

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

(8)

O.A. NO: 76/93.

199

~~XXXXXX~~

DATE OF DECISION

21/6/3

R. M. P.
Miss
Mrs. E.V. Chacko.

Petitioner

Mr. Y.R. Singh.

Advocate for the Petitioners

Versus

B.A.R.C., Bombay & others.

Respondent

Mr. J.G. Sawant,

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~XX~~

The Hon'ble Mrs. Lakshmi Swaminathan, Member (Judicial).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (Judl.)

mbm*

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

O.A.76/93.

miss

Mrs. E.V. Chacko

.. Applicant.

Vs.

1. B.A.R.C., Bombay &
3 Others.

.. Respondents.

Coram : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

Appearances:

1. Mr.Y.R. Singh, Counsel
for the applicant.
2. Mr.J.G. Sawant, Counsel
for the Respondents.

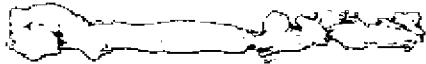
JUDGMENT :

Dated : 2nd. November 1993

I Per : Hon'ble Smt. Lakshmi Swaminathan, Member (Judl.)

The applicant who is a Nurse in Gr.C at the B.A.R.C. Hospital, Bombay has challenged the validity of the transfer order dtd. January, 1, 1993. By this order Respondent No.4, the Sister-incharge had transferred the applicant, from B.A.R.C. Hospital to O.Y.C. Dispensary with effect from 1.2.1993. The applicant had made a representation on 21.1.1993 to the Head, Medical Dn. of B.A.R.C. Hospital opposing the transfer, interalia, on the grounds that the transfer was not in accordance with the Rules and existing practice. The learned Counsel for the applicant has submitted that the existing practice from 1984 was to call for volunteers for such transfers and after holding an interview the selected candidates were transferred to the dispensaries. The learned Counsel has ^{also} impugned the transfer order on the grounds

10



of malafides and that by this transfer the applicant will be made to work below Respondent No.3 who is junior to the applicant.

2. The learned Counsel for the Respondents referred to the appointment letter dtd. 17/19-9-1975 whereby the applicant was appointed as Nurse (Hospital) in the B.A.R.C. Hospital. One of the conditions of the appointment was that she is posted to work in the Bhabha Atomic Research Centre, Bombay but the ~~appointment carries with it the liability to serve in any part of India or any of the constituent units of the Department of Atomic Energy.~~ The O.Y.C. Dispensary to which the applicant was transferred by the impugned order is one of the dispensaries of the Department. After 1988, the entire cadre of Nurses has common seniority and there is no separate cadre for Hospital and Dispensary Nurses. It is seen, therefore, that after 1988, since the distinction between the Nurses in Dispensaries and Hospital Nurses has been removed, they can be shifted to various dispensaries from the Hospital or interchanged from one dispensary to another by the Department on the exigencies of service. Prior to 1988 the Recruitment of Nurses in the department was to Hospital Nurses and the posts of dispensary Nurses were promotional posts to be filled in from Hospital Nurses. It also appears that after March, 1988 to August, 1993, 44 transfers of Nurses had taken place. The Respondents have stated in their reply that these transfers had not been made on the basis of any circular calling for volunteers for posting to any particular dispensary or only for O.Y.C. Dispensary.

SP

3. The learned Counsel for the applicant has strongly opposed these contentions, relying upon the circular dtd. August 6, 1993 by which an opportunity had been given to the nursing staff who was desirous of working in the CHSS dispensary to submit the applications to Respondent No. 4 for consideration. Therefore, it was contended that since the practice of calling for volunteers to work in the dispensary had not been followed in this case, the transfer was vitiated. It was also alleged that Respondent No. 4 had issued the transfer order malafide because the applicant alongwith 81 other staff members had addressed a representation dtd. 1.7.1992 to the Secretary, B.A.R.C. Employee's Union making the grievance against the proposal of the Respondents to change the shift timings. It is alleged that since the applicant had signed the representation at Sr.No.1, Respondent No. 4 had been annoyed and hence the Respondent Nos.1 and 2, in issuing the transfer order were motivated by malafides.

4. The Supreme Court in a recent case (Union of India Vs. S.L. Abbas 1993(2)SLR page 585) has held "Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject". The Supreme Court also observed that the "Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer".

B/

5. In another case (Mrs. Shilpi Bose Vs. State of Bihar AIR 1991 S.C. Page 532) the Supreme Court held that "The Courts should not interfere with transfer orders which are made in public interest and for administrative reasons, unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights". It was held that "even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead affected party should approach the higher authorities in the Department". The Court also observed that "if the courts, continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest". See also decision of the Supreme Court in Gujarat Electricity Board & Another Vs. Atmaram Sungomal Poshani (1989 10 ATC Page 396) where the same position with regard to transfer orders has been pointed out by the Supreme Court.

6. By the very terms and conditions of the ^{applicant} appointment order ~~she~~ was liable to be transferred to any of the constituent units of the Department. As held by the Supreme Court in the various cases, referred to above, the Government servant holding a transferable post has no vested right to remain posted at one place or the other and the transfer order issued by the competent authority does not violate any of her legal

rights.

7. In this case on behalf of the applicant it was also argued that if she is posted in the dispensary, she will have to work below her junior, Respondent No.3. This argument cannot be accepted as otherwise it would mean that she cannot be transferred out of the B.A.R.C. hospital. Besides, after the merger of the cadres of hospital and dispensary Nurses in 1988, this is no longer relevant.

8. Another argument advanced by the learned Counsel for the applicant was that the interview results for promotion of Nurses held in 1985/1986 had not been declared so far. The respondents have placed on record the Minutes of ^{the} meeting of the Selection Committee held in January 29, 1985 (and not 1986 as stated by the applicant) by which it is seen that though the applicant was considered, she was not found fit for promotion as Nurse Grade II. It is also seen from the records of the case, including the applicant's letter dated 1.4.1986 and the Atomic Energy Workers' and Staff Union letter dtd. 1.7.1986, that reference has been made to the non declaration of the results of the interview held in 1985 and not 1986. Therefore, this argument also cannot be accepted.

9. After hearing the learned Counsels for the parties and having considered all the facts and circumstances, I am satisfied that the applicant has failed to establish any malafide on the part of the respondents in issuing the impugned transfer order. There is also no violation of any statutory rule in issuing the transfer order.

10. For the above reasons I do not find any legal infirmity in the impugned transfer order. I, therefore, feel that the transfer order has been validly passed by the competent authority keeping in view the administrative exigencies, and there is no reason to interfere with the same.

11. The application is, therefore, dismissed.
There will be no order as to the costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (Judl.)

Corrected as per Tribunals order dated
13/12/93.

H.

Gauwad
9/11/93
S.O.

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No. 142/93 in

Original Application No. 76/93

Miss E.V. Chacko

... Applicant.

V/s.

B.A.R.C. Bombay and 3 others.

... Respondents.

CORAM: Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Tribunal's order on Review Petition (No. 142/93)

Dated: 18th Jan 1994

This review petition is filed against the order and judgement dated 2.11.93 in OA 76/93, rejecting the application challenging the validity of the transfer order. I have carefully gone through the grounds raised in the review petition. No new grounds have been raised in the petition which could not have been raised at the time when the applicant was heard in support of the original application. The applicants grievance is that the order dated 2.11.93 is erroneous but that ground cannot be a ground for a review of the order. The application for review is therefore dismissed.

Lakshmi Swaminathan
(Lakshmi Swaminathan)
Member (J)

NS