

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

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No. O.A. 350/00456/2016

Date of order: 26.9.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Tanusree Hajra (Chandra),
Wife of Chandra Sekhar Hajra,
Aged about 42 years,
Working as Staff Nurse,
Bankura, SCMMU, Jhalda, Purulia,
West Bengal,
Residing at 3 Bye Lane,
North Lake Road,
Rabindrapally, Purulia,
West Bengal,
Pin - 723 101

Applicant

- V E R S U S -

1. Union of India
Through the Secretary to the
Govt. of India,
Ministry of Labour & Employment,
Jaisalmer House,
Man Singh Road,
New Delhi - 110 011.
2. The Director General (Labour Welfare),
Jaisalmer House,
Man Singh Road,
New Delhi - 110 011.
3. The Welfare & Cess Commissioner,
Ministry of Labour & Employment,
Labour Welfare Organization,
234/4, AJC Bose Road,
5th Floor, 2nd MSO Building,
Nizam Palace,
Kolkata - 700 020.
4. The Medical Officer (Contract),
Static-cum-Mobile Medical Unit,
Jhaldah, Purulia,
Labour Welfare Organization,

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Ministry of Labour,
Govt. of India, Namopara,
Jhalda, Purulia,
Pin : 723 201.

... Respondents

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. S. Pal, Counsel

O R D E R (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- (a) An order quashing and/or setting aside the impugned order of transfer of the applicant dated 2.3.2016.
- (b) An order directing the respondents to consider the case of the applicant for her retention in or around Purulia or near Purulia.
- (c) An order directing the respondents to produce/cause production of all relevant records.
- (d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The applicant's submissions, as made through her Ld. Counsel is that that the applicant is a Staff Nurse working in the Labour Welfare Organization, presently posted at Jhalda. The applicant, who is a permanent resident of Purulia, suffers from various ailments. Apart from that, she has two minor school going children and her husband is a Lecturer in a Govt. aided college in Purulia in a non-transferable post.

An order has been issued on 2.5.2016 directing the applicant to be transferred to the Central Hospital at Dhuliyan in the District of Murshidabad, and, being aggrieved with non-consideration of her

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representations against such transfer, the applicant has approached the Tribunal praying for the aforementioned relief.

4. The applicant would support her claim for cancellation of transfer, *inter alia*, on the following grounds.

(a) That, the transfer order to Dhuliyan is arbitrary and tainted with malice;

(b) That, there were no bonafide reason to transfer the applicant without considering her health condition and other personal grounds.

(c) That, the transfer order cannot be made without placing her transfer matter before the placement committee.

5. The respondents have firmly contradicted the claim of the applicant as follows:-

(i) That, the applicant is a Staff Nurse appointed by the Labour Welfare Organisation which is the supporting regional office of the Ministry of Labour & Employment set up for implementation of welfare schemes. Under the health component of such Welfare Schemes, certain static-cum-mobile dispensaries have been set up in different locations in the State of West Bengal to deliver medical services to bidi workers and their family members.

(ii) That, the applicant had joined as a Staff Nurse in the said Static-cum-Mobile dispensary, Bankura on 3.10.1997, worked there till 2001, and, thereafter, transferred to Jhalda District, Purulia. The applicant has been continuing since 2001 which is nearly 18 years in the said post.

(iii) On 18.7.2001, right after joining her post at Jhalda, the applicant represented that she should not be disturbed from her

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present place of posting and, if at all so disturbed, she could only be considered for transfer at SCM Dispensaries at Bankura or Kharagpur.

Her representation, being entirely hypothetical in nature, did not merit any consideration.

(iv) That, the respondent authorities had set up a Central Hospital at Dhuliyan to provide outdoor and indoor services as well as pathological, 24-hour Emergency and Ambulance facilities to ferry patients requiring specialized treatment. Such a Central hospital had a sanctioned strength of 13 staff nurse. The actual strength of six nos. of staff nurse, however, being inadequate to cater to the demand of medical facilities created therein, the Director General, Labour Welfare, Ministry of Labour & Employment, had directed on 20.2.2016 the transfer of the applicant to Dhuliyan in public interest, and the applicant, being aggrieved, approached the Tribunal for quashing of the same. The applicant also obtained an ex parte interim relief since 18.3.2016 and has been continuing in her posting in Jhalda, Purulia.

According to the respondents, the applicant has spent almost 18 years at Jhalda, Purulia and seeks judicial intervention to prevent any transfer therefrom despite compelling administrative interests requiring her to be posted at a Central Hospital.

5. The primary issue for adjudication herein is whether the applicant has a right to challenge her transfer orders as in the instant O.A.
- 6.1. The applicant has sought recourse to DOP&T guidelines dated 30.9.2009 to claim benefits on spouse grounds. The said DOP&T circular refers to consideration on spouse grounds as follows:-

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F. No. 28034/9/2009-Estt.(A)
 Government of India
 Ministry of Personnel, Public Grievances and Pensions
 (Department of Personnel and Training)

North Block,
 New Delhi,

Dated the 30th September, 2009

OFFICE MEMORANDUM

Subject: Post of husband and wife at the same station.

In view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children, guidelines were issued by DOP&T in O.M. No. 28034/7/86-Estt.(A) dated 3.4.86 and No.28034/2/97-Estt.(A) dated 12.6.97 for posting of husband and wife who are in Government service, at the same station. Department had on 23.8.2004 issued instructions to all Mins./Deptts. to follow the above guidelines in letter and spirit.

2. In the context of the need to make concerted efforts to increase representation of women in Central Government jobs, these guidelines have been reviewed to see whether the instructions could be made mandatory. It has been decided that when both spouses are in same Central Service or working in same Deptt. and if posts are available, they may mandatorily be posted at the same station. It is also necessary to make the provisions at Paras 3(iv) and (vi) of the a.M. dated 3.4.86 stronger as it is not always necessary that the service to which the spouse with longer service belongs has adequate number of posts and posting to the nearest station by either of the Department may become necessary.

3. On the basis of the 6th CPC Report, Govt. servants have already been allowed the facility of Child Care Leave which is admissible till the children attain 18 years of age. On similar lines, provisions of a.M. dated 12.6.97 have been amended.

4. The consolidated guidelines will now be as follows:-

(i) Where the spouses belong to the same All India Service or two of the All India Services, namely IAS, IPS and Indian Forest Service (Group 'A');

The spouse may be transferred to the same cadre by providing for a cadre transfer of one spouse to the Cadre of the other spouse, on the request of the member of service subject to the member of service not being posted under this process to his/her home cadre. Postings within the Cadre will, of course, fall within the purview of the State Govt.

(ii) Where one spouse belongs to one of the All India Services and the other spouse belongs to one of the Central Services:

The cadre controlling authority of the Central Service may post the officer to the station or if there is no post in that station, to the State where the other spouse belonging to the All India service is posted.

(iii) Where the spouses belong to the same Central Service:

The Cadre controlling authority may post the spouses to the same station.

(iv) Where the spouse belongs to one Central Service and the other spouse belongs to another Central Service:

The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to

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the station or if there is no post in that station to the nearest station where the post exists.

(v) Where one spouse belongs to an All India Service and the other spouse belongs to a Public Sector Undertaking:

The spouse employed under the Public Sector Undertaking may apply to the competent authority and said authority may post the said officer to the station, or if there is no post under the PSU in that station, to the State where the other spouse is posted.

(vi) Where one spouse belongs to a Central Service and the other spouse belongs to a PSU:-

The spouse employed under the PSU may apply to the competent authority and the said authority may post the officer to the station or if there is no post under the PSU in that station, to the station nearest to the station where the other spouse is posted. If, however, the request cannot be granted because the PSU has no post in the said station, then the spouse belonging to the Central Service may apply to the appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station, to the station nearest to the station where the spouse employed under PSU is posted.

(vii) Where one spouse is employed under the Central Govt. and the other spouse is employed under the state Govt.:-

The spouse employed under the Central Govt. may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted.

(viii) The husband & wife, if working in the same Department and if the required level of post is available, should invariably be posted together in order to enable them to lead a normal family life and look after the welfare of their children especially till the children attain 18 years of age. This will not apply on appointment under the Central Staffing Scheme. Where only wife is a Govt. servant, the above concessions would be applicable to the Govt. servant.

The spouse of the applicant, being a Lecturer in a Government aided College at Purulia, does not belong to any of the sub-categories listed in the DOP&T circular.

Hence, the applicant's claim on spouse ground fails.

6.2. The applicant has brought forth before us the transfer posting guidelines of the Ministry of Labour & Employment wherein medical reasons are to be considered along with general transfers when deciding on transfer on compassionate grounds. The applicant has rued that the respondent authorities had selfishly ignored her medical condition. Upon a proposal of the medical certificates enclosed, we find that the applicant had suffered in 2007 from pneumonia with secondary infection, diagnosed with systemic hypertension and impaired glucose tolerance in 2013, and, with gastroenteritis in 2015. None of the medical certificates

661

have referred to the fact that the applicant is incapable of carrying out her regular duties as a staff nurse.

6.3. Ld. Counsel for the respondents would strenuously urge that the average tenure of posting in such clinics would be for four years and, accordingly, one Smt. B.M. Ekka, Staff Nurse, who had duly joined Dhuliyan Hospital in compliance with the transfer orders dated 2.3.2016 is now due to retransfer, and, her case would be taken up shortly as part of the general transfer proposals.

6.4. We find, from the transfer order, as well as in their reply, and, during hearing, that the respondent authorities have repeatedly highlighted the need of transfer in administrative interest / public interest. It is not disputed that the applicant was engaged as part of a Labour Welfare Scheme and her role is to provide nursing services to bidi workers and their families whenever there is a large congregation of such workers. Demographically speaking, Murshidabad District has the largest assembly of bidi workers on account of which the Ministry had deemed it fit to set up a Central Hospital therein. The respondent authorities, having set up the hospital are duty bound to ensure the availability of doctors and nurses. Hence, at no stage it can be disputed that the transfer of the applicant was entirely in administrative interest and her allegation of arbitrariness and malice do not have any leg to stand upon.

The respondents' transfer policy clearly mentions that every staff nurse should move after tenure of four years. The applicant has been retained at for 19 years. Hence, challenging her transfer order after 15 years of retention in Jhalda as arbitrary and malicious does not reflect the applicant's positive interest to discharge public service.

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6.5. The applicant has not brought before us her appointment orders to establish that her appointment precludes the respondent authorities from transferring her beyond districts of Purulia / Bankura or Kharagpur. Hence, her representation dated 18.7.2014, to say the least, is precocious, premature and unwarranted.

6.6. The applicant's claim for placement of her transfer proposal before a Placement Committee is illogical. The applicant is not a part of mainstream Ministry. She is attached with a specific Labour Welfare Scheme and would be guided by the guidelines for transfer posting as at Annexure A-6 to the O.A. The respondents have made it extremely clear that her orders for transfer were issued with the approval of the Director General, Labour & Welfare of the concerned Ministry, an authority named in para 2 of the said guidelines as competent to direct such transfer.

In *N.K. Singh v. Union of India*, (1995) I LLJ 854 and *Abani Kanta Roy v. State of Orissa*, 1995 Supp (4) SCC 169, it has been held that, unless the decision to transfer is vitiated by malafide, infraction of any professed norms or principle governing the transfer, judicial scrutiny is not called for.

In the instant case, the applicant has been moved after a tenure of 15 years but her colleague staff nurse has joined the place of transfer without any protest. Hence, the allegation of malafide fails. The competent authority has ordered the transfer as per the transfer guidelines after observing the professed norms. Accordingly, following the above ratio, the applicant's challenge to transfer does not succeed.

6.7. We are inclined to agree with the Ld. Counsel for the respondents that no government servant drawing salary from State exchequer should be allowed to continue in a post where the scope of her service is limited

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but should be posted where her services should be utilized optimally. Ld. Counsel for the respondents would urge that the applicant's contribution to the Labour Welfare Scheme would stand suitably enhanced if she renders her services in the Central hospital.

7. The claim fails. The applicant should join her transferred place of posting with immediate effect, failing which the respondents are at liberty to act as per law.

The interim order stands vacated accordingly.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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