

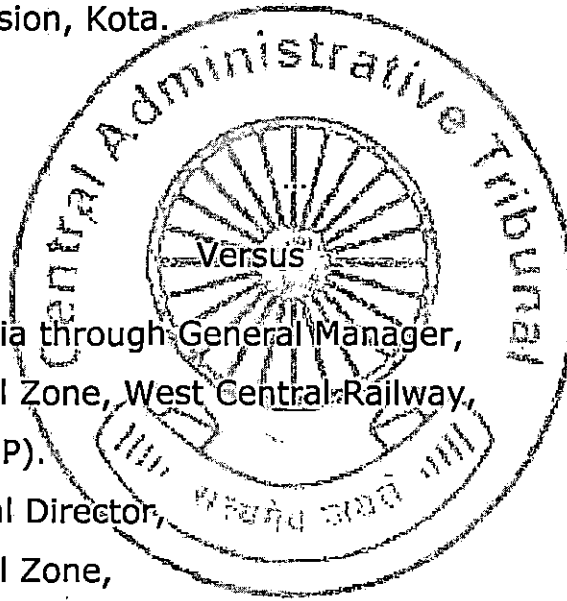
**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

O.A.No.291/00676/2016

Orders pronounced on: 7.10.2016
(Orders reserved on: 5.10.2016)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)**

Smt. Munni Burman (Manorama Burman) wife of Shri Murlidharan, aged about 58 years, resident of House No. 1, Road No. 7, Krishna Nagar, Near Bajrang Nagar, Kota and presently working as Chief Matron, Under Chief Medical Superintendent, Railway Hospital, Kota, West Central Railway, Kota Division, Kota.



Applicant

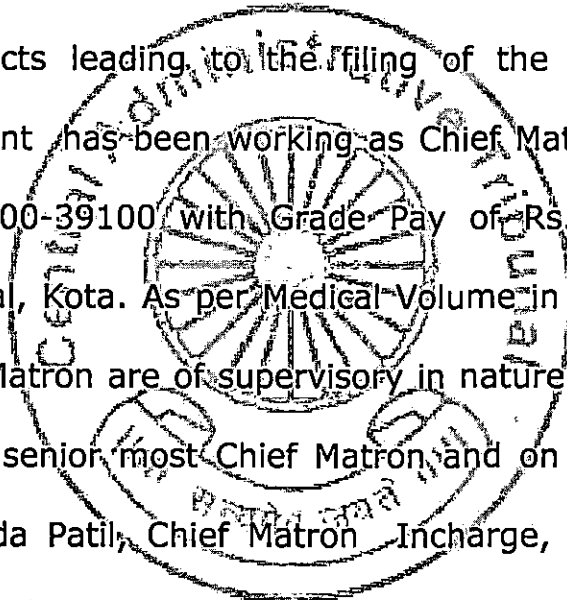
1. Union of India through General Manager,
West Central Zone, West Central Railway,
Jabalpur (M.P).
2. Chief Medical Director,
West Central Zone,
West Central Railway, Jabalpur (M.P).
3. Additional Divisional Railway Manager,
West Central Railway, Kota Division, Kota.
4. Chief Medical Superintendent,
Railway Hospital, Kota,
West Central Railway, Kota Division, Kota.
5. Dr. Anil Upadhyaya, Additional Chief Medical Superintendent,
Railway Hospital, Kota, West Central Railway, Kota Division, Kota.
6. Dr. Manisha Sharma, Divisional Medical Officer, Railway Hospital,
Kota, West Central Railway, Kota Division, Kota.

Respondents

Present: Mr. C.B. Sharma, Advocate, for the applicant.
Mr. Anupam Agarwal, Advocate, for Respondents No.1-4.
None for R.No.5.

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

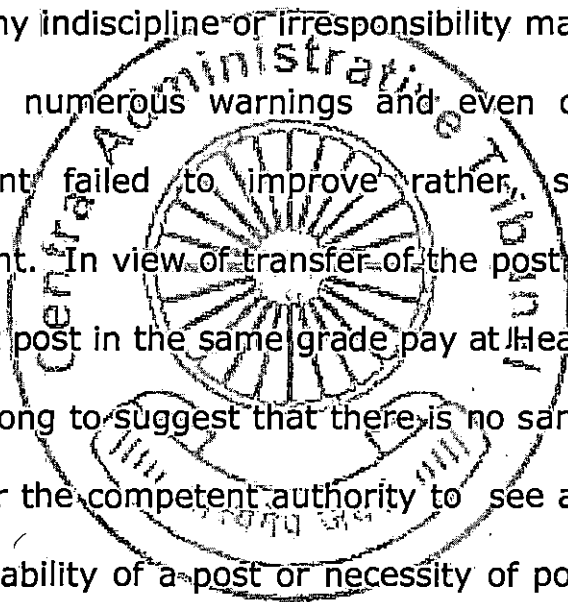
1. The applicant has filed this O.A., inter-alia, for issuance of direction to the official respondents to allow her to continue as Chief Matron, under Chief Medical Superintendent, Railway Hospital, Kota as she has been transferred to Shamgarh, till retirement i.e. 30.6.2018 by quashing the orders dated 19.8.2016, 22.7.2016 and 22.7.2016, A-1, A-4 and A-5 respectively.
2. The facts leading to the filing of the case are that the applicant has been working as Chief Matron in pay band of Rs.15600-39100 with Grade Pay of Rs.5400/- in Railway Hospital, Kota. As per Medical Volume in Railways, duties of Chief Matron are of supervisory in nature. She submits that she is senior most Chief Matron and on promotion of Smt. Sunanda Patil, Chief Matron Incharge, Divisional Hospital, Kota, she was given charge of Chief Matron Incharge on 8.1.2016. Prior thereto she was assigned duties for purchase of Vegetables and Food Commodities, which she claims to be against duty list of the post. She has been given dual duties of Chief Matron and Chief Matron Incharge to harass her. There was some complaint regarding purchase of sub-standard vegetables / fruits and the applicant was warned to be careful in future (Annexure A-10). The applicant took a stand that it is not her job to purchase fruits / vegetables and she cannot verify quality of the same and job may be



assigned to some competent person. She also submitted documents to indicate that there was no complaint by anybody including suppliers or end users against quality of stuff. Some other complaints were also filed against the applicant and a charge memo dated 27.5.2016 was issued to the applicant alleging that she was late in attending to her duties to which she filed a representation dated 4.5.2016. A fact finding enquiry was conducted and applicant was visited with penalty of stoppage of one set of PTO. However, Dr. Manisha Sharma, according to applicant, was annoyed and alleged in letter dated 13.4.2016 that the applicant misbehaved with her. Another Memo dated 24.6.2016 was served upon her regarding mis-behaviour with Dr. Manisha Sharma. However, she has been transferred to Shamgarh Health Centre ignoring the fact that applicant is due to retire within two years of service. One post has been transferred to Shamgarh with approval of respondent no.3, who is not competent to do so. As per rule 76 of Railway Servants (Pension) Rules, 1993, list of officials who are due to retire within next 24 to 30 months, is to be issued six monthly which has not been done. The applicant has changed her name to Manorama Burman yet she is being addressed as Munni Burman which also indicates that she is being harassed mentally and physically. The applicant is senior most Chief Matron at Kota and she cannot be shifted out and if anyone has to go, it should be the junior most person in the cadre. She filed an O.A.No. 291/00634/2016 which was disposed of on 5.8.2016 with liberty to the applicant to

submit a representation and till a decision was to be taken thereon, operation of order was stayed. The applicant was not taken on duty. She filed a representation on 9.8.2016 which has been rejected on 19.8.20016 as conveyed to her vide letter dated 23.8.2016. She claims that the ground raised by her in her representation have not been considered by the respondents, hence the O.A.

3. The respondents have filed a reply. They submit that applicant belongs to the category of staff that is directly related to the delivery of health care to beneficiaries and as such any indiscipline or irresponsibility may cause havoc. Yet despite numerous warnings and even charge sheets, the applicant failed to improve rather, she became more adamant. In view of transfer of the post and transfer of her on that post in the same grade pay at Health Unit Shamgarh, it is wrong to suggest that there is no sanctioned post there. It is for the competent authority to see as to whether there is availability of a post or necessity of post of Chief Matron. The applicant cannot be judge of her own cause. It is for the respondents as to where services of the applicant are to be utilized. Respondent No. 3 is SAG level officer and is higher than JAG level and is competent to transfer the applicant as per Schedule of Power (Annexure R-1). She was relieved upon transfer immediately. She herself has been using her changed as well unchanged name. In any case necessary correction has been made in the order. There were many complaints against applicant. She was issued charge sheet for dereliction of duty and indiscipline and was punished. She



is in habit of indulging in unnecessary arguments. The duties of para medical staff working in Railway Hospital have been revised vide Railway Board letter dated 15.10.2015 and item no. 2.2 of letter mentions duties of Chief Matron wherein sub item No. X specifies the duties as also look after the diet arrangement of patients". Sub item no. 13 mentions "any other duties and responsibilities entrusted by the administration". The applicant being senior and supervisory staff is supposed to be careful about the health of beneficiaries. Thus, she was rightly directed to be careful in maintaining quality of vegetables, food and raw material.

4. The applicant has filed a rejoinder to controvert the submissions made in the written statement.
5. We have heard the learned counsel for the parties at length and examined the material on file.
6. A perusal of the pleadings would disclose that the applicant has been working in a bickering and surcharged atmosphere at present place of posting. She was assigned duties to ensure purchase of fruits / vegetables for hospital but she claims that it is not her job to do so and on enquiry the purchase were found to be not upto mark. She was found to be late in attendance and not punctual and was punished also on that count. She claims that she is victimized mentally and physically. On the other hand respondents claim that the applicant is not performing her duties properly. It was her job to make purchases in which she has shown laxity and she is argumentative and has also indulged in misbehavior with higher officers. In these circumstances if a transfer

takes place to sooth the atmosphere in a government department or hospital, the Court does not find any fault in action of the respondents. It is in these circumstances that one post has been transferred to Shamgarh and applicant has also been posted there. The rule formulation relied upon by respondents does not indicate that the orders have been issued by any incompetent authority. Thus, order cannot be faulted on that ground also. In so far as plea that the applicant is having only less than 2 years of service before retirement is concerned, one can have sympathy with the applicant but hard realities of life cannot be ignored that the respondents have taken action in the interest of the administration and personal interest has to give way to the administrative interest and a court of law cannot interfere in such like transfer orders.

7. The allegations of malafide alleged by the applicant in the Original Application do not inspire any confidence and as such cannot be accepted at all. In view thereof, the orders cannot be faulted on that ground also.
8. At this stage, it would be also be useful to notice the law on interference by courts of law in transfer matters. It is well settled legal proposition that the transfer is an exigency and incidence of service and is an administrative decision to be taken by the Competent Authority in its wisdom who has to consider the factual matrix of a case and arrives at a particular decision. Interference by the Tribunal/ Courts with transfer orders should only be in very rare cases. In several decisions of the Hon'ble Apex Court viz. **Mysore Paper Mills**

Ltd., Bangalore Versus Mysore Paper Mills Officers Association, Bhadravati and Another [1999-6-SLR-77] B. Varadha Rao versus State of Karnataka (AIR 1986 SC 1955), Shilpi Bose Versus State of Bihar (AIR 1991 SC 532), Union of India versus S. L. Abbas (AIR 1993 SC 2444) and Airport Authority of India Versus Rajeev Ratan Pandey [JT 2009 (10) SC 472], Rajendra Singh Versus State of UP and Others [2010-1-SLR-632], it has been held that in the transfer matter of a Government employee, scope of judicial review under Article 226 of the Constitution is limited. The Tribunal and High Court should not interfere with an order of transfer lightly, be it at the interim stage or final hearing, as the Courts do not substitute their own decision and as the Courts and Tribunals are not appellate authority in such matters of transfer. The relevant part of judgment of Hon'ble Supreme Court in Masood Ahmad Versus State of U.P. [2007 STPL(LE) 39042 SC] decided on 18.09.2007 being relevant reads as under :

"4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005 as Executive Officer, Nagar Palika Parishad Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions, transfer is an exigency of service vide B. Varadha Rao vs. State of Karnataka AIR 1986 SC 1955, Shilpi Bose vs. State of Bihar AIR 1991 SC 532, Union of India Vs. N.P. Thomas AIR 1993 SC 1605, Union of India vs. S.L. Abbas AIR 1993 SC 2444 etc. The scope of judicial review of transfer under Article 226 of the Constitution of India has been

settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1993 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70) and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.

9. Even Tribunals are reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of Shilpi Bose (supra), Hon'ble Apex Court held as under:

"4. In our opinion, the courts should not interfere with a transfer order which is 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. 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. 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. The High Court overlooked these aspects in interfering with the transfer orders."

10. The Hon'ble Apex Court in **N.K. Singh Versus Union of India & Ors.** [(1994) 6 SCC 1998], reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision. In **Airport Authority of India Versus. Rajeev Ratan Pandey** [2009 (8) SCC 377] Hon'ble Supreme Court relying on its earlier judgment observed the following on the allegation of malafide as a ground of transfer, which reads as follows :-

"In the case of **State of U.P. v. Gobardhan Lal** (2004) 11 SCC 402, while dealing with a matter of transfer, this Court observed that allegations of mala-fides must inspire confidence of the Court and ought not to be entertained on the mere asking of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference would ordinarily be made with an order of transfer. That the burden of providing malafides is on a person levelling such allegations and the burden is heavy, admits of no legal ambiguity. Mere assertion or bald statement is not enough to discharge the heavy burden that the law imposes upon the person levelling allegations of mala-fides; it must be supported by requisite materials. In a matter of transfer of a government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the courts do not substitute their own decision in the matter of transfer."

11. The Hon'ble Apex Court in **Rajendra Singh's** case (supra) has held as under :-

"6.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 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 appointment or posted in a particular place or position, he should continue in such place or position as long as he desires [see State of U.P. v. Gobardhan Lal; (2004) 11 SCC 402]."

12. There are lot of other judicial pronouncement on the issue but we would not like to burden this order by mention of the same. Suffice it to say that a bare perusal of afore said law pronounced by highest court makes it more than clear that transfer is a part and parcel of the service conditions of an employee which should not be ordinarily interfered with by a Court of law, unless it is found that either the authority who issued the order, is not competent to do so; the statutory service rules prohibit such transfer or the order suffers from mala fide of the authorities which can be gathered from the evidence on record or that the transfer suffers from arbitrary action of the executive which elements are totally missing in the case in hand.

13. In the backdrop of aforesaid discussion, this O.A. is found to be devoid of any merit and is dismissed leaving the parties to bear their own costs.


(SANJEEV KAUSHIK)
MEMBER (J)


(MRS. MEENAKSHI HOOJA)
MEMBER (A)

Place: Jaipur
Dated: 7.10.2016

HC*