

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.2806/2002

New Delhi, this the 16th day of December 2002

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Ved Prakash Sharma,
S/o Shri Ram Roop Sharma
Aged 52 yrs,
R/o 1/2654, Ram Nagar,
Shahdara Delhi 32
Working as UDC
Directorate of Education
Old Sectt..Govt of NCT of Delhi
(By Advocate: Shri Arun Bhardwaj) ... Applicant

V E R S U S

1. The Govt of N.C.T. of Delhi
Through it's Secretary
Ministry of Education,
Old Sectt.. Delhi.
2. The Director
Directorate of Education,
Old Sectt.
Govt. of N.C.T. of Delhi
Delhi.
3. The Secretary (Services)
Delhi Sectt., Vth Level A Wing, I. P. Estate,
Govt. of N.C.T. of Delhi.
4. The Director General of Home Guards
and Director Civil Defence,
Nishkam Sewa Bhawan CTI Budg. Complex,
Raja Garden, New Delhi 110027.

(By Advocate: Shri Vijay Pandita) ... Respondents

O R D E R (ORAL)

Shri Shanker Raju, Member (J)

Through amendment, which is allowed, applicant impugns respondents' order dated 15.12.2002 whereby his transfer and relieving from Civil Defence Home Guards (CDHG) to Educational department of Govt. of NCT of Delhi has been cancelled retrospectively and he had been directed to continue to work in CDHG till further orders.

(8)

2. The applicant on account of failing health of his wife represented to the respondents at CDHG on 20.10.2001 as well as on 15.2.2002 to transfer him to nearest place of his residence. In view of this, the respondents vide order dated 6.8.2002 transferred the applicant from CDHG to Education Department of Govt. of NCT of Delhi against a vacant post. By further order dated 26.9.2002 even without awaiting the formal relieving order, applicant had been relieved to join the education department where he has joined on 7.10.2002. Directorate of Education vide order dated 16.10.2002 acknowledged the joining of the applicant.

3. Being aggrieved with the aforesaid cancellation of the transfer order without stating any reason, the applicant has filed the present OA. Shri Arun Bhardwaj, learned counsel appearing for the applicant contends that the only reason assigned in the reply is that the Head of Department on the basis of pending disciplinary proceedings whereby the charge-sheet was issued on 31.7.2002 in order to complete the inquiry which is more practicable in the CDHG had written to the services department which has resulted in cancellation of his transfer and relieving order. It is in this backdrop, stated that the applicant had not apprised before his the transfer in his representation about the pendency of the aforesaid disciplinary proceedings, which cannot be countenanced as he has already made his representation in Feb., 2002 when the charge-sheet was not in existence. It is further stated that as per the clarification of Govt. of India's OM dated 16.4.1969

under Rule 12 of the CCS (CCA) Rules, 1965 to a situation where the disciplinary proceedings started and the Govt. servant is transferred to the jurisdiction of another disciplinary authority. It is contended that now it has been decided that the inquiry proceedings should not be started *de novo* but the earlier inquiry can be carried on from the point when the transfer of the official was effected. In this background, it is stated that in the disciplinary proceedings after the appointment of the inquiry officer, the preliminary hearing is under way and no substantial progress is made in the inquiry as such the disciplinary authority in the education department i.e. Govt of NCT of Delhi is also competent to proceed further in the disciplinary proceedings as the documents and witnesses are available to D.A. in Education Department as well and the inquiry can be conveniently held in the Department of Education.

4. It is further stated that the Head of the Department was very much in the knowledge of disciplinary proceedings as he himself has issued the charge-sheet on 31.7.2002 while transferring the applicant. As such the contention raised is not well founded.

5. Thought no personal malafides have been alleged against the respondent No.4 i.e. Director but it is stated that the respondents have in their own reply pre-determined the misconduct of the applicant and at their own behest dehors the rules cancelled the relieving and transfer order so that the applicant can be brought within the ambit of the jurisdiction of

respondent No.4 for imposition of punishment. It is further stated that the aforesaid chargesheet was issued on showing nil balance of PUCs, which does not amount to a grave misconduct. (16)

6. It is, in this back ground, stated that the transfer is actuated and with legal malafide.

7. On the other hand, respondents' counsel Shri Vijay Pandita vehemently opposed the contentions of the applicant. In the light of the decision of Hon'ble Apex Court in the case of Union of India Vs. S.L. Abbas (1993 (2) SLR 585), it is contended that it is a settled legal position that who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it, while ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. If a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines provide that as far as possible, husband and wife must be posted at the same place. But the said guidelines have no legal enforceable right.

8. It is further stated by Shri Pandita that the applicant has not exhausted remedy under Section 20 of the Administrative Tribunals Act, 1985 against

cancellation order. It is urged that the malafides are neither apparent on the face of it nor established. Moreover, respondent No.4 has not been impleaded in person.

9. Apart from preliminary objection, it is contended that the transfer is prerogative of the cadre controlling authority i.e. services department. In the light of the fact that applicant did not mention about the disciplinary proceedings in his request/representation for his transfer and on account of pendency of charge sheet, disciplinary authority issued the charge sheet on 31.7.2001, orders have been issued to cancel the transfer and relieving order. Inquiry officer and PO have already been appointed and as the respondents department is aware of the details of the misconduct of the applicant, they would be better equipped with the inquiry and on its completion applicant would be relieved.

10. I have carefully considered the contentions of the parties and perused the material placed on record.

11. In the matter of transfer and posting, the law laid down by the Apex Court is abundantly clear that it cannot be interfered unless vitiated on malafides or it is against the rules or guide-lines. Transfer can also

be interfered if resorted to as a punitive measure. The only ground adduced by the respondents in their reply which persuaded them to cancel the said transfer

and relieving order is that the pendency of disciplinary proceedings which has not been apprised by the applicant and the inquiry if proceeded in CDHG would be conveniently held cannot stand the scrutiny of law. Admittedly the applicant requested for his transfer to the nearest place of his residence on account of ill health of his wife. Representation as such was lastly made on 15.2.2002 when the disciplinary proceedings were not in existence. There was no occasion for the applicant to apprise the Head of the Department about the said pendency of proceedings. Moreover, as the Head of the Department, respondent No.4 has recommended the said transfer of the applicant who was well aware of the said proceedings as he himself issued the same on 31.7.2002, administrative exigency resorted to cancel the transfer order cannot be sustained.

12. In so far as the ground that the inquiry would be more conveniently held in CDHG is concerned, the Head of the Department without any basis and dehors the rules recommended cancellation of transfer order to the services department. In the light of Govt. of India's OM dated 16.4.1969, whereby it has been clarified that in such cases, it is not necessary for disciplinary authority to start de novo proceedings by framing and delivering fresh charges to the concerned official, enquiry proceedings can be further resumed from the stage where the transfer of the accused officer was effected. If, however, the accused official is transferred to another station, then the procedure laid

down in Rule 12 (4) (b) of the CCS (CCA) Rules will have to be followed.

(B)

14. I also find from the records that the chargesheet was issued on 31.7.2002 and at the time of transfer in October, 2002 after appointment of the inquiry officer, notice for preliminary hearing was served upon the applicant. Neither substantial progress has been made in the inquiry nor the evidence has been recorded. As such the inquiry is still at the preliminary stage. In that event noting precludes the competent authority in Education Department to take over the inquiry proceedings from that stage and to resume it from the stage of preliminary hearing. The insistence of respondent no.4 to keep the inquiry within his jurisdiction as disciplinary authority is unfounded and unjustifiable in the light of Govt. of India's OM dated 16.4.1969. Disciplinary authority in the Education Department is competent to proceed ahead with the inquiry. It is strange to note that the respondents are stressing upon keeping the inquiry with them despite they have relieved the applicant after giving effect to the transfer order. Thus this action on the face of it, smacks of malafides. Even if respondent No.4 was not made party in person, the legal malafides are apparent on the face of record where the competent authority dehors the rules recommended the cancellation of the transfer of the applicant. Moreover from reply to para 4.6, it is clear that the misconduct of the applicant has been viewed and determined as a act ~~of~~ subversive of discipline. This shows that the issue was predetermined

(A)

and ~~for~~ for some reasons best known to respondent No.4 without any legal justification, dehors the rules, the disciplinary proceedings have been retained and a purported action was taken by the respondents to refer the case to services department for cancellation of the said order.

15. It is a settled principle of law that in administration, decisions should be fair, free and reasonable and the action confirmed to the rules.

16. Pending inquiry to my considered view can conveniently held at in the education department as per Rule 12 of the rules ibid and the reasons for cancelling the transfer and relieving order are baseless, smack of malafides and are not sustainable in the eyes of law in judicial scrutiny.

17. In the result, the OA is allowed. Orders of cancelling transfer and relieving of the applicant are quashed and set aside. The respondents are directed to forward the records of the disciplinary proceedings to the education department for resumption of the proceedings from the stage it was pending within a period of one month from the date of receipt of a copy of this order. It is needless to mention that the applicant in pursuance would be relieved to join the transferred place. No costs.



(SHANKER RAJU)
MEMBER (J)

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