

**Central Administrative Tribunal
Madras Bench**

OA/310/00793/2019

Dated the 17th day of July Two Thousand Nineteen

P R E S E N T

Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)

E.Manivannan,
S/o E.Elumalai,
Pillaiyarkoil Street,
Kilnallathur Village,
Thiruvallur District. .. Applicant
By Advocate **M/s.M.Gnanasekar**

Vs.

1. The Dean,
Regional Office,
Employees State Insurance Corporation Hospital,
K.K.Nagar, Chennai 600 078.
2. The Addl. Commissioner & R.D.,
Employees State Insurance Corporation Hospital,
No.143, Sterling Road, Nungambakkam,
Chennai 600 034. .. Respondents

By Advocate **Mr..K.Prabakar**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“i) to set aside the order No.51-A-22(15)-Tr.Posting (Nursing & Para Med)/2018/Admn. dated 10.06.2019 passed by the 2nd respondent

ii) to pass such further or other orders as are necessary to meet the ends of justice.

iii) Award costs and thus render justice.”

2. The applicant is working as CSSR Technician in the respondents' hospital at K.K.Nagar and he is the Joint Secretary of All India Employees State Insurance Corporation Medical Employees Federation. According to him, on 10.6.2019 the respondents had suddenly transferred the applicant from K.K.Nagar Hospital to Thirunelveli with immediate effect. According to him, his wife is working as Nursing Superintendent in the Railway Hospital, Perambur and the 2nd respondent is liable to set aside the transfer considering that the applicant is Joint Secretary of ESIC Hospital Employees' Union and he used to take up the grievances of his co-workers to the authorities. The DPC had erroneously promoted a junior employee by name Pandian to the post of Operation Theater Technician (OTT) ignoring a senior employee Gabriel Deepak Botham. According to the applicant, there are 8 posts of OTT and 8 posts of Central Sterile Supply Department Technicians (CSSDT) in the hospital. They have no sufficient promotional opportunities. According to him, there

is only 1 sanctioned posts of CSSDT in ESIC Hospital which is already occupied by another official. His transfer resulted in surplus manpower at Thirunelveli. As per ESIC Hospital, K.K.Nagar is concerned, there are 8 sanctioned posts and the present transfer will create shortage of manpower. So, the transfer is detrimental to the functioning of the hospital. Here the applicant has to look after his wife and there are 2 female children aged 10 years and 7 years studying in the school at K.K.Nagar. His wife is employed in the hospital. His mother is aged 60 years and she is suffering from diabetics. He has to take care of his 60 year old mother and give periodical treatment. The order of transfer in his case is not in public interest as stated by the respondents. It is punitive in nature and therefore, liable to be set aside. So, he seeks to set aside the transfer order dated 10.6.2019. On filing the OA, this Tribunal has ordered to maintain status quo till the respondents filed a reply in the OA.

3. Mr.K.Prabakar entered appearance for the respondents and filed a detailed reply on 12.7.2019 and we have heard both sides. According to the respondents, the transfer of the applicant was made on 10.6.2019 in public interest and he was ordered to be relieved on 21.6.2019. The same was communicated to the applicant through email and by post. According to the respondents, the applicant is serving as CSSD Technician in-charge of Modular OT and on 10.5.2019 he was late to duty and Dr.Illango Ganesan, Associate Professor has questioned him regarding the same. The applicant refused to attend the duty which showed disobedience in public and in front of OP patients. A complaint was submitted by Dr.Illango Ganesan and it was forwarded through proper channel to the Regional Director, i.e. the 2nd respondent.

The respondents in this case has produced a copy of the complaint given by Dr.Illango Ganesan marked as Annexure R1. The copy of the forwarding letter and copy of transfer order dated 10.6.2019 is marked as Annexure R1 to R3. According to the respondents, on 12.6.2019, the applicant took medical leave and he has not joined till 01.7.2019. In the meanwhile, he filed OA and obtained an interim order of status quo on 26.6.2019.

4. According to the counsel for the respondents, the respondents are bound to keep the discipline in the hospital and also among the staff. According to him, the complaint given by Dr.Illango Ganesan clearly shows the conduct of the applicant in the hospital. When the complaint was forwarded to the Regional Director, he had issued transfer order dated 10.6.2019. According to him, it was issued in the public interest and for keeping discipline and decorum in the hospital. Hence this transfer can only be considered as in public interest and there is no other reason for the same. It is true that there is a complaint filed against him and disciplinary action will be taken against him in due course. The transfer order issued is only with an intention to keep the discipline in the establishment and avoid further complication and indiscipline among the staff. Transfer cannot be considered as a punishment.

5. But the counsel for the applicant would contend that Annexure R1 complaint shows that there has taken place an incident in the hospital and the respondents have initiated proceedings against the applicant. So, the transfer made in the case is considered as punitive. The action of the respondents is arbitrary and liable to be set aside. The counsel for the applicant had produced a copy of the OA 446/2016 of this

Bench wherein the Tribunal has set aside a transfer order purported to be issued as punitive against the applicant in that case.

6. We have heard both sides and we have anxiously gone through the various records and documents produced by both sides. On a perusal of the pleadings, it can be seen that the applicant has not mentioned anything regarding the incident that took place in the hospital immediately prior to the transfer and he has obtained a status quo order on 26.6.2019. A perusal of the documents produced by the respondents, we can find that immediately after the issuance of transfer order dated 10.6.2019, the applicant had taken leave on medical ground and he was absenting from duty and thereafter, he has also not accepted the transfer order and the relieving order also. In the meanwhile, on 26.6.2019, after obtaining the status quo dated 26.6.2019, the applicant had joined the duty after leave. This clearly shows the conduct and nature of the applicant in this case. It seems that the applicant has a bad habit of disobeying the superiors as is evident from the complaint marked as Annexure R1 in this case. The incident has taken place in a hospital wherein lot of patients come and go and the applicant has behaved in a disobedient manner to the doctor who was attending duties there. It is, in this circumstances, the respondents has transferred the applicant to Thirunelveli. It is clear that if the applicant is permitted to continue there, it will create indiscipline among the staff and it will result in more problems to the hospital. The counsel for the applicant mainly rely on the order of this Bench in OA 446/2016 wherein the authorities have transferred a person from Sub-Registrar Office Karaikkal on receipt of mass petition even without ascertaining the genuineness.

This is not a case similar to the one in OA 446/2016. Here there has taken place an incident in the hospital and the authorities were compelled to transfer him on public interest in order to keep discipline and proper functioning of the hospital. We find merit in the contention of the respondents that the order of transfer made is not a transfer which is punitive but with the intention of keeping discipline and smooth functioning of the hospital. We find no merit in the contention of the applicant that he was transferred or victimised unnecessarily. Another ground argued by the counsel for the applicant is that the applicant's wife is working in the hospital at Perambur and there is nobody to take care of his children and mother. He has also produced a copy of the order wherein the government has also acceded to post spouse in the same station. But this circular has no application in this case as the applicant was transferred under public interest. So, we are of the opinion that there is no reason to interfere in the transfer order passed by the respondents in this case. Accordingly, we find no merit in the OA and it is liable to be dismissed.

7. OA is dismissed. The order of status quo granted will also stand vacated. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

17.07.2019

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