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

+ **Date of Decision: 23.05.2017**

% **W.P.(C) 4505/2017**

MOLLY DAS

..... Petitioner

Through: Mr. M.P. Raju, Advocate.

versus

THE PRINCIPAL SECRETARY (HEALTH)
AND ORS

..... Respondents

Through: Mr. Rahul Sharma & Mr. C.K. Bhatt,
Advocates for respondents No.1 to 6.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

VIPIN SANGHI, J. (ORAL)

C.M. No. 19679/2017

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 4505/2017 and C.M. Nos.19677/2017, 19678/2017 & 19680/2017

3. The petitioner has preferred the present writ petition to assail the order dated 11.05.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1561/2017. The

Tribunal has dismissed the said Original Application.

4. The petitioner had preferred the said Original Application before the Tribunal to assail the orders dated 25.04.2017, 27.04.2017 & 28.04.2017 passed by the respondents, whereby the petitioner was relieved from Guru Teg Bahadur (GTB) Hospital and was posted at Lal Bahadur Shastri (LBS) Hospital. The petitioner also sought orders for re-joining her duties at GTB Hospital.

5. The case of the petitioner was that she was initially appointed as a Staff Nurse and that she was working in the GTB Hospital since 1997. She was promoted as Nursing Sister Group-B in 2006. The Additional MS (HS) & Link Officer AMS (A) issued an order dated 25.04.2017 surrendering the petitioner's services with directions to her to report to the Special Secretary, Health & Family Welfare Department as her services were no longer required in the GTB Hospital. This order was issued with the prior approval of the Medical Director, GTB Hospital. On 28.04.2017, the relieving order was issued by the GTB Hospital, which referred to the communication of Deputy Secretary (HR-Nursing) dated 27.04.2017 and in consequence whereof, the petitioner was relieved from her duties w.e.f. 28.04.2017. This relieving order posted the petitioner to LBS Hospital.

6. The petitioner assailed the said orders on the ground that she is the General Secretary of the Nurses Union, i.e. respondent No.7, and that her relieving and subsequent posting at LBS Hospital was mala fide. By the impugned order, the Tribunal dismissed the Original Application by observing as follows:

“6. The basic ground on which cancellation and stay of the transfer order of the applicant is being sought is that the applicant feels that because she was a member of the union and had taken up certain causes on behalf of the Nursing staff, she is being victimized and transferred. First of all, if the union is not recognized as stated above then the ground that she is the office bearer of the union and hence cannot be shifted out will not arise. It would be clear from the list of dates that the applicant has been in GTBH since 1994 and vide orders dated 25.04.2017 and 28.04.2017 she has been shifted to another hospital in Delhi under the GNCTD, namely, Lal Bahadur Shastri Hospital. Even for transfer of Government servants within Delhi after decade of staying at one place in Delhi, there is rising tendency amongst Government servants to rush to the Tribunal to get the transfer stayed.

7. The Hon’ble Supreme Court in the case of S.C. Saxena Vs. Union of India & Ors., 2006 SCC (L&S) 1890 has settled the law on transfer as follows:

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.”

8. In this case as stated earlier, the transfer is from one hospital in Delhi to another hospital in Delhi and yet the applicant is defying the transfer order. We find absolute no merit in the OA in the facts and circumstances of the case as well as law laid down by the Hon’ble Supreme Court and the OA is dismissed in limine. No costs”

7. The submission of learned counsel for the petitioner is that in the Original Application, the petitioner had made specific allegations of mala fide against respondent No.5/ Medical Director of the GTB Hospital.

8. In this regard, we may refer to the following averments made in the Original Application by the petitioner:

“(iii) That in the year 2015 the respondent No.5 was appointed as the Medical Director, GTB Hospital. It is humbly submitted that the Respondent No.5 joined as a Resident Doctor in the hospital and got promoted in the hierarchy over the last 25 years. It is humbly submitted that the applicant union found that the Respondent No.5 treated his subordinates abusively, badly and in an arbitrary manner and had no respect for rules and procedures applicable to government servants. His behavior was anti-union. He always had an ear for sycophants and was surrounded by a coterie. The applicant No.1 union and the Respondent No.5 had conflict of interests for many years.

(iv) It is humbly submitted that the applicant union has been a strong defender of the rights of the nurses of the GTB Hospital and throughout Delhi. On the Respondent No.5 taking charge as Medical Director serious conflicts arose between him and the applicant No.1 union on many issues.

(v) The Respondent No.5 organised a coterie around him comprising of some junior male nurses whom he persuaded to register a Welfare Association in the name and style of. Nurses Association of GTB Hospital to act as a counter balance against the Applicant No.1 . After the registration of the above association as a welfare society, the Respondent No.5 went into an overdrive to grant recognition to the Nursing Association of GTB Hospital as the recognized Union/Service Association in the establishment of GTB Hospital. It is humbly submitted that to the information of the applicants, the Nursing Association of GTB Hospital was formed by 8 male nurses and after it's

formation by 8 members no election has been held in the association. The said Association has no representative character.

x x x x x x x x x x

(vii) The respondent No. 5 started pressurizing the applicant union to hand over the office allotted to it 25 years ago so that he could hand over the same to his pet Association, Nursing Association of GTB Hospital.

(viii) The applicant No.1 union did not accept the directive of the Respondent No.5 in handing over the union office to the Nursing Association of GTB Hospital and submitted during the various meetings held by the Respondent No.5 in this regard that they are ready and willing to accept any orders passed according to the mandate of the 1993 Rules. However, the Respondent No.5 was not ready to accept the suggestions of the applicant No.1 union to adapt the procedure as prescribed in the Central Civil Services (Recognition of Service Association) Rules 1993 and to conduct any form of verification/election/check off to ascertain the relative strength of the two contenting unions. The Respondent No.5 is avoiding to follow the rules in view of the fact that the Nursing Association of GTB Hospital Nurses Association is only a paper organization and they have been identified by the nurses as a puppet of Respondent No.5.

(ix) It is humbly submitted that the Respondent NO.5 found that the applicant No.2 is the General Secretary of the Union for a long time and is one among the most important bulwarks in the strength of the union.

(x) The Respondent No.5 decided to target the applicant No.2 to demolish the strength of the Nurses Union. On 18.5.16 he made a visit to the place of working of the applicant No.2 in the name of an inspection at the Cardiac Care Unit (CCU) where the applicant No.2 has been working and on 19.5.16 he issued a warning to the applicant No.2. The

***warning letter issued is enclosed herewith as Annexure-A-8.
The said letter alleged as under:-***

"WARNING

The undersigned took a round of CCU on 18.05.16 at around 9.00 AM and found the following discrepancies/ mismanagement :

An unauthorized person was waiting in the pantry room.

Inspection of the store revealed that the entries in the indent book was not matching with the items inspected (3-way).

Large amount of gauze and thans was found inside a large bucket.

It appears that despite my earlier orders, the store was not inspected on regular basis and no watch is being kept on the indents and outflow of the items indented. Accordingly, you are therefore warned to be careful and take necessary steps for maintaining and inspection of stores on regular basis."

(xi) It is humbly submitted that the allegations against the applicant No.2 as contained in the warning letter dt. 19.05.16 are totally unfounded. The applicant No.2 was not responsible in any manner for any of the short comings mentioned in the warning letter. Copies of the relevant replies / letters by the applicant No.2 dated 23.05.2016, 27.05.2016 and 06.06.2016 in this regard are Annexures-A-9 , A-10 and A-11 hereto. It is, however, humbly submitted that the Respondent No.5 transferred the applicant from the Cardiac Care Unit where she was posted for 10 years to the special Labour Room, contrary to the interest of patient care. Copy of the said order dated 25.05.2016 is Annexure-A-12. Copies of two more

memorandums by the Respondent No.5 dated 27.05.2016 and 30.05.2016 as **Annexure-A-13 and A-14** hereto.

(xii) The Applicant No.2 repeatedly represented that the warning against her is malafide, contrary to the principles of natural justice and without following the due procedure of law. The Respondent No.5, thereafter vide order dated 20.10.2016 constituted an enquiry committee to investigate the matter, which clearly shows that to the Respondent No. 5 himself the action in issuing the warning letter dated 19.05.2016 (Annexure-H) is erroneous. Copy of the order dated 20.10.2016 is **Annexure-A-15** hereto. It is humbly submitted that the Respondent No.5 fixed 2 weeks time for the committee to submit its report. It is humbly submitted that though 6 months have passed after the committee was given 2 weeks time to submit its report, no report of the committee has been handed over to the applicant No.2. The applicants have come to know that the committee has, in fact, exonerated the applicant No.2 and that is why the report of the committee is not being released. Copy of reply dated 08.03.17 received by the applicant No.2 claiming that the report of the committee is still pending is **Annexure-A-16** hereto.

(xiii) It is humbly submitted that in the meanwhile the Respondent No.5 continued to harass the applicants asking them to vacate the office of the union. Copies of these letters dated 28.03.2017 and 11.04.2017 issued by the respondent No.5 to the applicants are enclosed herewith as **Annexure-A-17 and A-18** hereto.

(xiv) It is humbly submitted that whenever discussions were held between the applicants and the respondent No.5 demanding surrender of the office of the applicant's union the Respondent No.5 called Sh. Jitender Singh who claims himself as President of the Nursing Association of GTB Hospital. The respondent No.5 clearly told the applicants in various meetings that after taking over the office from the applicant No.1, the same has to be handed over to the Nursing Association of GTB

Hospital, whom he now recognizes as the only union of Nurses in the GTB Hospital.

(xv) It is humbly submitted that while the purpose of the directive of the Respondent No.5 to the applicants to vacate the office of the union is shown as patient care the intention of the Respondent No.5 is to hand over the same to the Nursing Association of GTB Hospital after snatching it from the applicants, contrary to the Rules formulated by the Govt. of India governing recognition of Service Associations in the government service. The Respondent No.5 claimed in the letters dated 28.03.2017 and 01.04.2017 that the room being occupied by the applicants are Room Nos: 36 and 37 which are allegedly immediately required for patient care purposes. The truth is that the applicants are occupying Room No. 31. Room Nos. 36 and 37 are not in the possession of the applicants. Copy of the relevant letter dated 20.04.2017 by the applicants is Annexure-A-19 and its reply dated 24.04.2017 is Annexure-A-20 hereto.

(xvi) In addition to the above, the respondent No.5 also issued various circulars directing the nurses in the hospital to perform the duties of pharmacists also. It is humbly submitted that only pharmacists with a diploma of 3 1/2 years / 5 years degree could be entrusted with the task of handling and distribution of medicines which the nurses trained in nursing care was asked to do. The respondent No.5 issued circular dated 18.03.2017 that the nurses should do the work of pharmacists also. Copy of the said letter is Annexure-A-21 hereto. However, while assigning the work of pharmacists to the Nurses, the Respondent No.5 also assigned several pharmacists to clerical jobs, thus wasting valuable expertise and posing a threat to the lives of patients and adversely affecting patient's care. It is humbly submitted that around 10 pharmacists were deputed by the respondent No.5 in various types of clerical work with ulterior motives against the medical ethics which endangered the life of patients. The GTB Hospital is a 1300 bedded hospital where the pharmacy has to work for 24 hours while the respondent No.5 curtailed the timing from 9 am to 5 pm

and the poor patients who had to avail free medicines from the government hospital was compelled to buy the medicines from the open market since the respondent No.5 kept the pharmacy closed during 2 of the three shifts. This created serious problems for the nurses since they deal directly with the patients and the patients were agitated on account of not getting the medicines from government hospital during its three shift working since the medicines were distributed to the patients only during one shift. The union had taken strong exception to the above action of the Respondent No.5 in assigning substantial number of pharmacists to clerical work and assigning the work of pharmacists to nurses since the agitated patients harassed the nurses for not getting medicines and the applicant No.2, therefore, filed an application under the RTI Act on 24.4.17 seeking various information regarding the employment of pharmacists in the hospital on clerical work. Copy of the applicant's letter dated 24.04.2017 in this regard is **Annexure-A-22** hereto. Copy of the RTI application is **Annexure- A-23** hereto.

(xvii) The respondent No.5 found that he has been caught red handed in deputing the pharmacists in clerical jobs and issued an order dated 24.4.17 revoking his earlier order in directing the nurses to perform the duties of pharmacists. Copy of the order dated 24.4.17 revoking the order deputing nurses for the work of pharmacists is **Annexure-A-24** hereto.

(xviii) It is humbly submitted that on receipt of the above said RTI application the Respondent No.5 flew into a rage and ordered the surrender of the services of the applicant No.2 from the GTB Hospital. It is humbly submitted that the Respondent No.5 is neither the appointing nor the disciplinary authority of the applicant No.2. Copy of the letter of appointment issued to the applicant No.2 is **Annexure-A-25**. Copy of order promoting her as Nursing Sister is **Annexure-A-26**. It is humbly submitted that the nurses working under the Govt. of NCTD has a common cadre. They have one seniority list for entire Delhi Hospitals. Their transfer and posting etc. are controlled by Respondent No.6. In case of

any serious case of indiscipline or administrative exigency, or punishment Respondent No.5 could have at the best recommended punishment's including surrender of the applicant to Respondent No.6 and it was upto the Respondent No.6 to accept or reject such a recommendation. The Respondent No.5 could not have surrendered the services of the applicant No.2 in the manner it has been done and the same is arbitrary, against the rules, illegal and without jurisdiction.”(Emphasis supplied)

9. Learned counsel for the petitioner submits that the Tribunal did not even examine the said allegations of mala fide made against respondent No.5 since the Original Application was dismissed in limine and without calling for a response of the respondents and in particular of respondent No.5.

10. Learned counsel has placed reliance on the observations made by the Supreme Court in ***N.K. Singh Vs. Union of India & Others***, (1994) 6 SCC 98. In paragraph 21 thereof the Supreme Court did not approve of the manner in which the Tribunal proceeded to decide the case. Allegations of mala fide having been made by the appellant/ applicant on affidavit, the Supreme Court held that the Tribunal could not have rejected them without even requiring a counter-affidavit to rebut those allegations. The Supreme Court held that the Tribunal also did not appreciate the true extent of scrutiny that should be undertaken into such a matter, and the grounds on which a transfer is judicially reviewable.

11. Learned counsel for the petitioner has also placed reliance on ***Yadavindra Public School Association Vs. State of Punjab & Others***, (1999) 1 SCC 189, wherein the Supreme Court disapproved of the in limine

dismissal of the writ petition, wherein allegations of mala fide had been made. It was held that the person against whom allegations have been made must be given an opportunity to respond on an affidavit and the matter should be decided on merits.

12. We have consciously reproduced in extenso the allegations made in the Original Application by the petitioner against respondent No.5. It is well-settled that allegations of personal mala fide should be specific, and generalised allegations – without detailed particulars, would not suffice and would not stick. The allegations, as we have reproduced hereinabove, appear to be completely general in nature. Merely to claim that respondent No.5 treated his subordinates abusively, badly or in an arbitrary manner was not sufficient. Specific particulars and details of such like conduct ought to have been disclosed. It is not even disclosed as to with whom the respondent No.5 had acted abusively, badly or in an arbitrary manner or contrary to the rules, and when. Similarly, to claim that respondent No.5 had an ear for sycophants or he was surrounded by a coterie is not sufficient. In these circumstances, the Tribunal was justified in not calling upon the respondent No.5 to deal with the said general allegations.

13. The allegations with regard to the inspection carried out by respondent No.5 on 18.05.2016 of the CCU where the petitioner had been working are also meritless. Attention has been drawn by the learned counsel for the petitioner to the warning letter dated 19.05.2016 issued to the petitioner by respondent No.5. Pertinently, in her response given on 23.05.2016, none of the allegations contained in the warning were factually disputed. The response given by the petitioner on 23.05.2016, inter alia,

reads as follows:

“With reference to the above letter, I have to state the following:

1. The unauthorized person you have referred to in the letter was none else but a former employee of the hospital working in CCU. This was conveyed to you when you made the same query on 18.05.16. It is unfortunate that you still made a reference to it in the letter. Hence I would like to raise the following queries:

- a) Is it wrong for a former employee to visit the place she/he worked?*
- b) If the answer is yes, will it not mean that you or I won't be permitted to visit the department/hospital we worked after leaving this institute?*
- c) Will you please enrich my knowledge by providing me with the relevant rules in this regard?*

2. Regarding the mis-match of entries in the indent book, I would like to state that we take the time gap between the indent and the real delivery of items into consideration. Hence the mis-match you referred to should be seen from the point of patient care of the Aam Aadmi rather than from a purely technical angle.

3. The reference to gauze than or gauze bandage (I hope you mean gauze than when you have referred to 'gauze and thans' in your letter) seems to be misplaced. You have said that 'large amount of gauze and thans was found inside a large bucket'. On counting, I found that it numbered 25, and there is no wrong-doing/culpability/mismanagement in this regard.

Taking the above aspects into consideration. I feel that you have made a mountain out of molehill. Let me wind up with a quote: "[A great boss] is somebody who puts the human before the job". "

14. In view of the said response given, if respondent No.5 – who is concerned with the aspect of administration in the GTB Hospital, considered it essential to conduct a preliminary inquiry, the petitioner can have no grievance with the same. The respondent No.5 constituted a fact-finding inquiry committee vide order dated 20.10.2016 consisting of a Chairman, i.e. Dr. Rajiv Sagar, AMS (HS) with two members. It is informed that the said Committee has not given its fact finding report/ preliminary inquiry report as yet.

15. So far as the issue with regard to recognition granted to another Nurses Union is concerned, the same is a matter that the Union may agitate in the competent Labour Court. Obviously, since the petitioner's Union stands derecognized, the Union office should be vacated and be made available to the presently recognized Union.

16. In view of the aforesaid, it is clear that there was a skirmish between the petitioner on the one hand, and the respondent No.5 on the other hand. The same arose on account of the fact that the inspection carried out by respondent No.5 of the CCU – of which the petitioner was in-charge as Nursing Sister, threw up several alleged irregularities. The petitioner gave her aforesaid response, it appears, on account of the fact that she is the General Secretary of the Union.

17. In these circumstances, if with a view to maintain discipline in the administration of the hospital, the petitioner was relieved from the said hospital and posted at another hospital within Delhi – also managed by the respondents, in our view, mala fides cannot be alleged against the

respondent No.5 – merely on that account.

18. For the aforesaid reasons, we are of the view that the decisions relied upon by the petitioner were not attracted in the facts of the present case. We do not find any merit in the present writ petition.

19. Dismissed.

VIPIN SANGHI, J

DEEPA SHARMA, J

MAY 23, 2017

B.S. Rohella

