

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

....

Registration T.A. NO. 170 of 1987

(Original Suit No. 727 of 1984

of the Court of Munsif West, Allahabad)

Jaswant Singh Plaintiff-Applicant
versus

Union of India and others... Defendants-Respondents

Hon' Mr Justice Kamleshwar Nath, V.C.

Hon' Mr K.J. Raman, Member (A)

(By Hon' Mr Justice K. Nath, V.C.)

The regular Civil Suit described above is for cancellation of an order dated 3-7-1987 paper no. 30 'Ka' of the Civil Court's record, whereby the plaintiff-applicant was transferred from the Tundla Hospital of Northern Railway in Allahabad Division to pokaran Hospital Jodhpur Division. An appeal against the transfer having been dismissed, there is also a prayer for quashing the appellate order dated 6-12-1982 paper no. 14 'Ka'. The plaintiff-applicant Jaswant Singh was working as a Dresser (Class IV post) in the Northern Railway Hospital at Tundla, when he was transferred by an order dated 2-7-82 issued by DRQ, in consequence of which, he was relieved on 3-7-1982 by the Divisional Medical Officer to proceed to join at Jodhpur. The plaintiff-applicant never proceeded to join at Jodhpur and after his departmental appeal had been dismissed on 6.12.1982, he filed this Civil Suit on 12-9-1984.

2. The plaintiff-applicant's case is that the transfer order was passed by the Divisional Personnel Officer, but, the D.P.O. had no jurisdiction to transfer him to a place, outside the Allahabad Division, namely, Jodhpur Division and that the D.M.O. who relieved him by an order dated 19-12-1982 paper no. 15 'Ga' also had no jurisdiction in the matter. The next point raised is that the order is punitive, because it was passed on some complaint for which the plaintiff-applicant was not given an opportunity to show cause.

3. The case originally taken in the written statement was that the plaintiff-applicant was liable to be transferred within or out-side Division as per the exigency of service; that the Divisional Personnel Officer was competent to transfer and the transfer was justified. However, the defendants-respondents have filed supplementary counter affidavit stating there in that the transfer of the plaintiff-applicant from Allahabad Division to Jodhpur Division had the approval of the Chief Medical Officer, who was the competent authority to pass the impugned order of transfer.

4. The admitted position as it stands now is that, the Divisional Personnel Officer was not competent to pass the transfer order while the Chief Medical Officer was. The dispute only is whether the order of transfer of the plaintiff-applicant had the approval of the Chief Medical Officer. In compliance of our order dated 6-7-1990 calling upon the defendants-

respondents to produce the documents in this regard, Shri A.K. Gaur, learned counsel for the respondents filed supplementary counter affidavit along with some Annexures. Annexure-I, is a letter dated 2-7-1982 of the Divisional Personnel Officer to the Divisional Railway Manager, Jodhpur informing that one post of Dresser was being temporarily transferred to Jodhpur Division with immediate effect with the approval of the Chief Medical Officer, Northern Railway, New Delhi. Annexure-II, is the copy of the impugned order dated 2-7-1982, transferring the plaintiff-applicant with immediate effect to the Jodhpur Division issued by the Divisional Personnel Officer. Annexure-III, is the copy of a letter dated 8-9-1982 of the Additional Chief Medical Officer, Northern Railway, Allahabad addressed to the D.P.O. mentioning that the applicant was transferred to Jodhpur Division on administrative grounds as per the advice of the D.R.M. Allahabad and that the post of Dresser had been transferred to Jodhpur Division, temporarily and for that the approval of Chief Medical Officer had been taken on phone on 2-7-1982. The contention of Shri Anand Kumar, learned counsel for the plaintiff-applicant, as also in the supplementary rejoinder, is that the approval of the Chief Medical Officer, according to Annexure-III, was for transfer of the post of Dresser and not for the transfer of Plaintiff-applicant himself and that the approval mentioned in that letter, which is dated 8-9-1982, is an after-thought. In our opinion the contention is not correct. The transfer has to be considered in the light of all the surrounding circumstances. The D.R.M.

according to Annexure-III, had advised transfer of the plaintiff-applicant on administrative grounds. That advice having been accepted, the Dresser's post itself which was held by the plaintiff-applicant was transferred the same day i.e. on 2-7-1982 to Jodhpur Division and the plaintiff-applicant was transferred to that very post by the impugned order. The inference is that the transfer of the post and the transfer of the plaintiff-applicant were contemporaneous and constitute an composite administrative action. The ^{undoubted} approval of C.M.O. to transfer the post of the Dresser reasonably should ~~xxxxxxxxxx~~ [✓] be interpreted to be also his approval for the plaintiff-applicant's transfer to Jodhpur Division on the transferred post.

5. It may be mentioned that the plaintiff-applicant had filed an appeal dated 19-10-1982, paper no. 15 'Ga' to the D.R.M. Allahabad against the transfer order expressing his difficulties in proceeding to a station out-side Allahabad Division, but, he had not mentioned that the transfer order was not passed by a competent authority. That, however, ~~xe~~ may not be very material because a question of competence can always be raised as it concerns the very jurisdiction to pass an order. It is also not necessary as urged by the learned counsel for the plaintiff-applicant that the approval of the C.M.O. should have been in writing.

6. It is quite strange that even ^{though} the plaintiff-applicant's appeal against the order of transfer

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had been dismissed on 6-12-1982, he never proceeded to the station of his new posting, filed the Original Civil Suit almost two years later and has not yet joined, while, no interim order has been passed in his favour. Perhaps he might have been well advised to proceed to join at new station of posting and thereafter, to request the appropriate authorities for posting him back to Allahabad Division at some place closer home. His long absence from his place of posting on the pretext of the order of transfer being without jurisdiction might also entail other consequences concerned with his employment. Be that as it may, we are satisfied that the transfer of the plaintiff-applicant to Jodhpur Division had the approval of the Chief Medical Officer and it does not suffer from the vice of incompetence.

7. The allegation that the transfer was made on the basis of a complaint and is, therefore, punitive, is not made out by any material on record. In the result the plaintiff-applicant has no case and the Suit must fail.

8. For reasons stated above, the Original Civil Suit/T.A. is dismissed. Parties shall bear their costs.

l. P. Chauhan

MEMBER (A)

(sns)

~~November~~ ^{October} 30, 1990.

Allahabad.

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VICE CHAIRMAN