

REPORTABLE

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : July 23, 2008

+ WP(C) No. 4942/2008

DR. SURESH KUMAR ... Petitioner

! Mr. Sanjay Sharma, Advocate

Versus

\$ NTPC LTD. & ANR. ... Respondents.

**^ Mr. S.K. Taneja, Sr. Advocate with
Mr. Puneet Taneja, Advocate.**

**CORAM :
HON'BLE MR. JUSTICE S.N. AGGARWAL**

1. Whether reporters of Local paper may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether the judgment should be reported in the Digest?

S.N. Aggarwal, J. (Oral)

1 The petitioner, in this writ petition, is aggrieved by an order of his transfer dated 25th June, 2008 transferring him from N.T.P.C. Hospital, Vidyut Nagar, Distt. Gautam Budh Nagar (U.P) to R.G.P.P.L. site at Mumbai on secondment basis. He has prayed for issuance of appropriate writ/orders or directions against the respondents Nos. 1 & 2 quashing the transfer order dated 25th June, 2008.

2 Briefly stated the facts of the case are that the petitioner was appointed to the post of Medical Officer (E.N.T.) in N.T.P.C. vide

appointment letter dated 13th August, 1993 and consequent upon his said appointment he was posted to Rihand Super Thermal Power Project, P.O. Rihand Nagar, Distt. Sonbhadra (U.P.). Thereafter, the petitioner was transferred from there to his present place of posting at N.T.P.C. Hospital, Vidyut Nagar, Distt. Gautam Budh Nagar (U.P.). He has now been transferred to R.G.P.P.L. site at Mumbai on secondment basis vide transfer order dated 25th June, 2000, which is at page 9A of the paper book.

3 The petitioner has alleged that the impugned transfer order passed by the respondents against him has been passed arbitrarily with *mala fide* intention as a mode of punishment on him. The petitioner has also alleged undue hardship caused to him and to his family by the impugned transfer. He has stated that he has two children namely Gaurav, aged 7 years and Pareksha, aged 10 years, who are studying in Class-I & Class-IV respectively in Delhi Public School, Vidyut Nagar, Dadri, Distt. Gautam Budh Nagar (U.P.). He has contended that there is no similar school of the status of the Delhi Public School at the place where he has been transferred vide impugned transfer order and, therefore, according to him the studies of his children would suffer with the change of syllabus, etc. The petitioner has further contended that there is no provision for transferring an employee outside Delhi as per the Service Rules and Regulations including the Conduct, Discipline and Appeal Rules,

Administrative Orders, etc. applicable in NTPC (respondent No.1). It is on these grounds that the petitioner has prayed for quashing of the impugned transfer order and to allow him to continue to work in the hospital where he is presently posted.

4 This petition was taken up for admission hearing on 14th July, 2008 and on that day Mr. Sanjay Sharma, learned counsel appearing on behalf of the petitioner after advancing some arguments in the case took time to place certain correspondence that exchanged between the parties and also the relevant Service Rules having bearing on the impugned transfer order. On the request of the counsel for the petitioner, the case was adjourned to be taken up on 22nd July, 2008. In the meanwhile, the petitioner filed an application being CM No.9947/2008 for permission to plead additional grounds in support of his challenge to the impugned transfer order. This request made by the petitioner in CM No.9947/2008 was allowed vide order passed by the court on 22nd July, 2008. Remaining arguments in the main petition were heard on 22nd July, 2008 and after the counsel for the petitioner had concluded his arguments on that day and when the court had just started dictating judgment, the counsel appearing on behalf of the petitioner requested for time to take instructions from his client to withdraw the present writ petition and on his said request the case was adjourned for today i.e, 23rd July, 2008. On 23rd July, 2008 the counsel appearing on behalf of the petitioner made a

statement that the case may be disposed of by a speaking order and accordingly the case has been taken up for disposal on merits.

5 The main thrust of the arguments of learned counsel appearing on behalf of the petitioner was that the impugned transfer order is vitiated by *mala fides* on the part of the respondents. In support of his said argument, the learned counsel has referred and relied upon the communication that exchanged between the parties prior to passing of the impugned order, which are Annexures P-1 to P-6B in CM No.9948/2008. A careful reading of the said correspondence would reveal that the petitioner who is holding a responsible position in NTPC has taken an argumentative attitude with his employer (NTPC) regarding the nature of duties he is performing in the hospital where he is presently posted. It shall be relevant to refer to one of the letters dated 07th May, 2008 (Annexure P-6A) written by the petitioner to his higher authorities in regard to the duties performed by him and the contents of the said letter are extracted below:-

"To

*The C.M.D.
N.T.P.C., New Delhi*

Respected Sir,

I, [Dr. Suresh Kumar], working in company since 1993 as an ENT specialist. I joined in RHSTP Project on 06.09.1993 as a Medical Officer [ENT]. In my offer letter my work was clear cut mentioned that you have work as

per your specialty and as a GDMO whenever required. It means that you will see the patients of having ENT problem and when GDMO absent on that date you have to see general patient having cough, cold, fever in O.P.D. also. No other works mentioned in my offer letter. In Dadri project, Emergency is being runned around the clock 24 hours. Doctors are posted by CMO in shift duty. 3 doctors are posted in three shifts like A.B.C. I am sending the photocopy of duty roster of this month [May], kindly go through that rota. I was also put in the rota. When I refused that as per corporate order this work is not related to me and you have to make separate arrangement for this work. In spite of making separate arrangement, CMO started threatening me that, disciplinary action can be taken. He given me a letter and pressurizing to me to do shift duty and giving me example that in project other doctors are doing duty. What the other peoples are doing, I am not interest, may be their interest to get money and c.off. I told that I am not interested to get those benefits and remove my name from rota, but he is not removing my name and pressurizing to do duty which is not mentioned in my offer letter. Kindly interfere in this matter seriously as soon as possible. I am requesting you not threatening that if I put this matter in labour court than a lot of problems may arise and company will face problem and this will be only due to one person. I was due for promotion from E5 to E6 this year, I presented one letter to local management but no satisfactory answering given to me. I have done my education from BHU Varanasi. If the doctors are being tortured like that than no doctor will come in company. After 14 years, I reached upto E5 level only, having the doctor of Post Graduate.

*Copy of CMO Letter
Copy of Duty rota
Copy of Offer letter*

*Your employee
Dr. Suresh Kumar, NCPS Dadri
71222"*

6 A plain reading of the above referred letter shows the frustration of the petitioner. In this backdrop of the matter, the question that immediately arise to my mind is whether the impugned

transfer of the petitioner can be described as tainted with *mala fides* as sought to be alleged on his behalf? The answer to this question cannot be anything but simple 'NO'. It may be noted that the petitioner was appointed by the respondents to the post of Medical Officer (E.N.T.) vide appointment letter dated 13th /17th August, 1993, which contains terms and conditions of his appointment. The appointment letter of the petitioner is at page 10A to 17 of the paper book. On a reading of the said appointment letter, it may be seen that his appointment was in E-2A level, but over the years he was promoted from E-2A level to E-5 level. In case there was any *mala fide* on the part of the respondents, then the petitioner would not have been promoted from E-2A level to E-5 level. It may further be noticed from the appointment letter of the petitioner that it was a specific condition of his appointment that the respondents could take duties of general duty medical officer from the petitioner, whenever required in addition to his area of specialization.

7 Condition No.11 mentioned in his appointment letter is very important and the same is extracted below:

“11. You are liable to be posted at the discretion of the Management to serve at any of the Company's Offices/Projects/Units or any other Government department, statutory body or public sector undertaking anywhere in India or abroad.”

8 It is evident from the reading of the appointment letter of the petitioner that his services are liable to be transferred by the

respondents anywhere in India. It, therefore, does not lie in the mouth of the petitioner to contend that there are no provisions in the Service Rules and Regulations including Conduct, Transfer and Appeal Rules for transferring an employee outside the State. The issue of hardship raised on behalf of the petitioner is of no consequence because in the opinion of this court, every transfer would entail some amount of hardship to the employee under transfer. The law is well settled that the court normally should not interfere in the transfer orders unless impugned transfer is result of some *mala fides* or any abuse of administrative powers. In the present case, I do not find any such abuse of administrative discretion vested with the respondents in transferring the petitioner from his present place of posting to the place where he has been transferred. The transfer of the petitioner appears to be in exigencies of the service and the same cannot be faulted with.

9 In view of the above, I do not find any merit in this petition, which fails and is hereby dismissed in limine.

July 23, 2008
'nks'

S.N.AGGARWAL
[JUDGE]