

(2015) 04 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Petition No. 16101 of 2014

Praveen Prakash

APPELLANT

Vs

National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Citation : (2015) 04 MP CK 0077

Hon'ble Judges : Vandana Kasrekar, J

Bench : Single Bench

Advocate : Sankalp Kochar, Learned Counsel, for the Appellant; Indira Nair, Learned Senior Counsel and J.P. Pandey, Learned Counsel, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Vandana Kasrekar, J.

1. The petitioner has filed the present writ petition challenging the order dated 7/10/2014 passed by respondent No. 3 whereby services of the petitioner have been transferred from Divisional Office, Bhopal to Sehore on the pretext that she had submitted a representation to the higher authority for changing her place of posting on transfer under Mobility Scheme.

2. Brief facts of the case are that the petitioner was initially appointed on the post of Clerk vide order dated 8/11/1983 in the National Insurance Company. She was promoted to the post of Senior Assistant in the year 1990-91 and thereafter promoted to the post of Administrative Officer in the year 2004. Vide order dated 11/5/2014 the petitioner was promoted to the post of Assistant Manager and was posted at Indore DO-3. The petitioner was asked to report for duty latest by 31/7/2014. The petitioner has submitted a representation to respondent No. 2 through proper channel requesting to post her after promotion at Bhopal, itself, owing to the precarious condition of the petitioner wherein her mother, aged about 74 years is suffering from cancer and her daughter is

studying in Class XII standard. She further submitted that the petitioner's herself is suffering from Osteoarthritis and Spinal problem. The representation submitted by the petitioner was forwarded to respondent No. 1. The petitioner submits that she was under impression that as other similarly situated female employees like Leena Saha and Leena Philip have been adjusted in the same place after promotion and are working in Bhopal DO01, therefore, same treatment shall be given to her by posting her at Bhopal after promotion.

3. The contention of the petitioner is that thereafter Senior Divisional Manager started harassing the petitioner. The petitioner has, therefore, submitted number of complaints. The petitioner thereafter submitted a representation on 24/9/2014 to the Regional Incharge, Indore to adjust her at Bhopal DO-2 as soon as possible. The petitioner, therefore, submitted several representations to the respondents. It is submitted that without considering the representation submitted by the petitioner, the respondents have issued an order dated 7/10/2014 thereby transferring the services of the petitioner to Sehore BO. Being aggrieved by this transfer order, the petitioner has submitted detailed representation to respondents No. 1 and 2 on 8/10/2014 and she has clarified that she had never asked for transfer under TMP Scheme and, thus, the impugned transfer order has been passed without application of mind even for namesake. The petitioner further submits that the said transfer order is in contravention of the transfer policy framed by the Government of India Annexure-P/14.

4. The respondents have filed their reply and have stated that the petitioner is continuously working at Bhopal for last more than 31 years. As Scale I officer, the petitioner has completed more than five years, therefore, TMP scheme is applicable to her. In the reply it has further been stated that as per the transfer mobility policy, normal period for an officer may be considered for transfer after first quarter of every year and as per clause -E of the said policy, no officer shall ordinarily continue in a sensitive assignment for a period exceeding three years at a stretch. The respondents have further stated that at the most in TMP, the petitioner is in Scale I cadre and he is liable to be transferred out of Bhopal. The respondents have further stated that the petitioner has been transferred to Sehore which about 39 Km away from the Bhopal and, thus, it is in rd accordance with the policy Annexure-P/14 dated 23 September, 2014.

5. Learned counsel for the petitioner argued that the said transfer order is illegal and contrary to the policy framed by the Union of India. He further submits that the impugned transfer order has been issued as if the petitioner has made a request for her transfer, however, she has never made any request for transfer. He further argues that as per the policy Annexure-P/14, as far as possible the transfer/posting of married female employee on her request may be made at the place where her husband is stationed or as near as possible to that place or vice-versa and secondly to accommodate as far as possible transfer/posting of an unmarried female employee, on her request, at a place where her parents are

stationed or as near as possible to that place. In view of the policy, he submits that the petitioner is a deserted lady and she is residing with her three daughters and 74 years old aged mother and her mother is suffering from Cancer and, therefore, as per policy Annexure-P/14, she should be posted at her parents place i.e. where her mother is residing or as near as possible to that place. He submits that in the present case, the petitioner has not made any request for her transfer to Sehore and, therefore, the impugned order of transfer is illegal and deserves to be set aside.

6. On the other hand, learned counsel for the respondents submits that the services of the petitioner have been transferred to Sehore which is about 39 Kms. away from Bhopal and as the petitioner has already completed a period of more than three years at the place of posting and, therefore, as per TMP policy, she has been transferred. She further submits that Clause -F of the TMP Annexure-R/2, it has been stated that no transfer request shall ordinarily be considered until an Officer has completed a minimum of three years at his present place of posting. In the present case, as the petitioner has not completed three years at the present place of posting, therefore, her request for transfer cannot be acceded to. Learned counsel for the respondents, therefore, prays for dismissal of the writ petition.

7. I have heard learned counsel for the parties and perused the record. From perusal of the record, I found that the petitioner is working at present place of posting for last more than 30 years and by the impugned order she has been transferred to Sehore which is about 39 kms. away from Bhopal and as per transfer policy, a married woman can be posted at her own request where her husband is stationed or as possible as nearer place and in case of unmarried woman, at her parents place or a nearby place. In the present case the petitioner is a deserted lady and is residing with her daughter and mother at Bhopal and as per the impugned order, she has been transferred at Sehore which is nearby Bhopal and is only 39 kms. away from Bhopal. Thus, the impugned transfer order is issued as per the transfer policy (Annexure-P/14). The said transfer order is issued in accordance with TMP policy which applicable to the petitioner and as per the said policy, as the petitioner has completed more than three years at the present place of her posting, therefore, the said transfer order is issued. Transfer is an incident of service and it is domain of the employer to place its employees at the place where it wants to place. However, the petitioner has not alleged any mala fide or there is no violation of any statutory policy or rules in issuing the impugned transfer order.

8. Thus, in view of aforesaid discussion, the writ petition has no force and the same is hereby dismissed with no order as to cost.