

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1561/2017

Reserved on 05.05.2017
Pronounced on 11.05.2017

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

1. Mrs. Molly Das,
Nursing Sister Group- B,
W/o Mr. Marydasan John,
Aged about 56 years,
179-A, Pocket-F, GTB Enclave,
Delhi-110093

... Applicant

(By Advocate: Mr.N.A Sebastian)

VERSUS

1. The Principal Secretary (Health)
Department of Health and Family Welfare,
Govt. of NCTD,
Delhi Government Secretariat,
New Delhi-110002.
2. The Deputy Secretary (HR-Nursing),
Department of Health and Family Welfare,
Govt. of NCTD,
Delhi Government Secretariat,
New Delhi-110002.
3. The Medical Director & Regional Director (East)
Guru Teg Bahadur Hospital,
Dilshad Garden, Delhi-110095.
4. Additional MS (HS)
And Link Officer AMS (A)
Office of the Medical Director
And Regional Director (East)
Guru Teg Bahadur Hospital,
Dilshad Garden, Delhi-110095.
5. Dr. Sunil Kumar
Medical Director and
Regional Director (East)
Guru Teg Bahadur Hospital,
Dilshad Garden, Delhi-110095.
6. AMS (Admn) HOO
Office of the Medical Director,
Guru Teg Bahadur Hospital,
Dilshad Garden, Delhi-110095.

... Respondents

ORDER**Hon'ble Mr. P.K.Basu, Member (A):**

The applicant (Mrs. Molly Das) in this case is a Nursing Sister Group-B who was working in Guru Teg Bahadur Hospital (GTBH) under the Government of National Capital Territory of Delhi (GNCTD). On 25.04.2017, GTB surrendered her services to the GNCTD stating that her services are no more required in GTB Hospital. The GNCT of Delhi issued relieving order dated 28.04.2017 posting her at Lal Bahadur Shastri Hospital (LBSH) which also located in Delhi. We quote below the relevant order:

'F.3-5(268)E-II/GTBH 1342-1351 Dated 28.04.2017

RELIEVING ORDER

In pursuance of Deputy Secretary (HR-Nursing) order No.F. 8 (3) /2017/ Nursing /H&FW/679-685 dated 27.04.2017. Smt. Molly Das, Nursing Sister is hereby relieved from her duties w.e.f. 28.04.2017 (AN) as per details below:

Name	Designation	Transfer to/New place of Posting	Remarks
Smt.Molly Das	Nursing Sister	LBSH	Transfer with immediate effect

Smt. Molly Das Nursing Sister is directed to report for further duty in Lal Bahadur Shastri Hospital.

This issue with the prior approval of Medical Director, GTB Hospital."

The applicant being aggrieved by these two orders has filed this OA seeking the following relief:

"In the interest of justice, it is humble prayed that the orders dt.25.4.2017, 27.04.2017 and 28.04.2017 may be set aside and quashed and the applicant may be permitted to rejoin her duties at the GTB Hospital with all consequential benefits. The Respondents may also be directed to produce copy of order dated 27.04.2017."

2. Learned counsel for the applicant placed the following arguments in support of the applicant prayer:

- (i) The surrender of services of applicant by the respondents is outrightly malafide, colourable exercise of powers, arbitrary, by way of punishment, an act of victimization and is unjustified. It is stated that the surrender of service of the applicant is not part of any general policy of transfer of such an employees;
- (ii) That there is no other reason for surrendering the services of applicant other than on account of Union activities. The applicant is stated to be General Secretary of Delhi Hospital Employees and Nurses Union. Her case that she was transferred out as, as a General Secretary of the Union, she filed an application under RTI Act seeking information with respect to the engagement of Pharmacists in the hospital in non-pharmacy area of work and direction to the Nurses to perform the said work as it affected the working conditions of the Nurses.
- (iii) Since the transfer is by way of punishment, the same is against the principles of natural justice and the services of the applicant could not have been surrendered without following the due process of law.

3. Learned counsel also pointed to Annexure A-25 which is memorandum dated 6.05.1987 on the subject of recruitment to the post of Staff Nurse and specifically clause 9 which states as follows:

"The candidate so appointed to the post in question will be bound to serve in any where under this hospital/administration."

It is noted that this memorandum is an offer for the post of Staff Nurse on ad hoc and temporary basis to the applicant in GTB Hospital.

4. The learned counsel also drew our attention to order dated 25.09.2006 issued by the GNCTD by which Staff Nurses working in the various medical institutions/Hospitals of Govt. of NCT of Delhi were promoted to the post of Nursing Sister on regular basis and the applicant's name appears at serial no. 18. At Annexure A-17, the applicant has enclosed a note addressed by Medical Director, GTBH to Secretary, Delhi Hospital Employees and Nurses Union, GTBH directing them to vacate office space occupied by the union which is stated to be not a hospital Nurses union. Moreover, in this note it is also stated that the union stands unrecognized vide letter dated 03.10.2015 in GTB Hospital premises. It is argued that all these led to the applicant's transfer.

5. Heard the learned counsel for applicant and perused various orders.

6. The basic ground on which cancellation and stay of the transfer order of the applicant is being sought is that the applicant feels that because she was a member of the union and had taken up certain causes on behalf of the Nursing staff, she is being victimized and transferred. First of all, if the union is not recognized as stated above then the ground that she is the office bearer of the union and hence cannot be shifted out will not arise. It would be clear from the list of dates that the applicant has been in GTBH since 1994 and vide orders dated 25.04.2017 and 28.04.2017 she has been shifted to another

hospital in Delhi under the GNCTD, namely, Lal Bahadur Shastri Hospital. Even for transfer of Government servants within Delhi after decade of staying at one place in Delhi, there is rising tendency amongst Government servants to rush to the Tribunal to get the transfer stayed.

7. The Hon'ble Supreme Court in the case of **S.C. Saxena Vs. Union of India & Ors.**, 2006 SCC (L&S) 1890 has settled the law on transfer as follows:

"6. 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."

8. In this case as stated earlier, the transfer is from one hospital in Delhi to another hospital in Delhi and yet the applicant is defying the transfer order. We find absolute no merit in the OA in the facts and circumstances of the case as well as law laid down by the Hon'ble Supreme Court and the OA is dismissed in limine. No costs.

(P.K.Basu)
Member (A)

(V.Ajay Kumar)
Member (J)

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