

PRADIP MOHANTY, J & S.K.MISHRA, J.

W.P.(C) NO.9266 OF 2010 (Decided on 23.09.2010)

MATHURA MOHAN NAYAK Petitioner.

.Vrs.

STATE OF ORISSA & ORS. Opp.Parties.

For Petitioner - M/s. D.K.Mohapatra, B.B.Routray, S.Jena,
P.K.Sahoo & S.Das.

For Opp.Parties - Addl. Standing Counsel.

S.K. MISHRA, J. Petitioner assails the order of the Chief District Medical Officer, Puri passed on 04.05.2010, Annexure-2 transferring him to the District Headquarter Hospital, Puri.

2. Petitioner, who is working as a Pharmacist since 1995, was posted at Kamala Devi Mantri Maternity Home Hospital, Puri. He pleads that from the date of initial appointment till date there is absolutely no allegation against him nor there any adverse remark in his C.C.R. It is further pleaded that the opposite party no.1 had issued a letter dated 30.04.2010 to the Chief Medical Officer, Puri wherein serious allegations were made against some Paramedics and Ministerial Staff. Certain allegations have also been made against the present petitioner. On that basis directions were made to the C.D.M.O. to transfer such type of Paramedical and Ministerial Staff from parental posting to any other place in case they have completed more than three years in a particular station.

It is further pleaded that the allegations received by the opposite party no.1 as borne out from the order dated 30.04.2010 have never been brought to the notice of the present petitioner and he has no scope to deny such allegations to be false and frivolous. In any event, the opposite party no.1 ought not have directed the CDMO to transfer the petitioner solely on the basis of such allegations even though such allegations have not been enquired into by the authority after following due procedure of law. Petitioner challenged this order before the Orissa Administrative Tribunal in Original Application bearing O.A. No.477 of 2010 on the ground that the order of the State Government dated 30.04.2010 is not a transfer on administrative exigency but it is passed on serious allegations which cast a stigma on his service career. He, further, pleaded that the procedure established by the law has not been followed and merely on the basis of allegation, the transfer of petitioner to the District Headquarter Hospital, Puri is illegal.

Petitioner further claimed that the Tribunal without considering the specific case of the petitioner rejected his application and therefore, he has come up this writ petition to quash the transfer order as well as the order of the Orissa Administrative Tribunal.

3. Opposite party no.3 filed a counter affidavit, *inter alia*, alleging that the petitioner has worked more than nine years at Kamala Devi Mantri Maternity Home Hospital, Puri as Pharmacist as he joined on 02.09.2000 in the forenoon and has been relieved from

the said medical institution on 05.05.2010 forenoon. He has already joined in the District Headquarter Hospital, Puri on 07.05.2010.

Opposite party no.3 further pleads that it was decided by the Government in Health and Family Welfare Department, Orissa, Vide letter no. 10443-H dated 30.04.2010 and transfer of those Paramedics and Ministerial has been made, who have completed more than five years in a particular station with allegation. It is not only the petitioner but also some others have been transferred. It is further pleaded that the petitioner has been transferred as he has completed more than three years in a particular institution basing on prevailing rules of the Government as stated above but not taking into account allegation relating to so called stigma. It is further pleaded that had the petitioner not completed three years service in Kamal Devi Mantri Maternity Home, Puri, his transfer could have been made after departmental enquiry in respect of allegation made against him. It is further pleaded that the allegations relating to so called stigma cannot be recorded in the C.C.R. and the service career of the petitioner relating to the above transfer as no departmental proceeding has yet been drawn against the petitioner and other and no enquiry into the allegations has been completed. It is further pleaded that the allegations made by the public relating to so called stigma against the Paramedics and Ministerial Staff including the petitioner are under process of enquiry. The opposite party no.3, therefore, prayed to dismiss the writ petition.

Petitioner has filed a rejoinder to the counter affidavit filed by the opposite party no.3.

4. We have heard learned counsel for the petitioner as well as learned Addl. Standing Counsel extensively. It is undisputed that the transfer order was made in pursuance of communication received from the Government in Health and Family Welfare Department. It is very clear from Annexure-2 that in pursuance of the instructions conveyed vide Government letter no.10443/MSNG-IIM-13/10 dated 30.04.2010, the Paramedical and Ministerial Staff as detailed therein, were transferred at the places as noted against their names. Perusal of the aforesaid letter reveals that the Addl. Secretary to Government communicated a letter to the Chief District Medical Officer, Puri that it has come to the notice of the Government that some Paramedics and Ministerial Staff are continuing at a particular place/station for more than 20 years and creating unpleasant situation and involved in taking bribes from the patients. It is further indicated that in this regard an allegation petition has been received in the department from the Governor's Secretariat, Orissa, copy of which has been enclosed to the said letter. Thereafter, the Addl. Secretary directed the CDMO, Puri to transfer such type of Paramedical and Ministerial Staff from the present place of posting to any other place within the district in case they have completed more than three years in a particular station in addition to the course of disciplinary proceeding and to report compliance within a week. At page-3 of the allegation petition, there are some allegations against the present petitioner regarding illegal activities he has allegedly involved in. There is no dispute at this stage that the transfer has been made on the basis of the allegations made against the petitioner, thereby creating stigma to his career.

5. Learned Standing Counsel has placed reliance on the ratio decided in ***Union of India and others Vs. Janardhan Debanath and another***, 2004 SCC (L & S) 631, wherein the Hon'ble Apex Court has held that the manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the

consequences flowing from the order and as to whether it adversely affected any service conditions, status, service prospects financially and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in case of dismissal/discharge/ reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration. So observing the Hon'ble Supreme Court quashed the order of the High Court.

6. Learned counsel for the petitioner, on the other hand, relied on the case of **Somesh Tiwari vs. Union of India and others**, AIR 2009 SC 1399. While dealing a similar case of transfer on the basis of an anonymous complaint, the Supreme Court observed that the order of transfer is indisputably an administrative order. There cannot be any doubt whatsoever the transfer, which is ordinarily an incident of service should not be interfered with. Save in cases, *inter alia*, mala fide on the part of the authority is proved. Mala fide is of two kinds. One is malice in fact and the second is malice in law. The Hon'ble Apex Court further observed that the order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground, i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

7. The factual position on the second reported decision is similar to the case in hand. The authorities have taken into consideration the allegations against the present petitioner by some unknown persons and have transferred him as a punishment creating stigma on his career. Such action is not permissible. Therefore, we have no hesitation to quash the order passed by the opposite parties, i.e. Annexure-2, as far as it relates to the present petitioner. However, we make it clear that, at this stage, this order shall not be a bar against transferring the present petitioner to any other place in administrative ground.

Accordingly, the Writ Petition is allowed. No costs.

Writ Petition allowed.