization to which the transfer is made is essentially a matter of policy

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It is on record that a decision was taken by the Government with respect to the fitment of the various categories, and it was also stipulated that the inter se seniority will be determined on the basis of the respective dates of holding the post. Prima facie the decision cannot be considered as arbitrary or unfair."

7. I have carefully considered the arguments of the learned counsel for both the parties as well as the records in the case. At the time when the decision was taken by the Government of India, Ministry of Health and Family Welfare in 1989 to transfer the members of the staff working in the drug D- Addiction Centre from the Safdarjung Hospital to Smt. Sucheta Kripalani Hospital, it was a policy decision for administrative reasons. The applicants also did not question this decision at that time and they had moved alongwith the posts to Smt. Sucheta Kripalani Hospital. As pointed out by this Tribunal in A.R. Waje's case (Supra), the decision to move the Centre along with the posts and the members of the staff had been taken by the same Ministry under which both the Safdarjung Hospital and Smt. Sucheta Kripalani Hospital come. Being a policy matter and having regard to ^a catena of decisions on the issue, it is not for this Tribunal to question such a transfer. Since the posts along with the members of the staff have been transferred to Smt. Sucheta Kripalani Hospital, it is for the competent authority to decide further on the postings of the applicants.

8. The Supreme Court in UOI & Ors. v. S.L. Abbas case (Supra) has held as follows :-

" An order of transfer is an incident of Government service, Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it."

In this case, the applicants have neither alleged any breach of statutory provisions or mala fide in the matter of transfer effected vide orders dated 11.9.1989 and 27.6.1990. In the facts and circumstances of this case, I find that there is no merit in this O.A. Accordingly, this application is dismissed. There will be no order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (Judicial)

25/11/87