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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12851 OF 2016

Dr. Satish Kumar Ratnakar
Working as Principal Medical Officer (Selection Grade)
Ordnance Factory, Ambernath.
Residing at: Class 6/2, Ordnance
Factory Estate, Ambernath, Thane
District- 421 502. ...Petitioner

Vs.

1. Union of India
through Director General &
Chairman of Ordnance Factories
Ordnance Factory Board,
10-A. S.K. Bose Road,
Kolkata-700 001.
2. The Director of Health Services
Ordnance Factory Board,
10-A, S.K. Bose Road,
Kolkata – 700 001.
3. The General Manager
Ordnance Factory,
Ambernath, Dist: Thane-421 502.
4. Dr. A. Hazarika
Chief Medical Officer,
Ordnance Factory,
Ambernath, Dist: Thane-421 502.

...Respondents

Mr. R.S. Apte, Senior Advocate
i/b. Mr. Girish J. Paryani, Advocate for the Petitioner / Applicant
Mr. A.M. Sethna a/w. Mr. D.A. Dubey, Advocate for
Respondent / UOI.

**CORAM : SMT. V.K. TAHILRAMANI, &
M.S. KARNIK, JJ.**

DATED: 27TH APRIL, 2017

ORDER [PER SHRI M.S. KARNIK, J.]

1. The Petitioner challenges by this Petition the order dated 8th November 2016 passed by the Central Administrative Tribunal Bombay Bench, Mumbai. The Tribunal by this impugned order dismissed the O.A. No. 133 of 2016 filed by the Petitioner challenging transfer order dated 23rd February, 2016. By the transfer order dated 23rd February, 2016 the Petitioner was transferred from his present place of posting i.e. Ordnance Factory, Ambernath to Ordnance Factory, Itarsi.

2. The Petitioner was appointed in the Indian Ordnance Factories Health Services on 13th July 1998 as Assistant Medical Officer at the Vehicle Factory Jabalpur. The Petitioner was promoted as Principal Medical Officer on 1st April, 2011. The Petitioner was further promoted as Principal Medical Officer (Selection Grade) on 1st April, 2015. The

Petitioner came to be transferred and posted as Senior Medical Officer at the Ordnance Factory, Ambernath and he accordingly joined at Ordnance Factory, Ambernath on 1st August, 2012.

3. According to the Petitioner the Respondent No.1 has formulated the Transfer Policy for Indian Ordnance Factories Health Services. As per Clause 5 of the said policy the maximum tenure at a unit/station is for 5 years. According to the Petitioner his transfer was in breach of this policy. On this ground and other grounds mentioned hereinafter the Petitioner contends that the Respondents were not justified in transferring the Petitioner by the impugned order dated 23rd February, 2016.

4. The learned Senior Counsel for the Petitioner while assailing the order passed by the Tribunal has mainly contended as under:

(a) That the transfer order is contrary to the Transfer Policy for Indian Ordnance Factories Health Services (IOFHS). He invited our attention to the relevant clauses 5, 9 & 10 of the said policy which reads thus:

“5. The maximum tenure at a unit/station for all officers of the

IOFHS shall be 5 years, except MO-in-Charge of the Hospital. The MO-in-Charge, being a sensitive post, the maximum tenure shall be restricted to three years in a unit Hospital and five years at a station.

9. *Notwithstanding above, all representations and individual requests for transfer before completion of tenure, or retention beyond tenure, or any deviation from the transfer policy, in exceptional circumstances, shall be considered by the Committee consisting of the Member (Personnel) and the Director of Health Services. The Committee shall recommend its views stating clearly therein the reasons for deviation from the policy to the DGOF & Chairman, OFB. The decision of the DGOF & Chairman, OFB in the matter shall be final.*

10. *The posting of husband and wife at the same station shall be considered as per the Government of India guidelines on the subject”.*

(b) According to the learned Senior Counsel the Petitioner is transferred before he completed his tenure of 5 years. In the submission of the learned Senior Counsel there were no exceptional circumstances to transfer him before completion of his tenure. He invited our attention to the order of transfer dated 23rd February 2016 wherein it is mentioned

that the transfer is ordered in public interest and on administrative grounds. However, according to him the said transfer is made in breach of clause 9, in as much as, apart from the exceptional circumstances not existing to effect such a transfer, even the procedure laid down in clause 9 is not followed. Learned Senior Counsel invited our attention to one note at page 198 prepared before the decision of transfer was taken. In his submission the Committee is not constituted in accordance with clause 9, therefore, the order of transfer is vitiated.

(c) Learned Senior Counsel further contended that the transfer order is punitive in nature. According to him the note at page 198 itself would go to show that there are allegations of misconduct, dereliction of duty, insubordination and indiscipline against the Petitioner which has resulted in his transfer. In the submission of learned Senior Counsel he has been punished without holding an inquiry. According to him the order of transfer, therefore, is punitive in nature and hence illegal.

(d) It is next contended by the learned Senior Counsel that the order of transfer is malafide. According to the learned Senior Counsel he had given various suggestions regarding medical examination of the

employees engaged in hazardous operations. He also complained against misuse of Ambulance and for taking action against the concerned person responsible for this misuse. This was not liked by his superiors. The impugned order therefore came to be passed. He invited our attention to the representations made by the Petitioner in this regard more particularly the representation dated 27th January, 2016.

(e) It is next contended by the learned Senior Counsel that as per the policy, the Petitioner and his wife should be posted at the same station. According to him though his wife is working with the Central Bank of India there is no reason why the benefit of the policy in particular clause 10 thereof be not extended to him. The learned Senior Counsel contends that great prejudice would be caused to the Petitioner if he is posted at Itarsi which is a hard station. As a matter of fact the Petitioner was already posted at hard stations on previous occasions and therefore, it is not fair on the part of the Respondents to again post the Petitioner to a hard station.

5. The learned Counsel for the Respondents on the other hand supported the order of the Tribunal. According to him the transfer was

necessitated on grounds of administrative exigencies and public interest. According to the learned Counsel for the Respondents there is no infraction of clause 9 of the policy and in fact a decision to post and transfer the Petitioner at Itarsi has been taken after complying with clause 9 of the policy. He also invited our attention to the note at page 198. He invites our attention to the modalities which were available for consideration in view of the various allegations made against the Petitioner. Accordingly orders were sought as to whether disciplinary proceedings may be initiated against the Petitioner if deemed necessary / warranted; or the Petitioner may be posted from the Ordnance Factory Ambarnath in his own interest and also in overall organisational interest. Thereafter the recommendations were made at different levels and ultimately the DGOF and Chairman, OFB approved the transfer of the Petitioner to another station.

6. Learned Counsel for Respondents further submitted that the Petitioner's wife is working in the Central Bank of India and therefore, not covered by the Policy. He however, submitted that it is for the Petitioner to make a representation for considering his request, but the same could be considered only after he has joined the transferred place of posting.

7. According to the learned Counsel for the Respondents the transfer was necessitated for administrative reasons and for public interest. The learned Counsel for the Respondents invited out attention to the detailed order passed by the Tribunal and contends that in view of the well reasoned order passed by the Tribunal this Court may not interfere with the view taken by the Tribunal.

8. Having considered the submissions advanced by the respective Counsels we are of the opinion that the order passed by the Tribunal does not call for any interference. Admittedly the Petitioner had not completed the tenure of 5 years in his present place of posting. Several complaints have been filed by the OFA employees and by the Indian Ordnance Factories Health Employees Association about the conduct of the Petitioner. The Petitioner was counselled on a number of occasions to mend his ways and carry out his professional duties in proper manner. The noting in the note sheet indicates that the report about the Petitioner's conduct by his immediate superiors was taken into consideration by the Chairman, OFB. The Director of Health Services has also recorded that he has personally counselled the Petitioner on earlier

occasions and the Petitioner has been advised to mend his ways while treating the patients and be more polite in his approach.

9. The paramedical staff of the hospital also have lodged complaint against the Petitioner on 1st October, 2014 wherein they have described the rude and unreasonable behaviour of the Petitioner. There were several complaints about the Petitioner's mis-behaviour with the patients. The Petitioner has tried to contend that it was only on account of the Petitioner pointing out the misuse of ambulance by his representations dated 23rd November, 2015 and 9th December, 2015 that he has been victimised. There is however, memo issued by the Respondent No.4 on record to the Petitioner wherein the Petitioner has been advised to work in a more responsible manner in future. This memo is prior in point of time to the Petitioner making representations. The contention of the Petitioner that the action against him was taken only because the Respondents were annoyed by the representations made by the Petitioner is therefore without any substance.

10. The Tribunal in the impugned order at paragraph 16 has observed thus:

“16. I have also perused the original records wherein the matter of the applicant's transfer has been dealt with at the level of the Chairman Ordnance Factory Board. It shows the report about his misconduct by his immediate superior was taken in to consideration. Th Chairman, Ordnance Factory Board has taken into account the complaints received from the Chief Medical Officer In-charge, OFH/OFA, Joint General Manager/Admin, MTPF, The Indian Ordnance Factories Health Employees Association (affiliated to INTUC), Employees of OFH/OFA, Ordnance Employees Union, Ambernath and National Defence Employees Union before deciding on the applicants' transfer. It has also been observed in the File relating to the applicant's transfer that the Chief Medical Officer In-charge has intimated that he had received verbal complaint against the MO (applicant) from all sections of people. The MO has been previously verbally advised by the earlier Senior General Manager, present General Manager & CMO I/c on many occasions to correct his behaviour/approach towards the patients reporting to him for treatment. The Chairman, OFB has applied his mind and taken a conscious decision to approve the note that there is justification for transferring the applicant on administrative ground as well as issuing suitable advisory note/warning. I, therefore, find the action of the Chairman justified and legally valid”.

11. We therefore, do not find any merit in the contention of the Petitioner that the impugned order is punitive or malafide. The contention of the Petitioner that there is an infraction of clause 9 of the policy is, therefore, rejected. The decision to transfer the Petitioner has been taken by the Chairman, OFB after taking into consideration all the relevant facts and circumstances and in public interest.

12. In so far as posting of the Petitioner and his wife at the same station is concerned the Government policy stipulates that where one spouse belongs to a Central Service and the other spouse belongs to a PSU, the spouse employed under the PSU may apply to the Competent Authority and the said Authority may post the officer to the station or if there is no post under the PSU in that station, to the station nearest to the station where the other spouse is posted. If, however, this request cannot be granted because the PSU has no post in the said station, then the spouse belonging to the Central Service may apply to the appropriate Cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station, to the station nearest to the station where the spouse employed under the PSU is posted. In our

opinion the Tribunal is justified in observing that the Petitioner and his spouse are entitled to take further action as per the Government Guidelines once his transfer has been ordered in public interest.

13. In this view of the matter we do not find any reason to interfere with the order passed by the Tribunal. Writ Petition is accordingly dismissed with no order as to costs.

14. At this stage a request is made by the learned Senior Counsel appearing for the Petitioner that the interim protection granted by this Court may be continued for further period of 4 weeks. This request is objected to by the Counsel for the Respondents. However, in the interest of justice, we feel, that the interim order granted by this Court deserves to be continued for a period of 4 weeks from today.

(M.S. KARNIK, J.)

(SMT. V.K. TAHILRAMANI, J.)