

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No. 217/1986.

Smt. Kunjamma D'Cruz,
Flat No. 55, 'B' Building,
6th floor, Jagjivanram
Hospital, Quarters, Maratha
Mandir Marg, Bombay Central,
Bombay. 400 008.

... Applicant

V/s.

The General Manager,
Western Railway,
Headquarters Office,
Churchgate Building,
Churchgate,
Bombay. 400 020.

... Respondent

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil,
Hon'ble Member(A), Shri J.G.Rajadhyaksha

JUDGMENT:-

(Per J.G.Rajadhyaksha, Member (A)) Dated: 31.3.1987

The short and perhaps the only point to be decided in this application is whether the Transfer of applicant from the post of mid-wife, Jagjivanram Hospital, Bombay Central, Bombay to the post of mid-wife in the Health Unit at Okha is mala fide in any way.

2. The applicant submitted this application on 24.7.1986 inter alia asking for interim relief by way of injunction against her transfer and substantive relief in the shape of quashing the said order.

3. Interim Relief was granted as it was urged on behalf of the applicant, that she had not yet been relieved from her post. This stay had been operative up to the 31st of July, 1986. On 30.7.1986 Respondents claimed that the applicant had already been relieved

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of her post. Both the sides were heard and it transpired that there was reason to believe that the applicant had in fact been relieved. The question of continuing the 'status quo' order did not, therefore, arise and the stay that was granted on 24.7.1986 was vacated. Yet she had not joined her duties till now.

4. The history in brief is that the applicant is a mid-wife, has been serving in the Jagjivanram Hospital at Bombay Central, Bombay since 1958. On 16.7.1986 she was served with an order of transfer sending her to Okha in the same capacity in the place of Mrs.Yadav who was transferred to Baroda at her own request. It is the contention of the applicant that this transfer arose out of an incident in which she and her son were involved against Dr.Kapoor, the Ophthalmologist at the same Jagjivanram Hospital. She went with her son to ask for a certificate about the son's eye-sight which was required for College Admission. Dr.Kapoor refused to give it as he had been approached outside the regular hours meant for examination and issue of such certificates. Thereupon words were exchanged and it is alleged that Dr.Kapoor manhandled both the applicant and her son and used abusive language. This was followed by an incident in which the applicant's son and Dr.Kapoor's sons also hurled abuses at each other and perhaps exchanged blows. When the applicant went to lodge a complaint with the Police, she found that Dr.Kapoor and his sons were already there and their complaint was recorded, Dr.Kapoor had also complained of assault, insult and intimidation by applicant and her son. Her son was

arrested and enlarged on bail. She had, therefore, to go and file a non-cognizable complaint in the Court of a Magistrate. These matters are still pending in the Criminal Courts. It is applicant's contention that she had been transferred mala fide, in order to harass her, in order that her family life may be disrupted and that her son's education should also be disturbed. She refused to accept that the transfer is in administrative interest. She, therefore, prayed that the transfer order be set aside.

5. We have heard Mr. Philipose the Learned Advocate for the applicant extensively. He has also submitted written arguments. We have heard Mr. R.C. Master the Learned Counsel for the Respondents who has briefly pointed out that admittedly the transfer of the applicant was because of an incident that occurred but he has also strongly contended that the applicant herself was responsible for this and considering all aspects and circumstances the application deserves to be dismissed.

6. The Respondents have naturally resisted the application saying that applicant was in a transferable post; transfer was incidental to her service and that the transfer though admittedly ordered as a sequel to the incident alleged by the applicant was in administrative interest to achieve smooth functioning of the Gynaecological Department of the Hospital and not for the purposes of harassing the applicant.

7. In the application as many as 23 grounds have been urged. It would be convenient to group some of them together for understanding the contention of the applicant.

Grounds (I) to (VIII) briefly suggest that
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though a class.III employee of a Railway is not to be transferred out of any station as a matter of policy she had been so transferred although it was not in the interest of administration to transfer her, that there is nothing adverse in her record to warrant her transfer, there are vacant posts of 'mid-wife' in the Jagjivanram Hospital and she can be appointed to one of those; that she had not asked for a transfer nor has the transfer been necessitated by a restructuring of the cadre or the upgradation of the post.

Ground(IX) contains an allegation that this transfer would disturb her son's education.

Ground (X) suggests that the transfer order is vague as urged in ground (I) inasmuch as she does not know where to report for duty.

Grounds XI, XII, XIII, XIV, XV and XVI all aim at bringing out the position that applicant is serving under Mrs.Kapoor the wife of Dr.R.K.Kapoor, the Ophthalmologist, who is in charge of the Gynaecological department and has been so transferred on the plea that the administration wants smoother working. No action has been taken against Dr.Kapoor who is involved in the same incident. The administration including the Chief Office Superintendent have denied knowledge of the incidents, and had relied upon allegations and complaints against the applicant thus exhibiting prejudice against her.

Ground (XVII) therefore is that the transfer is vexacious, mala fide, motivated and meant to harass the applicant and coerce her into settling the criminal

cases that she has filed against Dr.Kapoor and his sons. Ground (XVIII) is an expansion of the same. Ground (XIX) is that the transfer is punitive in nature inasmuch as Okha is remote and applicant will be deprived of the facilities she had at Bombay for educating her children. She would also face a language problem. She will lose City Compensatory Allowance and thus her real wages will be reduced as indicated in Ground (XIX) and (XX). In ground (XX) she states the fact that her husband is carrying on some business in Bombay and that would be disrupted because he may have no residential accommodation which to day he is having as a result of the quarters allotted to the applicant. Grounds (XXII)and (XXIII) are repetitions of same or similar grounds.

8. Now turning to the contentions of Mr.Philipose we find that he strongly urges that there is no cause whatsoever to transfer the applicant outside the Jagjivanram Hospital, Bombay. The Respondents on the other hand say that admittedly the transfer is a result of the bad blood created between Dr.Kapoor and the applicant. They further contend that Mrs.Kapoor who is in charge of the Gynaecological department has to take work from the mid-wife (applicant) and the administration apprehends that there will be problems in the smooth working of that department. As for the vagueness of the order which is alleged by Mr.Philipose, Mr.Master points out that the order clearly suggests that the applicant has to go to the post of mid-wife in Okha and on her asking for travel facilities they would also be extended to her. He therefore, contends that there is no vagueness about it and the applicant

very well knows where she must go. As for the interest of administration which Mr.Philipose says will not be served, the Respondents' contention is that smooth working of a particular department in the Hospital must be ensured and that is the interest of administration. Next for Mr.Philipose's contentions that there are vacancies in the Jagjivanram Hospital and that applicant can be retained in those, and nor is the transfer occasioned by restructuring of the cadre and other similar contentions, Mr.Master points out in reply that the Railway Board has decided that there should be no posts of 'mid-wife' after the present incumbents vacate them and they have to be replaced by 'staff nurses', and therefore, there is no force in the contention that there is a vacancy ~~for~~ her.

9. As for the contentions that the transfer is mala fide, meant to harass the applicant, meant to disrupt her family life and her son's education, Mr.Master points out that transfer is incidental to the service which the applicant accepted. If in the process of being transferred, the applicant feels harassed the administration can do nothing about it. But the intention is definitely not to harass her or to cause disruption of her family life or disturbance in her son's education.

10. Mr.Master fairly stated that in order to demonstrate the bona fides of the administration they would be willing to consider accommodating the applicant in the post of a mid-wife in any other unit in Greater Bombay if she is willing to go there.

11. She would, of course, have to vacate her present quarters as soon as alternate accommodation is offered to her, in her new posting. There also the Respondents would be willing to let her continue in the present quarters until the end of the academic year.

12. As for the contention that the applicant will be losing her real wages by losing C.C.A. and allied grounds, ~~xxxx~~ Mr.Master's contention is that these are the natural consequences of a valid transfer order. However, as stated above he has also made the above statements to show the bona fides of the administration.

13. Having heard both the sides we come to the conclusion that the applicant is indeed in a transferable post and she had come to Bombay on transfer from Kota at her own request though this was as far back as in 1958. It is not possible for the administration to keep applicant in the same post permanently. Further, we find that the Gynaecological department is indeed a sensitive department and the Medical Officer in charge namely Dr.Mrs.Kapoor and the mid-wife working with her in that department or ward, namely the applicant will have to face each others frequently in the course of their duties. We have no doubts that because of the incident between Dr.Kapoor and the applicant the degree of cooperation that Dr.Mrs.Kapoor can expect will suffer adversely and it is bound to tell on the efficient working of the department. We therefore, find that the transfer of applicant ordered by the administration is indeed in the interest of administration.

14. The Respondents' stand that they are not concerned with what the husband of the applicant ^{is} doing in Bombay nor are they responsible to accommodate him in Bombay is indeed correct and we cannot find fault with

it. The one question before us is whether the applicant has been properly transferred as decided by the administration. Apart from the fact as is clarified by Mr.Master the Learned Advocate for the Respondents that we find that her continuing in the same hospital is not conducive to smooth & efficient working and the Respondents are justified in holding that she has to be transferred from there.

15. We need not go into the question of the ~~Cases~~ Criminal ~~files~~ that have been filed by the applicant against Dr.Kapoor and vice versa. The appropriate Courts will decide what should be done in those matters, but we cannot but observe that the incident occurred mainly because the applicant and her son insisted upon issue of a certificate outside the appropriate working hours and then started an ~~altercation~~ ^{altercation}. We are also not concerned with other allegations of the applicant that administration tried to build up a case against her by alleging that the dog maintained by her was a nuisance to her neighbours. These are extraneous matters, but getting back to the question of applicant's transfer we find that there is something more than meets the eye. But in that aspect the contribution of the applicant also cannot be ignored.

16. Considering all aspects, we feel that the applicant has not made out a case that her transfer is mala fide and meant to harass her or ordered with a view to causing her a great deal of inconvenience and embarrassment. She is a Government Servant in a transferable job and she will have to face this

situation some time or the other in her service.

In the circumstances therefore, we feel that the applicant has no case and the application deserves to be rejected totally.

17. In the peculiar circumstances of the case however, while rejecting the application, and in view of the statements made by Mr.Master, the learned Counsel for Respondents, we would also like to add a few directions for the Respondents to follow. These are that

(a) The Respondents should consider absorbing the applicant in a suitable vacancy in any unit of Western Railway in Greater Bombay other than the Jagjivanram Hospital. (b) The Respondents may not disturb the applicant from her possession and occupation of the quarters allotted to her until the end of the academic year, namely up to the end of April, 1987, and the Respondents would give alternative residential accommodation to the applicant. (c) The applicant's services may not be treated as 'broken' because of her absence from duty as a result of this incident and during the pendency of the application. (d) As for the absence, the Respondents may decide the question suitably according to the rules i.e. by granting her leave that might be due, half pay leave if permissible according to rules, and if no such leave stands to her credit then grant her extraordinary leave without pay, so that the continuity of her service is not disrupted.

18. We would normally have felt inclined to award costs to the Respondents in a case like this. *But in* the peculiar circumstances of the case we make no orders as to costs. The Parties may bear their own

costs.

19. The result therefore is that the application is rejected, with directions as mentioned above. No orders as to costs.

B.C.Gadgil

(B.C.GADGIL)
VICE - CHAIRMAN

(B.C. RAJADHYAKSHA)
(B.C. RAJADHYAKSHA)
MEMBER(A).