

(2019) 12 DEL CK 0081

In the Delhi High Court

Case No : Civil Writ Petition No. 7912 Of 2018, Civil Miscellaneous Application
No. 30342, 30343 Of 2018

Shrabani Mondal

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 15, 16

Citation : (2019) 12 DEL CK 0081

Hon'ble Judges : Dr. S. Muralidhar, J; Talwant Singh, J

Bench : Division Bench

Advocate : Anand Varma

Final Decision : Dismissed

Judgement

Talwant Singh, J

1. The Petitioner has challenged the order and judgment dated 3rd January, 2018 in OA No.2053/2016 and order dated 9th February, 2018 in RA No.18/2018 passed by learned Central Administrative Tribunal (CAT) and has further prayed for quashing and setting aside orders dated 4th May, 2016 and 27th January, 2016 as well as other proceedings. In brief, the case of the Petitioner is that she joined All India Institute of Medical Sciences (AIIMS) in 2002 as Sister Grade-I. On 30th September, 2015 she was asked to handover the charge to another nurse and she was transferred to DNS. She was earlier working in D2 ward. On 5th October, 2015 she requested the acting Medical Superintendent for some fixed time duty so that she can take care of her autistic child also. She further wrote a letter dated 2nd November, 2015 requesting to put her back in lithotripsy or OPD duty.

2. On 14th November, 2015 the Petitioner was served with a memo in which it is stated that she had shown reluctance and disinterest in joining the transferred place of work. She replied to the said memo on 26th November, 2015. A warning

letter dated 11th December, 2015 was issued to her stating that in future, she should not make baseless allegations against the seniors. Another memo was issued to her on 27th January, 2016 proposing to take action against her under Rule 16 of CCS Rules. The same was replied on 27th January, 2016. She again wrote a letter on 18th March, 2016 to the Medical Superintendent requesting for a light duty in view of the medical condition of her autistic child. In February/March, 2016 the Petitioner approached National Human Rights Commission, Court of Chief Commissioners for Persons with Disabilities, Delhi Commission for Women and Scheduled Caste Commission also and apprised them about the facts of her case. On 4th May, 2016 the Respondents instituted an enquiry against her under Rule 14 of CCS Rules, 1965.

3. The Petitioner preferred an OA No.2053/2016 before CAT which was dismissed vide impugned order dated 3rd January, 2018 and the review petition filed against the same has been dismissed on 9th February, 2018. The Petitioner has made the following prayers:

"It is therefore most respectfully prayed that this Hon'ble Court may be graciously pleased to:

(a) Quash and set aside the impugned orders and judgment dated 03.01.2018 in OA No.2053/2016 and order dated 09.02.2018 in RA No.18/2018.

(b) Quash and set aside the order dated 04.05.2016, dated 27.01.2016 and other proceedings.

(c) Pass any such order as this Hon'ble court may deems and proper in the facts and circumstances of the case to meet the ends of justices."

4. Counter affidavit was filed by Respondent Nos.2-5 mentioning therein that the only legal contention raised by the Petitioner is that two simultaneous proceedings under Rule 15 and 16 of CCS (CCA) Rules are being conducted; the departmental enquiry is mala fide and is being conducted to harass the Petitioner but the Petitioner had not raised these contentions before the CAT and it is established principle of law that the contentions not raised before the learned Tribunal cannot be raised before this Court for the first time. It has been further submitted that vide order dated 31st July, 2018 this Court had directed the Respondents counsel to seek instructions as to whether simultaneous proceedings against the Petitioner are being undertaken. The Respondents informed their counsel on 26 th October, 2018 that while issuing the order dated 4th May, 2016 with regard to appointment of Enquiry Officer and Presenting Officer, it was inadvertently mentioned that an enquiry under 14 of the CCS (CCA) Rules is being held against the Petitioner. However, order dated 31st May, 2017 was issued under Rule 16 appointing another Presenting Officer, as the earlier Presenting Officer had been repatriated to her parent cadre. So, at present, the order dated 31st March, 2017 stand and the enquiry against the Petitioner is only conducted under Rule 16 of CCS Rules and there is no enquiry being conducted under Rule 14. This fact has been recorded by this Court in the

order dated 29th October, 2018.

5. As per the Respondents, the Petitioner has not raised any substantive question of law and no cause of action exists in favour of the Petitioner. It has been further mentioned that the Petitioner's case is based on the fact that her request to not to transfer her to the reliever duty was not acceded to and this request arose from her requirement to take care of her child suffering from autistic disorder. Vide order dated 31st July, 2018 this Court has recorded that Petitioner's counsel, on instructions from his client states that she does not press the relief for exemption from routine transfers within the complex of AIIMS. The answering Respondents have, to the best of their administrative ability, tried to accommodate the Petitioner. The Respondents have tried to oblige the Petitioner in all possible manner so as to enable her to take care of her children. The Petitioner was never harassed by the Competent Authority of AIIMS. An assurance was given before the National Commission of Scheduled Casts that the Petitioner will be transferred to Yoga Centre, so as to enable her to take care of her children and she is currently posted at Yoga Centre in compliance with the said undertaking.

6. Stand of the Respondents is that there cannot be any exemption from transfer if the transfer order has been passed in accordance with exigencies of service or public interest. The Petitioner had been transferred to different departments within the same institute and in the same campus, so no hardship has been faced by the Petitioner giving her right to invoke the writ jurisdiction of this Court. The transfer is not initiated by any mala fide or in violation of any statutory provision and this Court cannot go into the question as to whether the transfer was done in public interest or not as that would require adjudication on facts and the same is not within the ambit of writ jurisdiction. Similarly, the Court cannot go into the question of relative hardship as the same cannot be a ground for judicial review. The learned CAT had directed the Petitioner to cooperate with the enquiry proceedings and even after the Chief Admin Officer had requested the Petitioner on 19th June, 2018 to cooperate with the enquiry proceedings. The Petitioner has not complied with the order of the learned Tribunal nor cooperated with the enquiry proceedings.

7. A rejoinder has been filed by the Petitioner stating that contents of counter affidavit are misleading and based on surmises of the Respondents. She has reiterated her demand for lighter duty and she further stated that the main challenge is to the two enquiries being conducted by the Respondents.

8. We have heard the Petitioner in person and learned counsel Mr. Anand Varma who appeared for the Respondents. The operative portion of the order of the CAT dated 3rd January, 2018 is reproduced here under:

"13. Primarily, the applicant is aggrieved of her transfer from one department (seat) to another by the respondents and subsequent action taken by them to warn her and then issued a charge sheet to her under Rule-14 of CCS (CCA)

Rules, 1965.

13.1 That transfer is an incident of service, is a principle well known and well settled as held by the Hon'ble Supreme Court in the case of SBI Vs. Anjan Sanyal, 2001(3)Scale 329 "An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order." It is clear that an employee has no legal right to insist on being posted at any particular place.

13.2 In the instant case, the Respondents showed due indulgence towards the applicant by simply transferring her from Lithotripsy room to another place. Being upset by the said transfer, the applicant felt that the action is on account of prejudice towards her and she started making allegations against seniors. While the applicant was well within her right to represent against the transfer, but being a government servant, certain amount of propriety and discipline is expected of an employee in making any request, in a proper manner. If the request is considered but not accepted, it does not tantamount to prejudice or discrimination etc. as alleged by the applicant.

13.3 While it is true that the applicant has personal problems on account of which it is a challenge for her to balance her responsibility at home and at her work place but it appears that the respondents have tried their best to accommodate her from time to time. It has also to be kept in mind that the respondents have a responsibility of running an institute and are dealing with matters of life and death where patients require dedicated and focused attention of the nursing staff. For this, they have to depute the staff as per their capabilities, keeping in mind the administrative requirement of each ward. Since the applicant has only been transferred from one department of the Institute to another, in a routine manner, the allegation of applicant regarding mala fide is not established. It has been alleged that the applicant's attitude is such that it might be detrimental to the patients in case she is allowed to continue in AB-4 Ward as requested by her.

13.4 As far as the impugned orders and other proceedings initiated against the applicant are concerned, we hold that the same have been issued by the respondents keeping in mind the best interest of the administration.

14. We, however, deem it appropriate to advise the applicant to co-operate with the enquiry proceedings and present her defence before the Enquiry Officer or the Disciplinary Authority, as the case may be, for redressal of her grievances, if any.

15. In view of the discussions above, we feel that the O.A. does not merit any interference from this Tribunal. The same is accordingly dismissed. No costs."

9. Now, as far as the question of Petitioner being aggrieved because of her transfer from one department of AIIMS to other is concerned, it has been recorded in the order sheet dated 31st July, 2018 is as under:

"1. At the outset, learned counsel for the Petitioner states on instructions from his client that he does not wish to press the relief for exemption from routine transfers within the complex of the respondent No.2/AIIMS. He states that the petitioner shall confine the relief in this petition to the findings returned by the Tribunal on two inquiries initiated against her, one under Rule 14 and the other under Rule 16 of the CCS(CCA) Rules, 1965."

10. The rest of the order dated 31st July, 2018 concerns regarding the scope of the present writ petition and the same is reproduced here under:

"2. Learned counsel for the petitioner states that while the inquiry in respect of the memorandum dated 27.01.2016 issued by the respondent No.2 is for a minor penalty proposed to be imposed on the petitioner, is pending, subsequently, an order dated 04.05.2016 was issued by the respondent No.2/AIIMS informing the petitioner that an inquiry under Rule 14 of the CCS (CCA) Rules was being held against her proposing to impose a major penalty on her, without furnishing her copies of the Articles of Charge.

3. On inquiring from learned counsel for the petitioner as to whether any such plea was taken before the Tribunal, on going through the OA filed by the petitioner before the Tribunal, he concedes that no such plea was taken before the Tribunal. That being the position, we decline to permit the petitioner to expand the scope of the present petition and raise pleas that were never taken before the Tribunal.

4. Till now, whatever arguments have been addressed by learned counsel for the petitioner to assail the order dated 03.01.2018, passed by the Tribunal, followed by the order dated 09.02.2018 rejecting the review petition filed by the petitioner, have not impressed us for issuing notice.

5. All the same, before proceeding further, we have requested learned counsel for the respondent/AIIMS to obtain instructions with regard to the subject matter of the two inquiries, one under Rule 14 and the other under Rule 16 of the CCS(CCA) Rules, 1965. The relevant documents relating to the charges subject matter of the inquiry being conducted by the respondent/AIIMS in terms of the order dated 04.05.2016, shall be produced on the next date with an advance copy to the other side.

List for admission on 29.10.2018."

11. It can be seen from the above order dated 31st July, 2018 that the Petitioner has been left with no grudge as far as her routine transfers are concerned. Moreover, nowadays she has been posted at Yoga Centre and when we required from her as to whether she is happy with her present posting, she acknowledged the same. Vide order dated 31st July, 2018 this Court has declined to permit the

Petitioner to expand the scope of present petition and she was not allowed to raise the pleas which were not taken before the Tribunal. The only query left for decision was that as to whether there were two parallel enquiries being carried against the Petitioner at the same time, i.e. one under Rule 14 and the other under Rule 16 of CCS (CCA) Rules, 1965. On the next date of hearing, learned counsel for the Respondents had clarified that there was only one enquiry pending and that under Rule 16 and there was no enquiry pending under Rule 14. The matter was referred to mediation vide order dated 29th October, 2018. On the next date, i.e. 30th November, 2018 the Petitioner, who was present with her counsel, stated that she would not like to proceed with the mediation. Accordingly, mediation proceedings were closed and the writ was fixed for hearing. Notice was issued on 13th May, 2019 and thereafter, counter affidavit was filed, followed by the rejoinder.

12. It has been made abundantly clear in the counter affidavit that only one enquiry under Rule 16 is pending. The relevant portion of the counter affidavit is reproduced here under:

"At present the order dated 31.05.2017 stands and therefore, the inquiry against Smt. Shrabani Mondal is only under Rule 16 of CCS (CCA) Rules, 1965 and there is no inquiry being conducted under Rule 14. The same has already been recorded by this Hon'ble Court in its order dated 29.10.2018. A copy of the communication dated 26.10.2018 from the Respondent is annexed herewith and marked as Annexure R-1."

13. The confusion which was being created that there were two enquiries being conducted on the same set of facts stands removed. This Court reiterates the advice given to the Petitioner by CAT that she should fully cooperate in the enquiry proceedings under Rule 16 of CCS (CCA) Rules being conducted against her and whatever she has to state in her defense, she should state so before the Enquiry Officer and she may even lead evidence in support of her contentions either by herself or by calling witnesses. Nothing survives in the writ petition and the same is accordingly dismissed. The pending applications stand disposed of.