

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3546/2015

Reserved on 19.11.2015

Pronounced on this the 24th day of November, 2015

Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Sh. A.B. Dhargave
S/o Sh. B.D. Dhargave
R/o R-14, SF, Uppal South End.
Sohna Road, Gurgaon, HaryanaApplicant.

(By Advocate :Sh.Rajat Sharma)

Versus

1. All India Institute of Medical Sciences
Through its Director
Ansari Nagar,
New Delhi-110 029.
2. Senior Administrative officer
All India Institute of Medical Sciences.
Ansari Nagar,
New Delhi-110 029.
3. Dr. U.Singh
HOD PMR, All India Institute of Medical Sciences
Ansari Nagar,
New Delhi-110 029. .. Respondents

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

O R D E R

The applicant, a Chief Physiotherapist / Occupational Therapist in the All India Institute of Medical Sciences, New Delhi (Institute) has filed the instant OA challenging his transfer from the Institute's Department of Physical Medicine and Rehabilitation (PMR) and posting in the Institute's Department of Geriatric Medicine (GM), which, in fact, he has already joined on 17.10.2015, on the grounds that the said transfer was mala fide and arbitrary , that he has not been dealing with muscular skeletal

disability (purview of the GM Department) and that he had been recruited for the PMR [erstwhile Rehabilitation and Artificial Limbs (R & AL)] Department only. He prays that the impugned order dated 15.09.2015 (Annexure A-1) be quashed.

2. I have heard the learned counsel for the parties, perused the pleadings and the rulings cited at the Bar, and given my thoughtful consideration to the matter.

3. Learned counsel for the applicant has relied on this Tribunal's order dated 03.02.2015 in the O.A. No. 1302/2014 (Ramji Rai Vs. AIIMS & Ors.). The said order set aside the relevant transfer order after having found the same to be punitive and the transfer was from Delhi to Ballabgarh. The other O.A., i.e., the O.A. No. 4017/2013, referred to in paragraph 5.G of the present O.A. , has yet not been disposed of.

4.1 That transfer is an incident of service is a principle well-settled and well-known. The learned counsel for the respondents has on the said point relied on the following judgments of the Hon'ble Supreme Court:-

- (i) Chief General Manager (Telecom) Vs. Shri Rajendra Ch. Bhattacharjee [1995 (2) SCC 532];
- (ii) U.O.I . Vs. H.N. Kirtania [1989 (3) SCC 447];
- (iii) N.K. Singh Vs. U.O.I. [1994 (6) SCC 98]; and
- (iv) S.B.I. Vs. Anjan Sanyal [2001 (3) SCALE 329].

4.2 The Hon'ble Supreme Court in **SBI Vs. Anjan Sanyal** observed as under:-

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction 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 order, had not the competence to pass the order."

4.3 It is submitted that an employee has no legal right to insist for being posted at any particular place.

4.4. In the instant case, the learned counsel for the respondents submits, the transfer is to only another Department of the Institute in the same compus and there is no mala fide in this.

5. The letter of appointment dated 26.12.1991 issued to the applicant on his appointment as a Physiotherapist (R & AL) does not prohibit his posting in another Department of the Institute. The Recruitment Rules for the posts of Chief Physiotherapist /Occupational Therapist, Supdt. Physiotherapist/ Occupational Therapist, Sr. Physiotherapist /Occupational Therapist, Physiotherapist /Occupational Therapist and Jr. Physiotherapist /Occupational Therapist do not make any distinction between Departments of the Institute. The first four posts are filled up 100% by promotion and the last one 100% by direct recruitment, for which the educational qualifications are: 1. Inter (Science) and 2. Degree in Phsiotherapy / Occupational Theraphy. Fine distinction between the requirements of different Departments is not reflected. It is presumably a matter of exposure and experience. A Physiotherapist /Occupational Therapist posted in a particular Department is expected to equip himself

with its peculiar requirements, the basic educational qualification being only one, i.e., a degree in Physiotherapy /Occupational Therapy.

6. The allegation of mala fide has not been substantiated. The order of transfer/ posting (Annexure A-1) otherwise is innocuous and does not seem to suffer from any legal infirmity.

7. In view of the above, I am of the view that this O.A. is devoid of merits. The same is, therefore, dismissed. No order as to costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

/mk /