

11

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.497 of 2011
Cuttack, this the 30th day of September, 2011

Ms.Manasi Mishra

.... Applicant

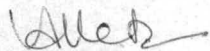
Versus


Union of India & Ors.

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? yes
2. Whether it be circulated to all the Benches of the CAT or not? yes.


(A.K.PATNAIK)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

12

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 497 of 2011

Cuttack, this the ~~30th~~ day of September, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Ms.Manasi Mishra, aged about years, W/o.Late Pramod Kumar Mishra, presently working as Family Welfare Extension Educator, INHS Nivarini, At/Po. INS Chilka, Dist. Khurda.

....Applicant

By legal practitioner: M/s. B.S.Tripathy-I,M.Kar,Counsel.

-Versus-

1. Union of India represented through Director General, Armed Forces Medical Services, Naval Headquarters, New Delhi.
2. Flag Officer Commanding-in-Chief, Headquarters, Eastern Naval Command, Naval Base, Visakhapatnam-530 014.
3. Commanding Officer, INHS Nivarini, At/Po.INS Chilka, Dist. Khurda.
4. A.K.Naik, Surgeon Captain, Commanding Officer, INHS Nivarini, At/Po.INS Chilka, Dist. Khurda.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra,SSC

ORDER

MR.C.R.MOHAPATRA, MEMBER (A):

The order under Annexure-9 dated 28th July, 2011

transferring the Applicant in her present capacity as Family Welfare Extension Educator from INHS Nivarini to Station Health Organization (V), Family Welfare Centre, Visakhapatnam has been challenged by the Applicant in this Original Application. Her contention is that the present order of transfer being opposed to the policy guidelines of the Respondents and being an out come of malice

R

and mala fide of the Respondent Nos.3&4 against whom she has made complaint of sexual harassment, the order of transfer is not sustainable and is liable to be set aside. In this regard the applicant has placed reliance on the decisions of the Hon'ble Apex Court in the cases of **Somesh Tiwari v Union of India and others**, (2009) 2 SCC 592 and **Fujit Kaur v State of Punjab**, (2010)11 SCC 455. This apart, it has been stated that the present transfer to Visakhapatnam would cause lots of family difficulties. Hence he prayed in this OA to quash the order under Annexure-9 and pass any other order/order(s) as would be deemed fit and proper in the circumstances of the case.

2.This matter was listed on 3.8.2011 –on which date this Tribunal while issuing notice to the Respondents to file counter/show cause to the prayer for interim order directed status quo, in so far as the transfer of the applicant shall be maintained and the said order has been continuing till date.

3.The order under Annexure-9 reads as under:

“1. Smt. Manasi Mishra, FWEE of INHS Nivardini is hereby transferred to Station Health Organization (V) against the existing vacancy held at Family Welfare Centre at Visakhapatnam.

2. Since the transfer is in public interest the above individual is entitled for TA/DA and joining Time as per normal rules.

3. It is requested that Smt. Manasi Mishra, FWEE be relieved immediately and directed to report to SHO (V) under intimation to this Headquarters.”

l

4. In the counter filed by the Respondents it has been stated that the applicant holds an All India transfer liability and she joined the post on dated 16-02-1999 on compassionate ground after furnishing necessary undertaking that she will have no objection to go on transfer as the post to which she is appointed is having all India transfer liability. Copy of the undertaking furnished by the Applicant at the time of appointment is filed by the Respondents at Annexure-R/1. In nut shell the case of the Respondents is that considering the necessity, desirability and in the interest of the administration in exigency of public service, she was transferred and posted at Station Health Organization (V), Family Welfare Centre, Visakhapatnam by the competent authority. While denying the allegation attributed by the Applicant behind her order of transfer it has been stated by the Respondents that the applicant had not made allegation of sexual harassment to the authority even including to her superior authority, a lady doctor/Gynaecologist. The matter has been brought to the notice of Headquarter Eastern Naval Command/Respondent No.2. On consideration of the necessity a committee consisting of Two Group A woman officers have been appointed to look^{int} her grievance. However, the said allegation has nothing to do with regard to the transfer of the applicant which has been made in public interest and interest of the

R

administration. Accordingly, Respondents have prayed for dismissal of this OA.

5. We have heard Learned Counsel for both sides and perused the materials placed on record as also gone through the decisions relied on by the Applicant in support of the relief claimed in this OA. The contention of the Applicant's counsel is that the applicant is a Civilian Personnel in Naval Base. The guideline of Civilian Personnel Administration issued by Naval Head quarters does not *inter alia* prescribe any provision for transfer of Civilian Personnel. Besides the above guideline, the Ministry of Defence also issued guidelines dated 21-05-1975 dealing with the transfer and posting of Class III & IV employees of defence wing in which it has been provided that Class III employee should not be transferred except in the contingency indicated therein. The undertaking taken by the Respondents in Annexure-1 cannot be acted upon being contrary to the offer of appointment issued to the applicant in other words there was no mention in the offer of appointment that the post in which the applicant was appointed is having All India Transfer liability. It has been contended that Annexure-2 and 3 are manufactured documents and cannot be relied upon. Further contenton of the applicant's counsel is that the applicant is an obedient and loyal employee of the department but for the reasons best known to the authorities manning

the administration being influenced by the Respondents 2&3 transferred the applicant by making several allegations without any enquiry as held by the Hon'ble Apex Court. Hence Learned Counsel for the Applicant has prayed for the relief claimed in this OA.

On the other hand relying on the averments made in the counter it was contended by the Respondents' Counsel that the applicant was assigned duties of FWEE as per the orders of the competent authority but she failed to perform the duties to the desired extent she was counseled. She has not utilized her skills and did not take enough interest for contribution to Family Welfare cause and community service commensurate to her qualification and pay. A complain was also made by the officer in charge on 11th July, 2011 to the Commanding Officer regarding non performance of family welfare duties as she was not present prior to surgery of a lady patient for permanent sterilization nor did she visit her thereafter. She did not even turn up for disbursing family welfare incentive payment to patient on the day of discharge in spite of being informed repeatedly by the Family ward staff. Despite opportunity and show cause she was not punctual in her duty. Therefore, considering all aspects of the matter the competent authority decided to transfer the applicant which needs no interference by this Tribunal. In this regard the Respondents' Counsel has also relied on the order of the Calcutta

Bench of the Tribunal declining to interfere with an order of transfer of an employee working under the Respondents in **OANo.652 of 2009** filed by **Smt. Dali Dutta v Union of India and others**.

6. We have carefully considered the rival submissions with reference to the pleadings and materials placed in support thereof. We have also gone through the decisions relied on by the Applicant's Counsel vis-à-vis the relevant decisions of the Hon'ble Apex Court laying down and reiterating the principles which the courts must follow while interfering in an order of transfer made in public interest/administrative exigency.

7. At the outset, we may state that in the matter of transfer of a Government servant having All India transfer liability, interference of the Tribunal is no more *res integra*. The Hon'ble Apex Court in the case of **Rajendra Singh v State of UP and others** [reported in 2010 (1) SLR 632 (SC)]; held that "a government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in administrative exigencies from one place to other. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary". In the case of **Kendriya Vidyalaya Sangathan v Damodar Prasad Pandey and others**

L

(reported in [(2007) 2 SCC (L&S) 596] held that "transfer is an incidence of service and who should be transferred and posted where is a matter for administrative authority to decide". In the case of Premlal Panda and another v Union of India and six others (reported in ILR 2009 Orissa 492} held that that Courts and Tribunal should not interfere in the order of transfer made in exigency of administration". Also Law is well settled by now that transfer being an incidence of service; 'who should be transferred and posted where' is a matter for the administrative authority to decide and, unless the order of transfer is shown to be clearly arbitrary or is done by *mala fide* or is made in violation of any operative guidelines or rules governing the transfer, the Court should not ordinarily interfere with an order of transfer of a Government Servant.

8. Law is also well settled by now (vide **S.C.Saxena v UOI and Others-2006 SCC 583**) to the extent that on transfer, one should report at new station and, thereafter only he/she can raise his grievance, if any. Recently the Hon'ble High Court of Orissa in order dated **05-01-2011 in WP (C) No. 17767 of 2010 (Union of India and others v Prakash Chandra Ray and others)** quashed the order of this Tribunal dated 05.09.2010 in OA No. 416 of 2010 holding that guidelines do not have statutory force of law and hence infraction of the guidelines shall not confer jurisdiction on the Court to interfere

with an order of transfer and the Tribunal should not interfere in the order of transfer unless it is in violation of statutory provisions.

9. It is the case of the Applicant that as the transfer of the applicant is by way of punishment, the same is not sustainable as held by the Hon'ble Apex Court in the case of Mr. Somesh Tiwari (Supra) and that the transfer having been done in post haste manner presumption of *mala fide* exercise of power cannot be ruled out, he has relied on the decision of the Hon'ble Apex Court in the case of **Fujit Kaur (surpa)**. We find no substance on the argument that since in the order of appointment it has not been mentioned that she is having all India transfer liability the undertaking given to that effect by the applicant can have no force. In this regard we may state that transfer is not a condition of service but is an incident of service. Therefore, even if it is not mentioned in the order of appointment, the fact that the post in which the applicant has been continuing is having all India transfer liability cannot be ignored nor the applicant can resist such transfer when it has been made in public interest. We also find that the cases of Twiari & Fujit Kaur (supra) cited by Learned Counsel for the Applicant has no bearing in so far as the present transfer of the applicant is concerned. In the case of Mr. Tiwari he was transferred on the basis of an anonymous complaint though on enquiry the complaint was not substantiated. Thereafter the said order of transfer

R

was modified. Hence after perusal of the materials and reasons of such transfer the Hon'ble Apex Court interfered in the matter. Similarly based on the facts and circumstances while interfering in the matter in the case of *Fujit (surpa)* the Hon'ble Apex Court held that when a thing is done in a post haste manner the presumption of *mala fide* exercise cannot be ruled out. In the present case neither the transfer of the applicant was by way of punishment nor has it been done in haste. The applicant has been transferred in public interest. Discharging the duties loyally and faithfully is of paramount consideration. The observation of the Hon'ble Apex Court in paragraph 14 of the decision in the case of **Union of India and others v Janardhan Debanath and another**, 2004 SCC (L&S) 631 is relevant which is quoted herein below:

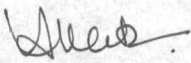
“14. The allegations made against the respondents are of serious nature and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for the Courts to direct one way or

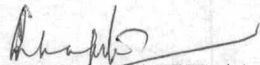
h

the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs." [emphasis supplied]

10. We also find no substance on the other allegations levelled by the applicant being not supported by any unimpeachable material as law is well settled that people are prone to make the allegation of *mala fide*/usually raised by an interested party (as in the instant case) and, therefore, the Tribunal should be careful while quashing the order of transfer on such grounds.

11. In view of the discussions made above, we are not inclined to interfere in the order of transfer especially when it has been made in administrative exigencies. Hence this OA stands dismissed by leaving the parties to bear their own costs.


(A.K. PATNAIK)
Member (Judl.)


(C.R. MOHAPATRA)
Member (Admn.)