

(A5)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Circuit Bench at Lucknow

Registration O.A. No.31 of 1989.(L)

Smt.Kamalavalli Nair Applicant

Versus

Union of India & Others Opposite Parties.

Hon.Justice Kamleshwar Nath, V.C.

Hon. K. Obayya, Member (A)

This application under Section 19 of the Administrative Tribunals Act XIII of 1985 is for cancellation of the order of the applicant's transfer contained in Annexure-A1 dated 6.6.1988 followed by order dated 21.7.88, contained in Annexure-A9 and lastly order dated 25.3.89 contained in Annexure-A20.

2. The applicant was working as Stenographer grade II in the scale of Rs.1400 - 2300 in the Central Command Hospital of Lucknow and had put in more than 22 years of service when on 6.6.88 opposite party No.4, the Senior Registrar, Col. V.Ratan of the Command Hospital passed the impugned order of transfer, Annexure-A1 directing the applicant to take charge of Fatal Section from a Sepoy Clerk who used to perform the function of typing out some papers of the hospital. This order was admittedly improper (vide para 12 of the Counter Affidavit) and although the applicant's representation was rejected by Annexure-A2, the posting order was changed by Annexure-A3/A5 dated 14.6.88 when she was posted as Stenographer and P.A. to the Officer-in-Charge of Surgical Division and Medical Division but was nevertheless asked to take charge from Sepoy Clerk Mahesh Gupta.

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who was placed there temporarily. Her representation, Annexure-A4 dated 14.6.88 that the change of assignment was not within the duties required to be carried out by a P.A. was rejected by Annexure-A5 dated 12.7.88. It appears that the applicant did not comply with the orders of transfer and ultimately on 22.10.88 she was taken out of the Central Command Hospital with the aid of the police of Police Station Cantt. under the orders Annexure-A14 of opposite party No.4.

3. The applicant made representations to the higher authorities and ultimately filed this petition on 8.2.1989 for cancellation of the abovementioned transfer orders.

4. Finally, the Army Headquarters at New Delhi took a decision in the matter of the applicant, communicated by a letter dated 26.12.88 and the applicant was transferred by an order dated 25.3.89, Annexure-A20 to A.M.C. Centre & School, Lucknow with a further direction to vacate the accommodation in her use as Stenographer grade II in the Central Command Hospital, Lucknow.

5. The applicant's case is that all these orders were the result of the mala fides of opposite party No.4, Col. V.Ratan and were calculated to harass and cause hardship to her. The opposite parties' case is that although the initial order of transfer, Annexure-A1 was improper, the subsequent orders were in order; that the allegations of mala fides of opposite party No.4 are not specific and that the last order passed during the pendency of the case does not entail any civil consequences or loss of salary of the applicant and was ordered in the exigency of service.

6. It is not necessary to comment upon the initial orders of transfer contained in Annexure-A1 and Annexures -A3/A5 because they have all been replaced by the final order dated 25.3.89, Annexure.A20. The order of Annexure-A20 is not shown to be the result of mala fides of opposite party No.4 because it was issued under the authority of the Army HQrs. letter dated 26.12.88 and was issued by some officer other than opposite party No.4.

7. The learned counsel for the applicant has tried to show that Stenographer grade II is entitled to be posted with a Brigadier, but that is not correct interpretation of the policy contained in Annexure-A8 relating to authorization for certain categories of stenographers' posts. This authorization mentions that the Maj.General or an officer of equivalent rank is entitled to have a Senior P.A. whereas Brigadier and an officer of equal rank is entitled to a P.A. in the scale of Rs.1400 - 2300, i.e. grade II to which the applicant belonged, whereas a Colonel, or equivalent officer was entitled to have a Stenographer in the pay scale commencing from Rs.1200/- Annexure-C1 is an extract of a similar classification effective from February 1, 1983, ^{and} speaks of the entitlement of Maj. General for a Stenographer of Grade I, ^{of} Brigadier for Stenographer of grade II, and ^{of} a Colonel/Lt. Col. for Stenographer of grade III. These entitlements ^{of} classifications relate to the officers of the Army. They do not relate to the Stenographers themselves. In other words, a Brigadier may be entitled to have a Stenographer grade II, but a Stenographer grade II is not necessarily

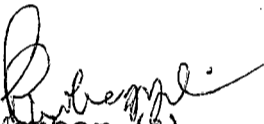
entitled to be posted with a Brigadier.

8. The learned counsel for the applicant says that the applicant having been posted with officers of rank equivalent to Brigadier, will suffer humiliation and harassment if she is posted at the A.M.C. Centre and School. It is not possible to treat such supposed humiliation and harassment to constitute a grievance in the eyes of law in respect of which ~~the~~ relief could be obtained from the Tribunal. It is only an infringement of a legal right which is remedied by the Tribunal. It is well known that a transfer is an incidence of service and unless either mala fides or other grounds of illegality in a transfer are made out, there can be no judicial interference.

9. It may be that on the applicant's posting to the A.M.C. Centre and School, she may have to vacate the accommodation in her use and in that sense she may have to face hardship; but it has not been shown to us that the applicant is entitled to hold an appointment where she may be entitled to an accommodation for all times to come. The best that the applicant can expect is to have a reasonable time at her disposal to vacate the premises. The learned counsel for the applicant says that the applicant has not been paid her salaries. We are of the opinion, that if that be so, the applicant must get her salaries unreservedly upto the period of the passing of the last transfer order, Annexure-A20, because till that stage she could have had some valid grievance, but in respect of the period from 25.3.89, the opposite parties must consider her claim in a fair and reasonable manner and pass suitable orders.

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10. In the result this application fails in so far as the last order of transfer, Annexure - A.20, dated 25.3.1989 is concerned. The applicant shall get her full salary; if not already done, for the period upto 24.3.89; the question of payment of her salary from the period 25.3.89 onwards shall be considered by the competent authority and appropriate orders shall be passed within a period of two months from today. The applicant will also be permitted by the opposite parties to retain the present accommodation for a period of three months after which suitable action may be taken by the opposite parties in that regard. Parties shall bear their own costs.


Member (A)


Vice Chairman

Dated the 28th Sept., 1989.

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