

(2014) 01 JH CK 0137

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5074 of 2012

Mira Mahananda

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-01-2014

Acts Referred:

Citation : (2014) 1 JLJR 626

Hon'ble Judges : R. Banumathi, C.J.;Shree Chandrashekhar, J

Bench : Division Bench

**Advocate : M.M. Pal, Mahua Palit and Leena Mukherjee, for the Appellant;
Mahesh Tewari, for the Respondent**

Judgement

1. Aggrieved by a part of order dated 05.07.2012 passed in O.A. No. 73 of 2011 (R) whereunder it has been held that the transfer order is not loaded with mala fide nor it has been issued to victimize the petitioner, the present writ petition has been filed. Further prayers seeking quashing of Memo dated 16.04.2011 and orders dated 09.04.2011 and 13.04.2011 have also been made in the writ petition. The petitioner was appointed on the post of Sweeper, Group D post. She was subsequently posted as Store KHI in Railway Hospital, Chakradharpur. A sparing memo dated 16.04.2011 was served to the petitioner with a direction to report to CMS/BNDM. On an application made under R.T.I., the copy of letter dated 09.04.2011 issued by the CMS/CKP was furnished to the petitioner. The petitioner moved the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 73 of 2011 (R) seeking quashing of order dated 16.04.2011. The said application has been dismissed recording as under:

The applicant has failed to establish that her transfer order is loaded with malafides and has been passed in order to victimize her. Accordingly, the action of the respondents in transferring the applicant cannot be interfered with by this forum. However, it appears that the applicant would be put to hardship and inconvenience by the transfer considering that she, an unmarried lady member of staff, is supporting a number of relatives by her income. There is also an

avermment by her that she was sought to be subjected to sexual harassment. Considering the hardship which would be caused to the applicant and the sensitivity of the matter, it is better that the CMS/CKP or some other higher officer looks into the case personally and sympathetically, gives an oral hearing to the applicant and then takes a decision in the matter either to confirm the transfer order already passed or to cancel/modify it suitably.

2. A counter-affidavit has been filed stating that the applicant being junior most Store Khalasi was ordered to transfer in place of Sri Benudhar Mahto by note-sheet dated 07.04.2011. A stand has been taken by the respondents that gazetted and non-gazetted post in the Railway is transferable and the petitioner was appointed on 27.01.2000 with certain conditions, one of which i.e. Clause 7 of the appointment letter clearly stipulates that the employee can be transferred to any Station in the South Eastern Railway. It is further stated that in compliance of order passed by the learned Central Administrative Tribunal, a personal hearing was given to the petitioner on 05.09.2012 and thereafter a detailed order has been passed on 11.09.2012 confirming the transfer of the petitioner.

3. Heard the learned counsel for the parties and perused the documents on record.

4. Mrs. M.M. Pal, the learned Senior counsel appearing for the petitioner has submitted that the note-sheet dated 07.04.2011, a copy which has been provided to the petitioner through R.T.I., would demonstrate that on the request of one Benudhar Mahto he was transferred from CMS/BNDM to CMS/CKP and only to accommodate him the petitioner has been transferred to CMS/BNDM. The learned Senior counsel has further submitted that the finding recorded by the learned Central Administrative Tribunal that the order of transfer is not loaded with malafide is apparently incorrect in view of the note-sheet dated 07.04.2011. It has not been disputed by the respondents in their counter-affidavit that the said Benudhar Mahto was transferred on his request. The learned Senior counsel has further submitted that the petitioner is an unmarried lady who has to look after her mother and younger brother and sister also, however, she has been transferred to a distant place from where it would not be possible for her to look after her family.

5. As against the above. Mr. Mahesh Tewari, the learned counsel appearing for the respondents has submitted that the petitioner was transferred in administrative exigency and since transfer is an incident of service the employee cannot challenge the order of transfer on the ground that it would cause hardship to him/her.

6. Having given our thoughtful consideration to the submission made on behalf of the rival parties, we are of the opinion that the impugned order dated 05.07.2012 does not can for any interference of this Court. The learned Tribunal has rejected the plea of malafide raised by the petitioner and we also do not find

any material to conclude that the order of transfer suffers from malafide on the part of the respondent-authority. The petitioner has remained for more than 10 years at one place and she being the junior most was transferred to BNDM. In view of the negation of sexual harassment made by the petitioner the learned Tribunal directed an higher officer to look into the grievance of the petitioner, the petitioner was heard by the Chief Medical Superintendent of Chakradharpur on 05.09.2012 and he has confirmed the transfer of the petitioner. The petitioner has not challenged the order dated 11.09.2012 passed by the Chief Medical Superintendent.

7. In Union of India and Others Vs. S.L. Abbas, , the Hon"ble Supreme Court has held:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it.....

8. In National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, , the Hon"ble Supreme Court has held:

5. It is by now well settled and often reiterated by this Court that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders as a matter of routine, as though they are the appellate authorities substituting their own decision for that of the management, as against such orders passed in the interest of administrative exigencies of the service concerned.

9. The Tribunal has recorded factual finding that the transfer is not loaded with any malafide and the said factual finding cannot be said to be erroneous. We do not find any merit in the writ petition and accordingly, it is dismissed. However, the request of the petitioner for transfer from CMS/BNDM to CMS/CKP Hospital, Chakradharpur/may be considered by the Chief Medical Superintendent, Chakradharpur after one year subject to the availability of the vacancy.