

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00919/2016

DATED THIS THE 11TH DAY OF OCTOBER, 2017

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

A. Anand,
S/o late Emmalur Abbaiah,
Aged about 55 years,
Was working as Cook,
National Institute of Mental Health and Neurosciences,
Hosur Road, Bangalore – 560 029.Applicant

(By Advocate Shri M.S. Bhagwat)

Vs.

1. Union of India,
Represented by its Principal Secretary,
Ministry of Health and Family Welfare,
Department of Health and Family Welfare,
Nirman Bhavan, New Delhi – 110 011.
2. The Registrar,
National Institute of Mental Health and Neurosciences,
(Institute of National Importance),
Bangalore – 560 029.
3. The Assistant Administrative Officer (H),
National Institute of Mental Health and Neurosciences,
(Institute of National Importance),
Bangalore – 560 029.Respondents

(By Shri M.V. Rao, Senior Panel Counsel for Respondent No.1 &
Shri K. Prabhakar Rao, Counsel for Respondent No.2 & 3)

ORDER (ORAL)DR. K.B. SURESH, MEMBER (J):

Heard. The matter is in a very small compass. The applicant claims that he is a cook whereas the respondents claims that he is a Group-D employee. In all probability, he may have been working in the kitchen and may have found the atmosphere there to be better and salubrious for his comfort. But for some reason he was transferred out to work as a Hospital Assistant and he refused to work as such. Following this, departmental enquiry was proceeded against him and he appeared in the enquiry. The proceedings are quoted herewith as produced by the learned counsel for the applicant.

"IO: Shall we commence the proceedings

PO: Yes

IO to CSO: *Did you receive the charge sheet*

CSO: Yes

IO to CSO: *Have you read and understood the contents of the charge sheet*

CSO: *I cannot read English. My lawyer has read and explained to me.*

IO to CSO: *Please go through the charge sheet carefully. Do you feel guilty of the charge mentioned in the charge sheet?*

CSO: *I have worked at Kitchen (Dietary Section) more than '25 years'. I was given transfer order and posted to work at NIIR on 19-5-2016. I am not willing to work at any other places except Kitchen. I have not attended the duties from 30-5-2016 to till date. I have not set foot inside the hospital since then. I will rejoin only if I am posted to work as cook in the kitchen. I am not willing to work anywhere else. The Institute can take any action against me.*

IO to CSO: *You were appointed as Group-D and your current designation is Hospital Assistant. As you are aware you should work wherever you are posted to work in the Institute.*

CSO: *I am not ready to work anywhere else. I am aged now and will work only if posted to 'Kitchen' (Dietary Section) as Cook.*

IO to PO: *The CSO has admitted the charges and has expressed his position; as such there is no necessity to further proceed the Inquiry.*

IO: *Since the CSO has admitted the charges and expressed his position, the Inquiry is concluded at 12-10 p.m.*

*sd/-
IO*

*sd/-
PO*

*sd/-
CSO*

Declaration by the Inquiry Officer:

Since the CSO does not know English, the Charge Sheet and entire day's proceedings were read out and explained to him in vernacular (Kannada), the language known to him.

*sd/-
IO*

Read out and explained to me by Inquiry Officer as mentioned above.

*sd/-
CSO*

Proceedings drafted by: Smt. K.S. Sudha, UDC"

For which he had given an answer that following the transfer order he has not set foot in the hospital at all and he will not work anywhere else other than the kitchen.

2. The respondents being an employer and the applicant being a Group-D employee the respondents would have the right to choose his work place. The

applicant cannot be choosy. Therefore naturally the course of events have to run its course. Since the enquiry is now complete there will be a mandate to the respondents to pass appropriate orders after issuing a copy of the Inquiry Report to the applicant and pass such appropriate orders but there will be a liberty given to the applicant to challenge the order if the order is against him. With this, the OA is closed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the applicant in OA No. 170/00919/2016

Annexure A1: True copy of Official Memorandum No. NIMH/HOS/EST/HA/POSTINGS/2016-17 dated 19.05.2016

Annexure A2: True copy representation of the applicant dated 23.05.2016

Annexure A3: True copy of Official Memorandum No. NIMH/HOS/EST-2/AA/E-155/2016-17 dated 04.06.2016

Annexure A4: True copy of Official Memorandum No. NIMH/HOS/EST-2/AA/E-155/2016-17 dated 14.06.2016

Annexure A5: True copy of representation of the applicant dated 09.06.2016

Annexure A6: True copy of postal acknowledgment dated 09.06.2016

Annexure A7: True copy of show cause notice No. NIMH/HOS/EST-2/ACS/E-527/2016-17 dated 21.07.2016

Annexure A8: True copy of representation of the applicant dated 29.07.2016

Annexure A9: True copy of postal acknowledgment dated 29.07.2016

Annexure A10: True copy of memorandum No. NIMH/HOS/EST-2/AA/E-527/2016-17 dated 09.09.2016

Annexure A11: True copy of representation of the applicant dated 09.01.2017

Annexures with reply statement:

Annexure R1: True copy of official memorandum dated 03.04.1989 designating the applicant as Group-D

Annexure R2: True copy of Circular No. NIMH/HOS/EST/MISC/2015-16 dated 19.10.2015 issued by the 2nd respondent.

Annexure R3: True copy of official memorandum No. NIMH/HOS/EST-3/E-155/2016-17 dated 27.05.2016
