

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 916 of 2002

Allahabad this the 17<sup>th</sup> day of December 2002

Hon'ble Mr.A.K. Bhatnagar, Member (J)

Smt.Jaikali Devi W/o Late Jay Lal Das, R/o House  
No.580/44 A-2, Village Laskar, Central Jail Road,  
Varanasi.

Applicant

By Advocate Shri K.P. Singh

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Assistant Director, Medical Services Headquarter.
3. Commanding Officer, Military Hospital, Varanasi Cantt.
4. Sri U.C. Goswami, Commanding Officer, Military Hospital, Varanasi Cantt.

Respondents

By Advocate Shri Rajeev Sharma

O R D E R

By Hon'ble Mr.A.K. Bhatnagar, Member (J)

This application has been filed by the applicant with a prayer to quash the movement order dated 07.08.2002, which is based on authority letter no.15990/Apr/1/2002/MP 4(Civ)(b) dt.24.04.02 and 10.07.2002.

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2. The facts giving rise to this application are that after the death of the applicant's husband in harness, she was appointed as Female Sweeper at Military Hospital on 05.04.80 at Varanasi. On 17.10.90, she was further appointed as Ward Sahayika and she was working on the said post. Suddenly, one day the applicant was informed that she has been transferred to Military Farm, Faizabad, on surplus ground, although no transfer order was served on her. For clarifying the authenticity the applicant moved an application to the respondents, but no reply or transfer order was given. On 07.08.02, a transfer and movement order was passed with a direction to leave the unit on the same day, but no T.A./D.A. advance was paid. The applicant has also alleged malafide against some officials of the department. The applicant has further stated that she is not a surplus staff as her juniors are still working in the respondents department. The applicant has moved a representation on 07.08.02, which is still pending. Aggrieved by the action of the respondents, the applicant has filed this original application.

3. The respondents have filed their counter-affidavit, in which they have stated that the applicant had the knowledge of the movement order as she herself made a representation on 03.05.02 for T.A./D.A. It is further stated that the applicant is the junior-most Ward Sahayika as no person namely Smt. Sushma is working at the Military Hospital, Varanasi. The respondents have mentioned that applicant's previous transfer order to Danapur, was changed and modified to Faizabad by the transfer order dated 10.07.02.

The applicant will be paid the T.A./D.A. on her joining at Faizabad as there is no provision of T.A./D.A. in advance. Denying the malafide against the officials, the respondents have mentioned that those officials were posted at Military Hospital, Varanasi during the year 1995-96 and they have no concern with the transfer order. The applicant has been adjusted and retained in service inspite of being declared surplus and posted to a place of her choice. The respondents have strongly contended that the transfer is an incident of service and it should not be interfered by the Courts. With the abovementioned facts, the respondents have prayed for dismissal of the O.A. with cost.

4. The applicant has filed the rejoinder affidavit, reiterating the facts mentioned in the O.A. It is contended that Smt. Kushma Devi, whose name was wrongly mentioned as Smt. Sushma Devi in the O.A., is still working in Military Hospital, Varanasi, and is junior to the applicant. She has prayed to quash the order dated 07.08.2002.

5. I have heard the counsel for the parties and perused the record.

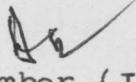
6. Learned counsel for the applicant has challenged the impugned transfer order mainly on the following grounds; that the applicant was not served with the said order and she was ~~neither~~ not juniormost <sup>nor seniormost</sup> Ward Sahayika at Military Hospital, Varanasi. She was not paid any T.A./D.A.

advance for the journey and the transfer order was passed in colourable exercise of power. In the counter-affidavit, the respondents have submitted that the applicant herself had made a representation dt.03.05.02 against the transfer order dated 24.04.02, in which she made a prayer that she may be transferred to any place on the post of Ward Sahayika. The respondents taking sympathetic view changed the place of transfer by posting her to Military Hospital, Faizabad as Ward Sahayika. On the claim of the applicant for T.A./D.A. advance, the respondents have specifically stated that there is no rule in this regard and applicant will be paid all the dues on submitting the bills of actual expenditure to the new place. The applicant has not submitted any rule in support of this claim. It is a well settled position of law that the scope of Tribunal to interfere in the matter of transfer is very limited as Hon'ble Supreme Court has repeatedly held that the Tribunal should not interfere in the day to day functioning of the department. The transfer order can only be interfered on account of malafide. The applicant has also alleged malafide against some officials of the department. In reply, in para-18 of the counter affidavit, it is stated by the respondents that the transfer order has been passed by the Army Headquarters and it has nothing to do with any incident which took place with the applicant as long back as in the year 1995-96 with the co-employees of Military Hospital, Varanasi. In my opinion, the applicant has not

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supported with any document to prove malafide in the issuance of the transfer order. Hence, the applicant is not entitled for any relief.

7. For the above, I find no merit in the O.A., which is dismissed. The interim order passed on 19.08.02, stands vacated. No order as to costs.

  
Member (J)

/M.M./