

Esic and Another Vs. Sumi Samadder

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Court : Delhi

Decided On : Mar-30-2012

Judge : Badar Durrez Ahmed & V.K. Jain

Appeal No. : W.P.(C) 1427 of 2012

Appellant : Esic and Another

Respondent : Sumi Samadder

Judgement :

V.K. JAIN, J.

1. This writ petition is directed against the order dated 02.01.2011 passed by the Central Administrative Tribunal, Principal Bench, Delhi (hereinafter referred to as the Tribunal) whereby OA No. 3496/2011 filed by the respondent was allowed. The facts giving rise of the filing of the petition can be summarized as under:

Pursuant to an advertisement issued by the petitioner inviting applications for filling up the vacancies in Employees State Insurance (ESI) Hospital, Gurgaon and ESI Hospital Adityapur (Jharkhand), the respondent who had applied for appointment to the post of ECG (Technician) was appointed as ECG (Technician) in the ESI Model Hospital Gurgaon. The offer of appointment stipulated that the respondent would be posted in any of the hospitals/units in NCR/Delhi. Pursuant to a request made by the respondent and some others for transfer on mutual basis, two employees including the respondent posted in Gurgaon were transferred from

Gurgaon to Delhi whereas two employees viz. Madan Lal and Daya Chand were transferred from Delhi to Gurgaon. A decision was taken by the petitioners on 8.12.2010 to make ESI Hospital, Gurgaon a part of Haryana instead of NCR/Delhi. Since, the seniority of the employees was to be maintained state-wise, seniority list of Gurgaon Hospital was delinked from Delhi and accordingly the persons who were transferred to Delhi from Gurgaon on the basis of mutual request were asked to give their option as to whether they wanted to remain in Haryana region or wanted to go back to Delhi. Both the persons, who were transferred from Delhi to Gurgaon viz. Madan Lal and Daya Chand opted for coming back to Delhi and their requests were allowed. The respondent and one Swati Jain who was the other person transferred from Gurgaon to Delhi on the basis of the aforesaid mutual request were directed to report to Gurgaon vide order dated 6.5.2011 and vide order dated 10.9.2011, the respondent was relieved from Delhi Hospital. The respondent filed OA No. 3496/2011 seeking quashing of the transfer order. The transfer orders were quashed by the Tribunal vide impugned order dated 2.1.2011.

2. A perusal of the offer of appointment dated 22.3.2010 issued to the respondent would show that she was liable to be posted in any of the hospitals/units of NCR/Delhi. There was no term in the offer of appointment issued to the respondent stipulating that she could not be transferred anywhere in the country or to any hospital/unit of ESI Corporation (ESIC) situated outside Delhi/NCR. No Rule governing the services of the respondent and stipulating All India transfer Liability has been claimed by the petitioner. The order passed by the Tribunal has been challenged on the ground that the respondent having been appointed against a post in ESI Model Hospital, Gurgaon, she can always be transferred back to that Hospital. The contention, to our mind, would be correct provided that ESI Model Hospital, Gurgaon continues to be a part of NCR region of ESIC. We notice the following averments made in the writ petition in this regard:

That on 8.12.2010 a decision was taken by D.G. ESIC that MS of Gurgaon Hospital will be the incharge of Haryana and ESI Hospital Gurgaon will be part of Haryana and not that of NCR/D(M)D and will have separate seniority of its para-medical staff than that of D(M)D. Since the seniority was to be maintained statewise the seniority list of Gurgaon Hospital was delinked from Delhi.

Accordingly, options were asked from person's who had come on mutual transfer to Gurgaon from Delhi that whether they want to remain in Haryana region or want to go back to Delhi. Both the persons opted for going back to Delhi and accordingly they were allowed to go back to their original State Delhi.

Identical averment was made in the reply to the OA filed before the Tribunal. In para 4.4 of the reply to the OA the respondents inter alia held as under:

x x x x at the time of transfer of petitioner from Gurgaon to Delhi, Gurgaon was considered as a part of NCR under the control of D(M)D. But subsequently in 2011 Gurgaon Hospital was taken out of the jurisdiction of D(M)D and placed under Haryana Region with different seniority than Hospitals in Delhi and NCR. x x x

It is therefore evident from a perusal of averment made in the writ petition as well as reply to the OA that ESI Hospital at Gurgaon is no more a part of NCR region as far as the petitioner ESIC is concerned. Had Gurgaon continued to be a part of NCR region of ESIC, the petitioners would have been perfectly justified in transferring her back from Delhi to Gurgaon but, once they had decided to take Gurgaon out of the NCR region of ESIC and make it a part of the Haryana region of ESIC, it was no more open to the petitioners to transfer her back to Gurgaon, since that would amount to her transfer to Haryana and such transfer to Haryana is not permissible in view of the terms and conditions of appointment of the respondent which envisaged her posting only in Delhi/NCR region of ESIC.

3. It was contended by the learned Senior Counsel for the petitioners that under NCR Planning Board Act, 1995 Gurgaon forms part of NCR region. This, to our mind, would not be relevant since ESIC is not following the Schedule attached to NCR Planning Board Act, 1995 and it has made Gurgaon Hospital a part of its Haryana region after delinking it from Delhi/NCR region. Once the petitioners had delinked Gurgaon from Delhi/NCR and made it a part of Haryana region they could not have transferred the respondent from Gurgaon which no more forms part of NCR region of ESIC. In fact not only Gurgaon but Faridabad, Sonapat, Rohtak and Panipat Districts of Haryana as well as districts of Bulandshahar and Ghaziabad in UP and Alwar in Rajasthan also form part of NCR region under the Schedule of NCR Planning Board Act, 1995 but as far as ESIC is concerned, its NCR region

does not include all the aforesaid districts. Therefore, the reliance upon the Schedule attached to NCR Planning Board Act, 1995 is misconceived.

4. The learned Senior Counsel for the petitioners has referred to ***Bedanga Talukdar v. Saifudaullah Khan And Others: 2011(11)Scale 293***, where the Supreme Court held that no relaxation of the terms and conditions contained in the advertisement was permissible unless the power of relaxation was available either in the advertisement itself or in the relevant Rules. However, in the case before this Court, no relaxation of any Rule or the terms and conditions subject to which the respondent was appointed is involved. In fact it is the terms and conditions contained in the offer of appointment on the basis of which the respondent claims that she cannot be transferred to Gurgaon as it is no more a part of Delhi/NCR region of ESIC. In the advertisement, we could find no stipulation for transfer to any place outside Delhi/NCR region therefore, the reliance upon this judgment is wholly misconceived.

For the reasons given in the preceding paragraphs, we find no merit in the writ petition. The petition is hereby dismissed without any order as to costs.

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