
(2018) 01 CAT CK 0080

In the Central Administrative Tribunal

Case No : Original Application No. 2053 Of 2016

Shrabani Mondal

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 03-01-2018

Acts Referred:

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

Citation : (2018) 01 CAT CK 0080

Hon'ble Judges : Praveen Mahajan, Member (A); Raj Vir Sharma, Member (J)

Bench : Division Bench

Advocate : R.K. Gupta

Final Decision : Dismissed

Judgement

Praveen Mahajan, Member (A)

1. Briefly stated, the facts of the case are that the applicant joined All India Institute of Medical Sciences (AIIMS) as Nurse/Sister Grade-II in the year 2002. She got married in 2005 and in 2006, she gave birth to a baby girl, who had symptoms of Autism. In April, 2010, she again gave birth to a baby boy, who was also found to be suffering from Autism Spectrum disorder (mental retardness/disabled).

2. The applicant states that she was posted in a reliever duty from 2011-2013 March, which requires extensive physical exertion. Finding it difficult to balance between taking care of the children and her job, she requested that she may be given any fixed OPD duty. She was posted in Lithotripsy, OPD, Room No. 62 in April, 2013 where she continued to perform well till 6th October, 2015 under HOD Dr. Dogra.

3. She further contends that in September, 2015 she joined her duties after availing CCL of 60 days (approx.) when she was informed over the phone by OPD DNS Manju Singh that on instructions of Dr. Dogra, she has been transferred to OPD Ward reliever where she was given duties of fixed reliever in Ward Block

area. She requested the department that she may be transferred to another department where Dr. Dogra is not the head. Later, on her personal request, Dr. Dogra permitted her to work in the same ward i.e. Room No. 62, Lithotripsy. But on 30.09.2015, the applicant was again asked to hand over her charge and was transferred to some reliever duty. She again requested Mrs. Manju OPD DNS to give some fixed duty whereupon Mrs. Manju directed her to approach Medical Superintendent. She accordingly wrote to the acting Medical Superintendent Dr. I.B. Singh, and requested for some fixed duty, alleging bias by the attitude of the respondents. Thereafter, she again wrote to Medical Superintendent, requesting that she may be put back in Lithotripsy or put her on OPD duty due to personal problems, but her plea fell on deaf ears. The applicant avers that she received many letters/memorandums regarding her reluctant behavior and aggressive attitude towards her seniors. The respondents transferred the applicant to the Ward where work load is very hectic. She repeatedly requested the authorities to give her light duties so that she can take care of her Autistic children, but to no avail.

4. The applicant submits that she has been served a Memo dated 14.11.2015 stating that she showed reluctance and disinterest in joining the transferred place of work. The same was replied to on 26.11.2015. She explained her problem to the CNO and DNS Mrs. Manju Singh but instead of considering her request, DNS took it otherwise and forwarded a letter dated 19.10.2015 to her and put it in the personal file of the applicant without serving it on her. The respondents have issued a warning letter dated 11.12.2015 to the applicant stating that in future she shall bear in mind not to make such baseless allegations regarding her seniors.

5. The respondents issued another Memo dated 27.01.2016 to the applicant whereby an action against the applicant under Rule-16 of the CCS Rules was proposed to be taken against her. The applicant submits that she was not on duty from December, 2015 to March, 2016 and was surprised to know that the respondents have issued her three letters dated 14.11.2015, 05.12.2015 and 27.01.2016 in 03 months. She replied on 11.02.2016 to the Memo dated 27.01.2016 denying all the allegations in the Articles of Charge. She again wrote an application dated 18.03.2016 to the Medical Superintendent of AIIMS explaining the reasons for requesting for light duty. Vide their reply dated 11.04.2016, the respondents state that she has been given duty in Ward AB-4 on humanitarian ground in view of her family and social problems.

6. The applicant approached the National Human Rights Commission, Delhi Commission for Women, and, Schedule Caste Commission and submitted letters dated 04.02.2016, 09.02.2016 and 07.03.2016. She submits that DoP&T O.M. dated 07.11.2014 clearly states that vide OM dated 06.06.2014, those government employees are exempted from the routine exercise of transfer who are care giver of the exempted child. Since Autism also is a kind of disablement, hence she requested that she may be given light duty work and also exempted

from routine transfer. Despite all this, the respondents vide letter dated 04.05.2016 instituted an enquiry against her under Rule 14 of the Central Civil Services (Classification, Control & Appeals) Rules, 1965.

7. Aggrieved by the Memos dated 27.01.2016 and 04.05.2016, the applicant has approached this Tribunal seeking the following reliefs:-

"(i) Quash the order dated 04.05.2016 and dated 27.01.2016 and other proceedings and in view of the OM dated 17.11.14 & 06.06.14 issued by the Ministry of Personnel, issued directions to the respondent to exempt the applicant from the routine transfer in future view of the office memorandum dated 17.11.2014 and 06.06.2014 issued by the Ministry of Personnel; or to provide light duty in view of same.

(ii) May pass such other and further order(s) which this Hon'ble Court deem fit and proper in the view of the present facts and circumstances and in the interest of justice."

8. Rebutting the allegations, the respondents state that Memos dated 27.01.2016 and 04.05.2016 have been issued to the applicant according to law. They submit that the applicant was issued transfer orders due to administrative reasons, and not because of any bias towards her. Sh. P.N. Dogra, Head, Deptt. of Urology had requested Medical Superintendent verbally to change the place of posting of the applicant from Lithotripsy Room to any other area. Since this was a routine administrative request, Medical Superintendent informed Chief Nursing Officer to do the needful. She had conveyed it through DNS, OPD Ms. Manju Singh that the applicant's present place of posting will be changed.

9. The applicant's claim that Dr. Dogra appreciated her work is wrong. Dr. Dogra did not want to make a formal complaint against the applicant but he wanted that her present place of work be changed without taking any punitive action against her. Thereafter, the applicant started making allegations against her seniors and tried to portray herself as the victim. On 17.03.2016, Dr. Dogra made a written complaint against the work and conduct of the applicant. The respondents state that the applicant was not transferred due to any prejudice of DNS Ms. Manju and Dr. Dogra towards her but due to her own habit of making false and baseless allegations. Since the applicant was indulging in behaviour, unbecoming of a government servant, therefore, a show cause notice dated 14.11.2015 was issued to her. After examining her explanation dated 26.12.2015, a warning was issued to her vide Memo dated 11.12.2015. The applicant, however, continued to make complaints to the Medical Superintendent alleging mental harassment by CNO and DNS vide letter dated 08.01.2016. A disciplinary enquiry was initiated against the applicant and charge sheet dated 27.01.2016 issued to her. She did not respond to the same and continued to make complaints vide letters dated 4th/5th February, 2016 and 8th February, 2016 to the Office of Director. The respondents have further contended that the show cause notice, warning and charge sheet etc. are due to her continuous false

complaints against her seniors and her unbecoming behaviour.

9.1 The applicant had submitted a representation to National Commission for Scheduled Castes, who found that the allegations made by her are not true and closed the case.

9.2 The applicant has filed a case bearing No. 6719/1023/2016 dated 10.08.2016 before the Court of Chief Commissioner for Persons with Disability, New Delhi, which is still pending.

10. The respondents have relied upon the decisions of Hon'ble Supreme Court in the following cases:-

(i) Chief General Manager Vs. Sh. Rajendra Ch. Bhattacharjee, 1995(2) SCC 532.

(ii) UOI Vs. H.N. Kirtania, 1989(3)SCC 447.

(iii) N.K. Singh Vs. UOI, 1994(6)SCC 98.

(iv) SBI Vs. Anjan Sanyal, 2001(3)Scale 329.

10.1 The respondents have also relied on the decision of this Tribunal in the following case:-

OA-3546/2015 (A.B. Dhargave Vs. AIIMS & Ors.) decided on 24.11.2015.

11. In the rejoinder, the applicant has reiterated the issues already raised in the O.A.

12. We have heard the learned counsels for the parties, perused the pleadings as well as the rulings cited at the Bar and given our thoughtful consideration to the matter.

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 inference from this Tribunal. The same is accordingly dismissed. No costs.