

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A No. 4017/2013

New Delhi this the 15th day of December, 2016

Hon'ble Mr. Justice M. S. Sullar, Member (J)

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

Smt. Pushpa Devi,
D/o. Late Sh. Tika Ram,
R/o. 421/9, Near Durga Ashram,
New Delhi-110 074.

.....Applicant

(By Advocate : Mr. Anup Kumar Das)

Versus

1. Director,
All India Institute of Medical Science,
Ansari Nagar, New Delhi 29.
2. The Chief Administrative Officer,
All India Institute of Medical Science,
Ansari Nagar, New Delhi-29.
3. Senior Administrative Officer
All India Institute of Medical Science,
Ansari Nagar, New Delhi-29.
4. Sh. Rakes Sharma
Multipurpose Worker
CRHS Project, Ballabgarh.

...Respondents

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

O R D E R (O R A L)

Justice M. S. Sullar, Member (J)

The challenge in this Original Application (O.A), filed by the applicant, Smt. Pushpa Devi, is to the impugned order dated 30.09.2013 (Annexure A/1), whereby she was transferred from Obst. & Gynaecology department to CRHS Project, Ballabgarh, of same All India Institute of Medical Science (AIIMS) Hospital and order dated 14.10.2013 (Annexure A/2), by virtue of which, she was relieved from the duty by the competent authority in pursuance of impugned transfer order.

2. The crux of the facts and material, which needs a necessary mention for deciding the sole controversy involved in the instant O.A and emanating from the record is that, initially applicant was appointed as Multipurpose Worker on 17.09.1998 in AIIMS, New Delhi. She was confirmed on 22.07.2002 on the same post. Subsequently, she was promoted on 17.01.2004 and was working as 'Health Assistant' at AIIMS, New Delhi at the relevant time of transfer. It was alleged that on 18.10.2013, when she joined the office after availing the leave, she came to know about her transfer. She approached and requested the authority to stop her illegal transfer, but in vain. Then, she wrote a letter informing the Director, AIIMS about the illegal and mala fide impugned transfer order. Neither she received any reply to her representation nor, the competent authority has cancelled her transfer order.

3. Aggrieved thereby, the applicant has preferred the instant O.A challenging the impugned transfer/relieving orders (Annexure A/1 & A/2), invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985.

4. The case setup by the applicant, in brief insofar as relevant is that, impugned orders are illegal, mala fide, arbitrary and result of complaint made by her against misconduct of three female employees namely Ms. Anita, Ms. Rajbala and Ms. Sunita. It was claimed that the impugned transfer orders are administrative in nature and came to the knowledge of three female employees in advance, which shows that the transfer order was the result of their conspiracy, with the officials of the administrative department. Her transfer to a lower cadre/post

without any reason and without affording her opportunity of hearing were stated to be illegal and in violation of principles of natural justice. On the strength of aforesaid grounds, the applicant seeks to quash the impugned transfer/relieving orders in the manner indicated hereinabove.

5. Sequelly, the respondents refuted the claim of the applicant and filed the reply wherein it was pleaded that an order of transfer of an employee is a part of the service condition and are not required to be interfered with lightly by the Court of Law. The impugned transfer order was stated to have been passed bonafidely on administrative grounds and in the public interest. It was averred that the personal internal dispute of the applicant with aforesaid other female employees has no concerned with the transfer order. Virtually acknowledging the factual matrix and reiterating the validity of the impugned transfer / relieving orders, the respondents have stoutly denied all other allegations and grounds contained in the O.A and prayed for its dismissal.

6. Controverting the allegations pleaded in the written statement of the respondents and reiterating the grounds contained in the O.A, the applicant filed the rejoinder. That is how, we are seized of the matter.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable assistance, and after bestowal of thoughts over the entire matter, we are of the firm view, that there is no merit and the instant OA deserves to be dismissed, for the reasons mentioned hereinbelow.

8. Ex-facie the argument of the learned counsel, that since the applicant was transferred on the ground of malice and her complaint against three female employees, so the impugned orders are illegal, is not only devoid of merit, but, misplaced as well.

9. As is evident from the record that applicant was initially appointed on the post of Multipurpose Worker on 17.09.1998. She was promoted to the post of Health Assistant vide letter dated 17.01.2004. Since then, she is working in AIIMS, Delhi. The fact remains is that, even she has not joined her transferee post till today in the garb of status-quo order dated 18.11.2013 passed by a Single Bench of this Tribunal. Moreover, it remained an unfolded mystery as to when, how and in what manner the above named three female employees were instrumental or were capable of influencing the competent authority to transfer the applicant. Mere bald allegations, which remained unsubstantiated, are not at all sufficient, in this regard.

10. Whereas, on the contrary, the positive case of the respondents is that, it was an "intra departmental transfer" on administrative grounds, in public interest, by the competent authority, in the same Institution. Since the applicant was transferred in CRHS, Ballabhgarh of the same AIIMS Hospital, so, it cannot be possibly be saith that she is aggrieved by the transfer order in any manner, particularly when, it is now well settled principle of law that that the

Courts have very very limited jurisdiction to interfere in transfer matters. Such transfer orders issued by the competent authority, in administration of exigency and in public interest (as in the present case), cannot legally be set aside unless it is smeared with malice, which is totally lacking in this OA.

11. In the instant case, the applicant has miserably failed to plead and substantiate the specific allegations of malice against any individual. It is now well settled principle of law that *mala fide* is very easy to allege but difficult to prove as the onus to prove *mala fide* lies on the person who alleges it. The Hon'ble Apex Court in case **State of Punjab & Anr. Vs. Gurdial Singh & Ors. (1980) 2 SCC 471** has ruled as under:-

"9. The question then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power-sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfillment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and

embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action mala fides on fraud on power vitiates the acquisition or other official act.”

The same view was reiterated by this Tribunal in **T.M. Sampath Vs. Union of India**, [OA No. 188/2012 decided on 30.08.2013] and **Naresh Wadhwa Vs. Union of India** [OA No. 810/2013 decided on 29.10.2013].

12. Meaning thereby, the competent authority has transferred the applicant on administrative grounds and in public interest. Indeed such transfer order cannot and should not be interfered with by the courts. A Government servant holding a transferable post is liable to be transferred and he has no right to remain posted at one place or the other. Such transfer orders issued by the competent authority do not violate any legal right. If the courts continue to interfere with day-to-day transfer orders issued by Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to the public interest. This matter is no more res integra and is now well settled.

13. An identical question came to be decided by Hon’ble Supreme Court in case **Shilpi Bose Vs. State of Bihar AIR 1991 SC 532**. Having considered the scope of judicial interference in transfer matter, the Apex Court has observed 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.”

14. In the same manner, it was also held by Hon'ble Supreme Court in case ***Union of India V. S.L. Abbas 1993 (4) SCC 357*** that 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.

15. Similarly, a three-Judge Bench of Hon'ble Supreme Court in cases ***Major General J.K. Bansal Vs. Union of India & Ors. (2005) 7 SCC 227*** and in another case ***State of M.P. and Another Vs. S.S. Kourav and Others (1995) 3 SCC 20*** has observed that the Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. 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 places. It is for the administration to take appropriate

decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In case **S.C. Saxena Vs. U.O.I. & Others (2206) 9 SCC 583** it was held by Hon'ble Apex Court that a Government servant cannot disobey a transfer order by not reporting back at the place of posting and then go to a court to ventilate his grievances. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

16. Again the same view was reiterated by Hon'ble Supreme Court **State of U.P. Vs. Gobardhan Lal (2004) 11 SCC 402** wherein it was ruled as under:-

"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 the 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 off 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 grievances sought to be made. Even administrative guidelines for regulating transfer 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 and 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 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.

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 to 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.”

17. Therefore, once it is proved on record that the competent authority has transferred the applicant for exigency of administration, and in public interest from one department to other nearby Department of the same hospital, in that eventuality, such transfer is not open to judicial review in the obtaining circumstances of the case, specially when, she is working at Delhi since 1998. Thus, the contrary arguments of the learned counsel for the applicant, *stricto sensu* deserves to be and are hereby repelled. The ratio of law laid down in the indicated judgments is *mutatis mutandis* applicable to the present controversy and is a complete answer to the problem in hand.

18. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

19. In the light of the aforesaid reasons, as there is no merit, the instant OA is hereby dismissed, as such. However, the parties are left to bear their own costs.

Needless to mention that in case the applicant is aggrieved by any other adverse action of the respondents, in pursuance to the impugned transfer order, in any manner, then she would be at liberty to file a fresh O.A challenging such action of the competent authority, in accordance with law.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)
15.12.2016

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