

***CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD***

This the 01st day of November, 2019

Present:

HON'BLE MS. AJANTA DAYALAN, MEMBER-A.
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER-J

**ORDER ON INTERIM RELIEF
IN
ORIGINAL APPLICATION NO. 330/01104/2019**

Major (Dr.) Farah DeebaApplicant.

V E R S U S

Union of India and others. Respondents

Present for the Applicant : Shri Anil Kumar Singh

Present for the Respondents : Shri L.P. Tiwari

ORDER ON INTERIM RELIEF

Delivered by Hon'ble Ms. Ajanta Dayalan, AM

Heard Shri Anil Kumar Singh, learned counsel for the applicant and Shri L.P. Tiwari, learned counsel for the respondents.

2. The present OA has been filed by the applicant Major (Dr.) Farah Deeba seeking quashing of order dated 03.10.2019 (Annexure A-1) transferring the applicant from Allahabad to Tiruchirappalli. Directions are also sought for the respondents not to transfer the applicant from her present post till logical conclusion in her cases which are pending at the present place.

3. In the OA, the applicant has stated that she is a Commissioned Officer Whole Time Lady Officer (WTLO) selected by UPSC in 2002 in National Cadet Corps (NCC). It is stated that in March 2018, Col. Sunil Kaul, HQ D.G., NCC at New Delhi, who is respondent no. 4, called the applicant for signing irregular financial documents and she was detained

in his office till 4.30 in the afternoon. According to the applicant, she was pressurised to sign the papers which finally she did under protest. The applicant reported this incidence to Additional Director General, NCC by speed post on the next day itself i.e. 10.03.2018 (Annexure A-2). She also gave an application to Police Station, Allahabad for lodging FIR. However, initially no FIR was lodged by the police due to pressure of respondent no. 4. She was thereafter pressurised to withdraw the complaint and she was threatened by the respondent no. 4 with serious consequences, if she refused to do so. Brig. P.P.S. Bajwa, Group Commander, NCC was appointed to enquire in the matter as well as sexual harassment of the applicant by the respondent no. 4. Order appointing court of inquiry to examine alleged financial irregularities and sexual harassment of the applicant was issued on 23.03.2018 (Annexure A-3).

4. The learned counsel for the applicant stated that subsequent to these developments, the impugned transfer order dated 03.10.2019 has been issued by the respondents. Learned counsel for the applicant stated that even earlier but subsequent to the incidents narrated above, the applicant was transferred vide order dated 27.03.2018 from Allahabad to Jagdalpur (Annexure A-5). However, this transfer order was cancelled by the respondents vide order dated 07.12.2018 (Annexure A-10) in view of this Tribunal's order dated 10.04.2018 staying the said order (Annexure A-6). Learned counsel for the applicant stated that the respondents department smartly found the via media to bypass the order dated 10.04.2018 directing that the applicant be not relieved from her present place of posting by cancelling the original order and have now issued fresh order transferring the applicant from Allahabad to Tiruchirappalli.

5. Learned counsel for the applicant further pleaded that the respondents department had even attempted to detain the applicant from moving out due to complaint made by her and her refusal to sign the

irregular financial papers. There was also an attempt to put fire in her flat where she was residing with her family. Learned counsel for the applicant also relied upon news paper reports in this regard (Annexure A-7, page 55 to 57). These reports also refer to sexual harassment

6. Learned counsel for the applicant stated that this is a blatant case where senior army officer of the rank of Major is being harassed to sign irregular financial documents and is then harassed sexually and also to the extent of her detention in house and burning of her house.

7. Learned counsel for the applicant also brought out that the applicant is a single lady with two children. She is now being posted vide impugned order from Allahabad to Tiruchirappalli, which is over two thousand kilometres away. Being a victim of sexual harassment, she should have been retained at her present place of posting.

8. Learned counsel for the applicant also stated that the applicant is suffering from acute anaemia and other deficiencies and is in poor health condition. She is advised by the respondents department's own Medical Board to be under surveillance at the nearest MO. He further brought out that there is no MO available at Tiruchirappalli. He, therefore, pleaded that this is a clear-cut case for staying the impugned transfer order.

9. Learned counsel for the respondents stated that he needs to seek instructions from the department for making his submissions.

10. We observe from the impugned transfer order dated 03.10.2019 itself that this is a standalone order transferring the applicant. No other person has been transferred vide this order. No person has been posted in place of the applicant to look after her charge. We also observe that as per the posting policy for Whole Time Lady Officer (WTLO) like the applicant (Annexure A-19), the annual turn-over of WTLOs will be done in March-April every year and will be implemented during May-June. Obviously this

transfer order has not been issued as a part of annual turn-over exercise and has been made in midterm.

11. We further note that the impugned transfer order transfers the applicant from Allahabad to Tiruchirappalli, which is 2000 Kms away. The applicant is a single lady with two children. Besides, a court of enquiry has already been constituted by the respondents department to go into the complaint of sexual harassment made by the applicant as well as regarding the matter of alleged financial irregularities. There is also an Internal Complaint Committee constituted by the respondents department vide order dated 02.05.2018 for investigating the complaint of sexual harassment made by the applicant (Annexure A-8). Thus, there is no dispute that this matter is in the knowledge of the respondents. We thus find that this is rather an unusual case where the stated victim of sexual harassment case itself has been transferred out from the present place of posting to a place over 2000 Kms away and that too as a standalone transfer. Besides, we also find that the applicant is a single lady with two children and it is normally expected that due consideration should be given to this fact by the competent authority while taking a view on her posting.

12. We also observe that in the earlier order of this Tribunal dated 10.04.2018, this Tribunal had directed that 'the applicant may not be relieved from her present place of posting (if not relieved till today)'. As such, stay was granted to the applicant and subsequently transfer order dated 27.03.2018 was cancelled by the respondents department in December 2018. Issuance of second transfer order within a year of the first transfer order - that too in the circumstances discussed above - seems rather unusual and gives us impression that cancellation of earlier transfer order was only a via media resorted to by the respondents department to bypass the Tribunal's order dated 10.04.2019.

13. We also note that as per department's own medical report submitted by the Medical Board (Annexure A-15), the applicant has poor health and has been recommended to be under surveillance to nearest MO. However, there is no such facility at Tiruchirappalli. As the medical report is by the Medical Board of the respondents' department itself, we see no cogent reason for the respondents not to abide by this recommendation. On this ground also, the impugned transfer order seems to be unreasonable.

14. In view of all above, we direct the respondents not to give effect to and stay the operation of the impugned order dated 03.10.2019 (Annexure A-1) till further orders.

15. Let the counter affidavit be filed within 06 weeks by the respondents department. The applicant may file rejoinder, if any, within 02 weeks thereafter.

16. List on 07.01.2020.

(Rakesh Sagar Jain) (Ajanta Dayalan)
Member – J Member – A
Anand...