
(2012) 09 DEL CK 0037
In the Delhi High Court
Case No : WP (C) 5486 of 2012

Pushpa Devi

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Citation : (2012) 09 DEL CK 0037

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : Anil Hooda and Mr. Prashant Kumar, for the Appellant; Ravinder Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The petitioner is in the Nursing Cadre of BSF. Since BSF is a totally combatized force, her rank is that of an Inspector (Nursing). On May 14, 2011 the petitioner proceeded on deputation to the Composite Hospital of National Security Guards at Manesar and as pleaded by her in the writ petition, immediately on joining she availed medical leave and thereafter she availed maternity leave.

2. Grievance in the writ petition is she being repatriated, on administrative grounds, to BSF.

3. Petitioner asserts that tenure of deputation was 5 years.

4. As per the counter affidavit filed, in paragraph 4, it has been pleaded as under:-

4. The petitioner accepted offer of appointment and was relieved by her parent organization i.e. Border Security Force on 3rd May 2011 along with permission to avail journey period as admissible under the rules and 15 days of Earned Leave, and joined Composite Hospital, NSG on 14th May 2011, without availing sanctioned 15 days Earned Leave. On the first day of joining itself the petitioner

applied for 60 days Earned Leave on the ground of her child's illness. The Director (Medical), keeping in view of her condition took a sympathetic view and allowed her to join even when she was sanctioned 15 days Earned Leave by BSF authorities, got her induction medical conducted and sanctioned her 60 days Earned Leave on the same day. All these actions were taken very promptly and in the bare minimum of time she proceeded on 60 days Earned Leave immediately after joining NSG. She rejoined her duties on 14th July 2011 and again on 8th August 2011 the petitioner prayed for 10 days of Casual Leave. The petitioner remained on leave up to 22nd August 2011. On 9th August 2011, the petitioner applied for medical leave and remained on leave till 13th October 2011 (35 days). Again on 12.01.2012 the petitioner availed 29 days Medical Leave and remained on leave up to 09.02.2012 and in continuance availed 14 days of Medical Leave up to 23.02.2012. Immediately thereafter she remained on maternity leave w.e.f. 24.02.2012 and 21.08.2012. Thus during her total deputation period i.e. from 14.05.2011 to 21.08.2012 which comes to 466 days the petitioner has remained on duty only for 131 days. It is reiterated at the cost of repetition that there are only 5 posts of Nursing Sister and continuous non availability of one deputationist adversely affects the working of the hospital. It is pertinent to point out that Composite Hospital is the only hospital for total strength of the Force, which is catering for the medical needs of the personnel and their family members of the NSG.

5. In the rejoinder, pertaining to paragraph 4 of the counter affidavit the facts disclosed therein are not denied.

6. It has been highlighted in the counter affidavit that there are only 5 posts of Nursing Sisters in Composite Hospital, NSG and if one out of the five continues to avail leave, the working of the Composite Hospital suffers, and this we find is a good reason to take an administrative decision to repatriate a person on deputation.

7. Suffice would it be to state that the Nursing Cadre in BSF has 100s of posts of Inspectors as against only 5 under NSG. Thus, a person who is so situated in life that she needs repeated leave would be better off in an organization where number of posts is more, so that the need of the person can be accommodated and simultaneously the working of the organization is not disrupted.

8. We eschew reference to the controversy pertaining to the stand taken by the respondents that to browbeat senior officers, so that leave should be sanctioned to her the petitioner is making false allegations pertaining to sexual harassment, which on investigation have been found to be false, and the contra stand taken by the petitioner that since she did not succumb to the sexual overtures by her male superior officers they manipulated her repatriation.

9. It is settled law that a term of deputation can be curtailed and there is no vested right for a deputationist to remain on deputation for the originally agreed term.

10. The writ petition is dismissed. However, taking into account that the petitioner has an infant daughter and the sudden translocation may have a problem, we permit the petitioner to retain, for a period of 30 days from today, Type-III Quarter No. 31, allotted to her at Manesar by NSG and we are passing this order since on being repatriated, vide communication dated August 27, 2012, the petitioner has been directed to immediately surrender the quarter and handover vacant possession. No costs.

CM No. 11188/2012

Dismissed as in fructuous.