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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No. 1866/2004

New Delhi this the 16th day of September, 2004

**Hon'ble Mr. S.A. Singh, Member (A)**

Dr. G.P. Sarabhai,  
Flat No.2, Type VI,  
ESI Dispensary, Sarojini Nagar,  
New Delhi

..Applicant

(By Advocate Shri K.C. Mittal, learned counsel with  
Shri Harpreet Singh )

**VERSUS**

1. Employees' State Insurance Corporation,  
Through its Director General,  
Panchdeep Bhawan, Kotla Road,  
New Delhi -11000 2
2. Shri Ajay Dua,  
Director General,  
Employees' State Insurance Corporation,  
Panchdeep Bhawan, Kotla Road,  
New Delhi. 11000 2

..Respondents

(By Advocate Shri Yakesh Anand, learned counsel  
with Ms. Anantmala Potdar )

**O R D E R**

**Hon'ble Mr. S.A. Singh, Member (A)**

The applicant, who is a doctor with the Employees' State Insurance Corporation (for short ESIC), is aggrieved by the impugned order dated 28.5.2004 transferring him as Senior State Medical Commissioner to Kolkata. His main ground for impugning the order is that it is against the transfer policy of the ESIC and Govt. of India. Despite the policy that persons left with two years of service before retirement should not normally be disturbed the applicant who will be retiring in July, 2005 has been transferred because of the malafide action of respondents No 2.

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2. The applicant pleads that the transfer order is the outcome of an unpleasant incident which occurred on 13.3.2003 while he was working as Medical Superintendent, ESIC Hospital, Okhla, concerning the son of the driver of respondent No. 2. This incident led respondent No.2 to frequently transferring the applicant. He was first transferred vide order dated 22.7.2003 from Medical Superintendent, ESIC Hospital, Okhla to the post of Officer-on- Special Duty and few days later vide order dated 25.7.2003 to Chennai as Regional Deputy Medical Commissioner. This order was kept in abeyance by MOS vide an order dated 8.9.2003 because of the assurance given to Rajya Sabha unstarred question No. 1291 that no transfer would be effected till the transfer policy is approved, unless it is completely unavoidable due to administrative reasons

3. Despite the above order of the MOS (who is also the Chairman of the Standing Committee), Respondent No. 2 did not allow the applicant to join duty at ESIC Hospital, Okhla. The applicant made three representations and filed OA 2447/2003, which was subsequently withdrawn, he was finally allowed to join vide order dated 24.10.2003 as MS, ESI Hospital, Rohini. Now, the applicant has once again been transferred by respondent No.2, vide impugned order, to Kolkata. The above sequence of transfers of the applicant show malafide intention of the respondents. Further, the respondent No.2 has not appeared as a party, even though he has been arrayed in his personal capacity, amounts to accepting the above averments of the applicant and on this sole ground the OA should be dismissed.

4. The applicant also pleaded that in the absence of a transfer policy, as it is yet to be finalized and also in view of the assurance given to Rajya Sabha unstarred question, the applicant cannot be transferred. He, therefore, prays for setting aside the impugned order dated 28.5.2004. The applicant relied upon the judgment of the Hon'ble Rajasthan High Court in the case of Dr. (Smt.) Pushpa Mehta Vs. Rajasthan Civil Services Appellate Tribunal and Ors (2000(5) SLR 598) wherein it has been held that ordinarily an employee should not be disturbed from the place of his posting, when that employee is on the verge of his retirement unless there are compelling reasons.

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5. The respondents have vehemently contested the OA stating that there is no malafide reasons for the transfer of the applicant. The applicant has not been able to show any incident other than the trivial case of the son of the driver of respondent 2, which should lead to the conclusion of malafide. The incident concerning the son of the diver of respondent No.2 is too far fetched to show that respondent No.2 is acting in an inimical manner.

6. The facts are that the applicant had been avoiding transfer all through his service under one pretext or the other and has managed to stay in Delhi through political and other pressures. In this regard the respondents have placed on record the details of posting of Delhi based Medical Officers outside Delhi. From the statement the respondents contended that the applicant in his service career has been away from Delhi only from 31.3.1997 to 8.10.1998 when he was posted at Mumbai. During this period, also, he was on leave for 80 days in various spells and was frequently present in Delhi for a variety of other reasons. Furthermore, whenever he had been transferred in the normal course, he represented and managed to have the transfer orders cancelled. In regard to the specific question of transfer of the applicant to Chennai, the respondents stated that as the Standing Committee started strengthening supervision of the medical scheme in the States the Corporation took over 12 model hospitals and it was decided that in 5 major hospitals to post 5 SAG level medical officers and designate them as Senior State Medical Commissioner. One of the posting places was Chennai and the applicant being one of the seniormost doctors, was posted to Chennai. They further stated that the post of Medical Superintendent, ESI Hospital, Okhla was not meant to be filled by doctor of applicant's seniority as the bed strength of the hospitals is only 150 and a medical Officer of the NFS Grade can be posted in Okhla whereas the Hospital at Chennai was of 500 beds. The Standing Committee of the ESI Corporation in its meting dated 23.6.2003 created the post of Senior State Medical Commissioners and State Medical Commissioner to improve the supervision its hospitals as the implementation of the medical scheme in the State and also in view of the decision

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of the Corporation to take over certain hospitals run by the State Governments as ESI Model Hospitals. Even though the applicant was transferred to Chennai on 25.7.2003 he represented on one pretext or the other and did not carry out the transfer. Because of this delay the applicant is now left with less than a one year's service before he retires and is taking advantage of the transfer policy guidelines that persons left with less than 2 years service should not normally be transferred. The respondents mentioned that it becomes difficult for them to keep the applicant in Delhi because there are other doctors posted out of Delhi who want to return after finishing their tenures. With regard to the contention of the applicant that there was no urgent need to transfer him to Kolkata because the work there is being managed by Dr. N.D. Khurana who can continue as has some more time to retire, the respondents contended that Shri Khurana had undergone open heart surgery and had requested for transfer to Delhi. Accordingly, his case was given due consideration.

7. With regard to the question that no transfer should be done unless the transfer policy is finalized, the respondents contended that Respondent No. 2 being the Director General of the ESI Corporation and the appointing authority in respect of all the employees of the ESIC has the inherent power to transfer the employees as per Section 94 (A) of the ESIC Act, 1948 read with regulation 4 of the ESIC (S&CS) Regulation, 1959.

8. Moreover, the applicant has no vested right to remain posted at one place as he holds a transferable post and is liable to be transferred from one place to the other. His contention that persons who are due for retirement within 2 years of retirement should not be disturbed is not a right but only guidelines. Competent authority is empowered to consider such cases on administrative exigencies. The respondents also relied on the decisions of the Hon'ble Supreme Court in the case of UOI & Ors Vs. S.L. Abbas (AIR 1993 SCC 2444) wherein it has been held that who should be transferred and where, is a matter for the competent authority to decide and unless the order is vitiated or is made in violation of any statutory provisions,

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the Court cannot interfere with it. In the case of **Mrs. Shilpi Bose and Ors Vs. State of Bihar and Ors** (AIR 1991 SC 532) wherein it has been held that the Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory rule or on the ground of mala fide. A Govt. servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. On this ground the respondents pray that the OA may be dismissed on these rulings above.

9. I have heard the learned counsel for the parties and gone through the documents on record.

10. The applicant has tried to show that the impugned transfer orders have been issued by respondent No.2 in a malafide manner because of an incident concerning the son of the driver of respondent No.2. He has not been able to show any other incident which would support his contention that Respondent No.2 was inimical towards the applicant. I agree with the contention of respondents that this incident is too trivial to show malafide in the transfer orders issued by respondent No.2. In fact the records clearly show that the applicant has been avoiding transfers and even in the present case he has not acted upon the impugned transfer order despite being shown relieved from his posting at Delhi.

11. In view of the law laid down in the cases cited by the respondents, namely, **UOI & Ors Vs. S.L.Abbas's case (supra)** wherein it has been held that guidelines issued by the Government do not confer upon the employees the legally enforceable right concerning transfer and cannot be interfered with by the Court unless it is vitiated by malafides or is made in violation of statutory provision. And also in the case of **Mrs. Shilpi Bose and Ors's case (( supra))** wherein it has been held that Courts should not interfere with transfer orders which are made in public interest and for administrative reasons unless these ordered in violation of any mandatory/

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statutory rule or on the ground of malafide. In view of the law laid down in the referred judgement the OA is without merit and is dismissed. No costs.

  
( S.A Singh )  
Member (A)

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