

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.1284/2017

Order Reserved on: 20.04.2017
Order pronounced on 09.05.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri P. K. Basu, Member (A)

Nirmal Thakur
Aged about 40 years
D/o Late Shri B.D.Singh
Working as Media Coordinator
Group-B
R/o Room No.N-305
N.N.Hostel, Masjid Moth
New Delhi – 110 049. ... Applicant

(By Advocate: Mr. Manish Kumar with Mr. Surat Chandra)

Versus

1. Jai Prakash Narayan Apex Trauma Centre, AIIMS
Through its Chief of Trauma Centre
Chief Office, 4th Floor
JPNATC, AIIMS
Ring Road
New Delhi – 110 029.

2. AIIMS (Recruitment Cell)
Through Director
Ansari Nagar
New Delhi – 110 029. ... Respondents

(By Advocate: Mr. R.K.Gupta)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Senior Nursing Officer in the respondent-AIIMS, filed the OA questioning the Annexure A1-Office Order dated 22.03.2017 whereunder the applicant was transferred from its JPN Apex Trauma Centre to its main Hospital and the consequential relieving Order, dated 31.03.2017.

2. It is submitted that the applicant was appointed as Trauma Coordinator with respect to manage the media and press as well as the Media Coordinator cum Organ Transplant coordinator at its JPN Apex Trauma Centre w.e.f. 11.12.2008. Since then, she has been discharging her duty and was reporting to Dr. Amit Gupta, Assistant Professor, Department of Surgery, Trauma Centre.

3. It is further submitted that on account of continuous appreciation received by the applicant and other members of the team of Dr. Bhoi, wherein the applicant was also a member, the other Doctors and staff members such as Dr. Amit Gupta, who were part of other teams, became jealous and disgruntled against Dr. Bhoi, and his team. In order to settle personal score against Dr. Bhoi, Dr. Amit Gupta, not only started get Dr. Bhoi removed from the post of Medical Superintendent but also instigated other members to harass the applicant. Being constrained from the constant harassment, by Sushil Tyagi and Joginder alias Guddu, the applicant made complaints against them but in vain. Finally, to get rid of the applicant, the said Dr. Amit

Gupta, got the applicant transferred from Trauma Centre to Main Hospital vide the impugned transfer order.

4. Heard Shri Manish Kumar, the learned counsel for the applicant and Shri R.K.Gupta, the learned counsel for the respondents, on receipt of an advance notice.

5. The learned counsel for the applicant, would mainly submit that the impugned transfer order was issued due to the mala-fide action of Dr. Amit Gupta and others, and not due to public interest or in exigencies of service, and accordingly, liable to be quashed, and placed reliance on **Somesh Tiwari v. Union of India & Others**, (2009) 2 SCC 592.

6. It is not in dispute that the applicant had been working at JPN Apex Trauma Centre, AIIMS w.e.f. 11.12.2008. It is also not in dispute that the applicant was transferred from Trauma Centre to the Main Hospital which is in its close proximity.

7. In **Rajendra Singh & Others v. State of UP & Others**, (2009) 15 SCC 178, the Hon'ble Apex Court 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 appointed 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].

7. The courts are always 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 (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"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."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court 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."

8. In view of the above referred legal position, it is to be seen whether the required grounds are established by the applicant in the instant case.

9. The only ground raised by the applicant is the mala fide action by Dr. Amit Gupta and others.

10. As per the settled position of law, no personal malafides can be attributed without making the concerned persons as parties to the lis. Since the applicant has not made either Dr. Amit Gupta or any other

person against whom she alleged personal mala fides, the said ground cannot be entertained. However, in view of the decision in **Somesh Tiwari** (supra) it is to be seen that any malice in law is established by the applicant. In the backdrop of the submissions made by the applicant, no malice in law is also established.

11. In **S.C.Saxena v. Union of India & Others**, (2006) 9 SCC 583, the Hon'ble Apex Court observed, as under:

66. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart therefrom, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. ¶ ¶ ¶ ¶ ¶ .

12. In the circumstances and for the aforesaid reasons, the OA is dismissed, being devoid of any merit. No costs.

(P. K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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