

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

**OA No.3540/2018 With
M.A No. 5261/2018**

Reserved on: 08.01.2019

Pronounced on: 22.01.2019

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Mrs. Neelam,
Aged about 59 years,
W/o. Sh. Narender Kumar,
R/o. 48/9, MCD Flats,
Bungalow Road, Kamla Nagar,
Delhi – 110 007.Applicant

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

Versus

1. North Delhi Municipal Corporation,
Through its Commissioner,
4th Floor, Civic Centre,
Jawahar Lal Nehru Marg,
New Delhi -110 002.
2. Medical Superintendent,
Hindu Rao Hospital,
Malka Ganj, Delhi.Respondents

(By Advocate : Mr. R. V. Sinha with Mr. Upjeet Singh)

O R D E R

By Hon'ble Ms. Aradhana Johri, Member (A) :

The applicant, Smt. Neelam, Deputy Nursing Superintendent was transferred from Hindu Rao, Hospital vide order dated 12.09.2018. She has filed this O.A for quashing and setting aside the transfer order.

2. It is the contention of the applicant that she joined Hindu Rao Hospital only on 18.04.2018 and she will be superannuating on 31.07.2019. Therefore, she could not be transferred from Hindu Rao Hospital. Further, there is no post of Deputy Nursing Superintendent in Balak Ram Hospital, which is under construction. In the light of this, the applicant has been asked to draw the salary from Hindu Rao Hospital. She has also claimed that she was operated in Max Healthcare Hospital and is currently undergoing treatment there.

3. The respondents have asserted that they have every right to transfer the applicant under their jurisdiction for smooth functioning of the health institution. The office of Commissioner, North DMC received substantive complaints against the applicant and also complaints from various other sources. Hence, the applicant was transferred from Hindu Rao Hospital to Balak Ram Hospital so as to ensure just and fair investigation. They have gone on to say that the applicant was transferred from Rajan Babu Institute of Pulmonary Medicine and Tuberculosis (RBIPMT) to Hindu Rao Hospital on complaint basis of misconduct and misbehaviour after conducting due enquiry. In the present circumstances, she has been relieved from Hindu Rao Hospital on 12.09.2018 vide office order No.

5843/AO/HRH/2018, but, she refused to accept the transfer order and relieving order, which was sent to her residential address through Speed Post but, were returned back with the remarks that the house was found locked several times. They have gone on to question the conduct of the applicant stating that on 13.09.2018, she visited Max hospital and was advised bed rest for 10 days but, since she got stay order against her transfer, on 18.09.2018 and continued to be in Hindu Rao Hospital, under the stay, she joined her duties on 20.09.2018 along with medical certificate and fitness certificate from Fortis Hospital, Shalimar Bagh. They have pointed out certain contradictions in the OPD slips and the fitness certificate.

4. Heard Mr. S. K. Gupta, learned counsel for applicant, Mr. R. V. Sinha with Mr. Upjeet Singh, learned counsel for respondents.

5. The applicant has not contended any mala fide on behalf of the authorities in her transfer. But made the technical plea of their being no post of Deputy Nursing Superintendent at Balak Ram Hospital. Her claim is that she cannot be transferred on a post subordinate to that she is entitled to.

6. Learned counsel for applicant has cited judgment in the case of **R. Sudhakar Vs. M/s. Indian Immunologicals, Hyd.** W.P No. 9108/1995 decided on 22.04.1997 and quoted the following paragraphs :-

“17. It is now well settled principle in administrative law, that an officer holding a particular rank/position can be transferred and posted only to a post which is equivalent to that post in all respects, otherwise, it amounts to effecting status held by the incumbent. I have no hesitation to hold that by the impugned order, the position of the petitioner is adversely effected, whereby he will be looked down by not only the employees of the respondent unit, but also by others in the Society.”

7. However, in the present case, the applicant continues to be Deputy Nursing Superintendent and continuous to draw the salary of Deputy Nursing Superintendent. Therefore, it cannot be said that she has been reduced in rank.

8. The second judgment that has been quoted is that of **P. K. Chinnasamy Vs. Government of Tamil Nadu & ors.**, in (1987) 4 SCC 601, the facts of the case were that the applicant's promotion was delayed and even after that the State Government allowed the appellant's junior to officiate as Joint Transport Commissioner while the appellant who was a Deputy Transport Commissioner was consistently overlooked.

9. The circumstances of the present case are different from those of the P. K. Chinna Swamy's case, since the applicant was not overlooked for promotion to a higher post.

10. The respondents have also cited certain case law of **Union of India & ors. Vs. S. L. Abbas**, to justify the authority of the Government to transfer any Government servant, the relevant part of which is being reproduced below :-

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundamental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,-though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed "mischief" to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same

place. The said guideline however does not confer upon the government employee a legally enforceable right.”

11. In the case of **Union of India & Ors. Vs. Janardhan Debanath & Anr.** in (2004) 4 SCC 245, the respondents have, made a case that where there is any inefficiency or misbehaviour, the employer can transfer the Government servant out even on a post carrying less pay than the pay of the post on which he holds a lien.

“11. A bare reading of FR-15 makes it clear that except in cases where the transfer is (a) on account of inefficiency or mis-behaviour, or (b) on a written request the government servant cannot be transferred or except in a case covered by Rule 49 appointed to officiate in a post carrying less pay than the pay of the post on which he holds a lien. The clear intention of the prescription is that except the two categories indicated above, in all other cases the pay to be paid on transfer shall not be less than of the post on which he holds a lien. Exception is made in case of a transfer where it is on account of inefficiency or mis-behaviour. In a case where transfer is on account of inefficiency or mis-behaviour, the same can be made to a post carrying less pay than the pay of the post on which he holds a lien. Similar is the position where a transfer is made on a written request. Where the transfer is otherwise than for inefficiency or mis-behaviour or on a written request made by the transferred employee, the protection of pay is ensured. The High Court seems to have completely misconstrued the rule as if there cannot be any transfer in terms of FR 15 on account of inefficiency or mis-behaviour. The view is clearly contrary to the pronounced intention of FR 15.

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14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the *prima facie* satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be

insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.”

12. In view of all the circumstances of the matter, that there is no allegation of mala fide, the applicant continue to hold the post of Deputy Nursing Superintendent and gets the same pay, as well as the fact that there are complaints against the applicant which are under inquiry, we do not deem it fit to interfere with the impugned order dated 12.09.2018. However, the respondents shall complete the inquiry against the applicant within one month and take appropriate action thereon. The O.A is dismissed with no order as to costs.

(Aradhana Johri)
Member (A)

(V. Ajay Kumar)
Member (J)

/Mbt/