

13.01.92

Present : Sh. M.M. Sudan, counsel for the applicant.

Mrs. Avnish Ahlawat, counsel for the respondents.

The only point involved in this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, is the transfer of the applicant, from Guru Teg Bahadur Hospital, Shahdara, where he was posted as Specialist (Radiology), since 27.6.1988, vide order Annexure A-1, where the applicant is stated to have joined w.e.f. 11.8.1988. His grievance is that his present transfer vide Annexure A-4, is on account of malafide reasons, entertained by the present Medical Superintendent, Dr. Bansal. His case further is that a series of incidents had taken place during the past few months, which have resulted in incurring wrath of Dr. Bansal, towards the applicant, which eventually resulted in his transfer, from the present post, in C.G.H.S., Delhi. The details of incidents have been incorporated in paragraph 4.7(a) to (1).

2. After filing of the present O.A., and hearing the learned counsel for the applicant, an ad-interim stay order was granted, restraining the respondents to implement the impugned order (Annexure A-4 till 6.1.1992, further extended till 8th instant and again till today.

3. The applicant's claim has been resisted by the respondents, who have also filed counter collectively, on behalf of the respondents. The allegations of malafides, attributed by the applicant towards the Medical Superintendent of the hospital in question (Respondent

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No.2), have been denied and also other allegations refuted.

4. In the rejoinder filed by the applicant, the contentions raised in the O.A. were broadly reiterated.

5. We have also heard the learned counsel for the parties and have perused the record, so far as it was relevant, for purposes of deciding the present O.A. Needless to say that as the matter involved is concerning transfer, it was thought proper to dispose of at the admission stage itself, which was also subscribed by both the sides.

6. As regards the allegations for malafides, the learned counsel for the applicant, by referring to the relevant paragraphs in the O.A., presses that, prejudice could have been developed at any stage, even at a small incident, as in this case, and because of a few episodes detailed therein, the present Medical Superintendent got annoyed with the applicant, and hence managed his transfer or atleast became instrumental in getting him transferred, from applicant's present place of posting. The learned counsel for the applicant also emphasised that there is no clear denial with regard to the contentions put forth by the applicant, in the aforesaid paragraphs, and the same also is a pointer to the direction that perhaps respondents have nothing to counter-act the same.

7. We have also heard the learned counsel for the respondents who pointed out that Dr. Bansal, the present Medical Superintendent, was posted on his present assignment on 17.10.1991, and most of the matters about which the story of malafides has been woven, relate to the earlier

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period. The learned counsel, by referring to the impugned order dt. 12.12.91 (Anneure A-4), and received by the applicant on 21.12.91, ^{pleaded that} inspite of the same having been issued earlier, the applicant continued on the post held by him, for quite sometime thereafter, which in the event of any malafides being borne by the Medical Superintendent, could not have been possible, as the latter would have seen that applicant is relieved, as early as possible, particularly when the order was to take effect immediately. The learned counsel for the respondents also pointed out that the transfer order has been issued by the Ministry of Health & Family Welfare (Department of Health, Govt. of India), and it is difficult to accept that the Medical Superintendent of the hospital concerned would have manipulated applicant's transfer. He also emphasises that the transfer is an incident of service, more so in the case of the applicant, who has the liability to serve ~~all~~ over India, but inspite of that, the respondents had kept in view the fact that over three years ago, he was posted to his present post, by cancelling his posting from Allahabad to Jaipur, ~~which~~ is also apparent from the fact, that, by his present transfer, he has been kept in Delhi, itself.

8. We have also perused the citations referred to by both the sides, in support of their respective contentions, but ^{the same} need not be dilated upon, as the law on the subject matter of transfers, is ^{quite} clear. The applicant is on transferable post and has only been shifted from his present place of posting, at Shahdra Hospital, to some place in Delhi, itself, and as such, no change of station has practically, taken place, and, therefore,

the hardship, if any, would be the ~~minimal~~. Keeping in view the same and also the facts and circumstances of the case involved, even with regard to the alleged ground of malafides, we find no justification to interfere in the present case. In result, the O.A. is dimissed, and the stay order earlier granted stands vacated. There is also no order as to costs.

S. Oberoi
(T.S. OBEROI)
MEMBER(J)
13.01.1992

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