

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 291/00252/2014

ORDER RESERVED ON : 02.02.2015

DATE OF ORDER : 5.02.2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Dr. Keerti Nathuram wife of Shri Rajesh Nathuram, aged about 43 years, resident of 431, B-8, Ashiyana, Village Rangoli, Bhiwadi posted at ESIC Hospital, Bhiwadi (Rajasthan)

... Applicant

(By Advocate: Mr. Ashwini Jain)

Versus

1. Union of India through Secretary Ministry of Labour and Employment, ESI Corporation Hospital, Panchdeep Bhawan, CIG Road, New Delhi.
2. Director, Employees State Insurance Corporation, Panchdeep Bhawan, CIG Road, New Delhi.
3. Medical Superintendent, ESIC Hospital, Plot No. 1202, RIICO Industrial Area, Phase III, Sector 29, Bhiwadi, Rajasthan.
4. Dr. Ramesh Kumar, SAG Medical Superintendent, ESIC Hospital, Bhiwadi, Rajasthan.

... Respondents

(By Advocate: Mr. T.P. Sharma – Respondent nos. 1 to 3
Mr. S.S. Ola – Respondent No. 4)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

This is the second round of litigation. Earlier the applicant has filed an OA No. 291/00180/2014 being aggrieved by her transfer order dated 18.03.2014 from Bhiwadi to Manesar, Haryana. In pursuance of the directions of the Tribunal, the respondents have considered the representation of the applicant and vide order dated 17.04.2014 (Annexure

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A/1) have rejected the representation. The applicant has filed the present OA being aggrieved by the rejection of her representation and also being aggrieved by her transfer order dated 18.03.2014.

2. The brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant filed a complaint against the respondent no. 4 alleging sexual harassment. To look into the complaint filed by the applicant, a so-called committee was constituted in terms of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. That when nothing happened towards the complaint made by her, the applicant send reminders to the respondents and ultimately she lodged a FIR at PS Bhiwadi against respondent no. 4. That within a span of one month of lodging the FIR, the applicant was transferred from ESIC Hospital Bhiwadi to ESIC Hospital Manesar, Haryana.

3. The transfer order of the applicant dated 18.03.2014 is at Annexure A/7. In this transfer order, it has been mentioned that the transfer has been ordered in public interest.

4. While rejecting the representation of the applicant vide order dated 17.04.2014 (Annexure A/1), the respondents have stated that with a view to maintain congenial environment at work place, the applicant was transferred to the nearest

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possible hospital that is ESIC Manesar and the transfer order was not issued to punish her.

5. The applicant has stated that the respondent no. 4 due to complaint made by the applicant was annoyed and threatened to disturb the personal as well as professional life of the applicant. The Committee has acted as hands in glove to respondent no. 4. The applicant also made complaint to the National Women Commission. That it is a case of sexual harassment at workplace for which the respondent department ought to have undertaken the necessary steps. However, they have failed to do so which resulted into harassment of the applicant with no fault of her part. That the transfer order has been shown in public interest. However, basically it is a punishment order. The representation of the applicant has not been considered in objective manner. Therefore, the transfer order dated 18.03.2014 and the order of rejection of his representation dated 17.04.2014 (Annexure A/1) are arbitrary orders and, therefore, needs to be quashed and set aside. The transfer order is also against the transfer policy of the Department dated 30.01.2014 (Annexure A/13). That the applicant is still on probation, therefore, she could not have been transferred. The Committee constituted by the respondents to look into the complaint of sexual harassment filed by the applicant was in violation of provisions of the Act, 2013. There was no member of the NGO in the Committee, therefore, no action could have been taken on the basis of the recommendations of such Committee. Thus the transfer order

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of the applicant dated 18.03.2014 and the rejection order of representation of the applicant dated 17.04.2014 (Annexure A/1) be quashed and set aside.

6. The official as well as private respondent no. 4 have filed their reply. The official respondents in their reply have stated that the applicant has all India transfer liability. The applicant has been accommodated to a nearby hospital at Manesar. The representation submitted by the applicant has been duly considered by the respondents and it has been rejected vide order dated 17.04.2014 to maintain congenial environment at workplace. That the applicant filed a complaint against respondent no. 4 for sexual harassment at work place. The complaint was examined by the Committee constituted for the purpose. The Committee submitted the report on 27.01.2014. The Committee came to the conclusion that charge of harassment of Dr. Kirti Borkar and other female employees of the hospital were not proved and that Dr. Kirti Borkar's complaint dated 23.05.2013 against Dr. Ramesh Kumar "lacks credibility". Dr. Ramesh Kumar has also been transferred and the applicant has also been transferred in the interest of public service.

7: The respondents have submitted that the Committee constituted to look into the allegation of sexual harassment at workplace made several negative observations against Dr. Kirti Borkar such as threatening and mis-behaving with the committee members, trying to dictate the disciplinary process

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to be followed, not only verbally but also through various letters.

8. The applicant could not prove the allegations made against Dr. Ramesh Kumar. Therefore, the allegation of the applicant that the respondent department is trying to save Dr. Ramesh Kumar is absolutely incorrect. Otherwise also, the applicant has also filed a FIR against Dr. Ramesh Kumar. The law will take its own course. There is no illegality or infirmity in the transfer order dated 18.03.2014 or in the order of rejection of the representation of the applicant dated 17.04.2014 (Annexure A/1). Hence the OA has no merit and it should be dismissed with costs.

9. The respondent no. 4 in his written reply has stated that the complaint against respondent no. 4 was not proved. That the respondent no. 4 has also been transferred. The applicant has also an all India transfer liability. That the applicant has been trying to spoil the discipline in the hospital and causing libel and trying to defame respondent no. 4. That the applicant has misused the process of law and on this ground alone, the OA be dismissed.

10. Heard the learned counsel for the parties, perused the documents on record and the case law as referred to by the applicant.

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11. The learned counsel for the applicant reiterated the facts as mentioned in the OA. He drew my attention to the transfer policy dated 30.01.2014 (Annexure A/13). According to this transfer policy, the minimum tenure of posting of every CLS Officer in a particular post shall generally not be less than two years, provided there is no serious complaint of misconduct against the officer or it is an expedient in the public interest to transfer her/him before completion of the minimum tenure. According to the learned counsel for the applicant, the applicant's tenure of two years at Bhiwadi has not been completed, therefore, her transfer to Manesar is against the transfer policy of the respondents. He also argued that there is no public interest involved in the transfer of the applicant. There is only one post of Pathologist at Bhiwadi and after her transfer that post has been lying vacant. The patients are suffering because there is no facility of pathologist. That the Committee constituted to look into the complaint of sexual harassment was not properly constituted as it had no NGO. The transfer of the applicant is based on mala fides and, therefore, the transfer order needs to be quashed and set aside. In support of his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **Ramadhar Pandey vs. State of U.P. & Others, 1993 (3) SLJ 124 (SC): JT 1993 (4) SC 72**, in which the Hon'ble Supreme Court has held that order required to be issued in public interest not valid if it does not recite the public interest. He also referred to the judgment of the Hon'ble High Court of Orissa at Cuttack in the case of **Shantilata Pattanaik vs.**

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Swaminathan Research Foundation (WP (c) No. 13120 of 2009 decided on 31.07.2012). In this judgment, the Hon'ble High Court came to the conclusion that transfer order as well as termination order was not bona fide. The Hon'ble High Court held that it was not at all expected from an employer and this will break down the moral courage of other women employees in the institution, which will ultimately culminate in unsatisfactory performance. Therefore, the learned counsel for the applicant submitted that the transfer order dated 18.03.2014 and the order dated 17.04.2014 (Annexure A/1) be quashed and set aside.

12. On the other hand, the learned counsel for the respondents reiterated the facts as stated in their written reply and submitted that the transfer is an incidence of service and to maintain congenial environment at the workplace, the applicant was transferred. This transfer order is not by way of punishment. Seniority, pay & other allowances are not been adversely affected. Therefore, the OA has no merit and it should be dismissed.

13. Having heard the learned counsel for the parties, perused the documents on record and after perusal of the case law, as referred to by the learned counsel for the applicant, I am of the opinion that the applicant has failed to make out any case for interference by this Tribunal. It is admitted that applicant has made a complaint of sexual harassment at work place against respondent no. 4 that is Dr. Ramesh Kumar. The

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Committee was constituted to inquire into the complaint. The Committee submitted its report. A copy of the report is at Annexure R-4/6. The Committee came to the conclusion that Dr. Kirti Borkar's complaint with Annexures appears to lack credibility. Moreover, the Committee has observed that she also threatened and mis-behaved with the committee members and tried to dictate the disciplinary process to be followed, not only verbally but through various letters forwarded from ESIC Hospital Bhiwadi and Headquarters. The deriant behaviour of Dr. Kirti Borkar was witnessed by the Committee in Bhiwadi on first meeting itself held on 20.10.2013 wherein Dr. Kirti Borkar threatened the committee members for further approaching the Women Commission as she alleged to have no confidence in the committee. There appears to be an overall unhealthy work environment in ESIC Hospital, Bhiwadi due to soft administration. That there is an insubordinate and defiant work culture. Dr. Ramesh Kumar that is private respondent no. 4 was not found guilty. However, official respondents informed that Dr. Ramesh Kumar has also been transferred from Bhiwadi and Dr. Kirti Borkar, applicant, has also been transferred at nearby place that i.e Manesar. I do not find any infirmity/illegality in the transfer order of the applicant dated 18.03.2013. Similarly the order of the respondent dated 17.04.2014 on the representation of the applicant is a speaking and reasoned order. They have clearly mentioned in Para No. 4 of the order that with a view to maintain congenial environment at work place, which in this case is a hospital, both the officers were transferred from ESIC Hospital Bhiwadi,

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even though charges against Dr. Ramesh Kumar were not proven. Being Group A cadre officer, both the Medical Officers are liable to be transferred anywhere in India and she has been transferred to the nearest possible hospital i.e. ESIC Hospital Manesar and the transfer order was not issued to punish her. Therefore, I do not find any illegality/infirmity in this order either. The transfer is an incidence of service.

14. I have carefully perused the judgment passed by the Hon'ble Supreme Court in the case of **Ramadhar Pandey vs. State of U.P. & Others, 1993 (3) SLJ 124 (SC): JT 1993 (4) SC 72**, and I am of the view that under the facts & circumstances of the present case, the ratio decided by the Hon'ble Supreme Court is not applicable. The respondents have categorically stated in their order dated 17.04.2014 that in order to maintain congenial environment, the applicant has been transferred. From the perusal of the report of the Committee, it appears that work environment at Bhiwadi Hospital was unhealthy. That Dr. Kirti Borkar, applicant, threatened the committee members and mis-behaved with the committee members. In my opinion, it is a good ground to transfer the applicant from Bhiwadi. Every employee has a duty to maintain a basic discipline in office/ at work place.

15. I have also carefully perused the judgment of the Hon'ble High Court of Orissa at Cuttack in the case of **Shantilata Pattanaik vs. Swaminathan Research Foundation (WP (c) No. 13120 of 2009 decided on 31.07.2012)** and I am

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of the opinion that the ratio decided by the Hon'ble High Court is not applicable under the facts & circumstances of the present OA. In the judgment, the Hon'ble High Court came to the conclusion that the entire episode show how the opposite party no. 2 has acted illegally and contrary to the guidelines and suggestions laid down in the Vishaka's case and, therefore, the Hon'ble High Court came to the conclusion that the termination and the transfer of petitioner is liable to be quashed and set aside but in the present OA, there is no violation the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Even if one member of NGO was not nominated, it would not make the proceeding of the entire committee illegal. Even if for the sake of arguments it is accepted that the constitution of the inquiry committee was not as per the provisions of the Act, 2013, even then the transfer of the applicant cannot be said to be illegal. The action of the respondents in transferring the applicant is neither illegal nor arbitrary. Therefore, the ratio as decided in the case of **Shantilata Pattanaik vs. Swaminathan Research Foundation (WP (c) No. 13120 of 2009 decided on 31.07.2012)** would not be applicable in the present OA.

16. Moreover, the Hon'ble Supreme Court in catena of judgments has held that transfer is an incidence of service and it should not be interfered with unless it is made in violation of any act or rule (statutory provisions) or order is made on mala fide or issued by the incompetent authority. In the present

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case, it is not disputed that the order of transfer of the applicant has been issued by the competent authority. It is not in violation of any statutory rule or act and there is no mala fide alleged against the competent authority who has approved the transfer order.

17. However, even if for the sake of arguments it is accepted that the transfer of the applicant has been made in violation of the guidelines even then the applicant is not entitled for any relief at this stage. The Hon'ble Supreme Court in Para Nos. 7 & 8 of its judgment in the case of State of U.P. vs. Gobardhan Lal, 2005 SCC (L&S) 55, has held that

"7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in the transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

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"8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

Hon'ble Supreme Court has clearly held that unless the order of transfer is shown to be an outcome of mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the Officer or servant concerned to approach their higher authorities for redress but cannot have the consequences of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest as if found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. In this particular case, the learned counsel for the applicant has not alleged any mala fide or have stated that the transfer order has been issued in violation of any statutory provision/ Act or Rule or have been

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issued by an authority not competent to do so. Therefore, there is no reason to interfere with this transfer order. The learned counsel for the applicant also did not mention whether the transfer of the applicant would affect in any manner career prospects of the applicant such as seniority, scale of pay and secured emoluments. Thus I do not find any reason to interfere with the transfer order of the applicant.

18. Moreover the Hon'ble Supreme Court has also held that Tribunals/Courts should not act as Appellate Authorities over the transfer order. The Courts/ Tribunals cannot substitute their own decision in the matter of transfer. Hon'ble Supreme Court in Para No. 7 & 8 of its judgment in the case of Union of India vs. S.L. Abbas , 1993 (4) SCC 357, has held that-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it....."

"8.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....."

19. The Hon'ble Supreme Court in the case of **Rajendra Singh & Others vs. State of Uttar Pradesh & Others**, 2010 (1) SCC (L&S) 503: 2009(15) SCC 178 in Para No. 8 has 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 the administrative exigencies from one place to

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the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

20. Now the other ground taken by the learned counsel for the applicant is that the transfer order is not issued in public interest. I am of the opinion that the applicant cannot be judge in his own case. Therefore, he cannot allege that there is no public interest involved in the transfer order of the applicant. From the perusal of the transfer order, it is clear that the transfer has been issued in the interest of the administration. The Hon'ble Supreme Court in the case of **Punjab National Bank & Others vs. All India New Bank of India Employees Federation and others**, 1997 (10) SCC 627, has held in Para 15 that "the management is in the best position to judge how to distribute its employees between the different branches". Similarly, the Hon'ble Supreme Court in the case of **M.P. & Others vs. S.S. Kourav & Others**, AIR 1995 SC 1056, has held that "the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper place". Under the facts and circumstances of the present OA, the ratio decided by the Hon'ble Supreme Court in these judgments is squarely

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applicable in the present OA. Therefore, the Tribunal cannot interfere in the transfer order issued by the respondents.

21. On the basis of the above discussion, I am of the view that the applicant has failed to make out any case for the interference by this Tribunal. Consequently the OA being devoid of merit is dismissed with no order as to costs.


(ANIL KUMAR)
MEMBER (A)

Abdul