

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2845/2002

New Delhi, this the 29th day of January, 2003

Hon'ble Sh. Shanker Raju, Member (J)

Mrs. Arvinder Sethi
R/o D-4/4095, Vasant Kunj
New Delhi.

...Applicant

(By Advocate Sh. Arun Bhardwaj with
Sh. Pradeep Dahiya)

V E R S U S

1. Govt. of NCT of Delhi
through Director of Education
Directorate of Education
Old Secretariat, Delhi.
2. Dy. Director (Education)
Distt. South-West
Vasant Vihar, New Delhi.
3. Principal
Sarvodaya Vidyalaya
Senior Secondary School
Sector-VI, R.K.Puram
New Delhi.

...Respondents

(By Advocate Sh. George Paracken)

O R D E R

By Hon'ble Sh. Shanker Raju, Member (J)

Applicant in this OA impugns respondent's order dated 20-9-2002 as well as 29-10-2002 whereby she has been transferred from R.K.Puram School to Inder Puri School and the representation preferred against the transfer has been rejected. She has prayed for setting aside of the orders.

2. Applicant was promoted to the post of Post Graduate Teacher (PGT) on 8-5-86 and was transferred from Sarvodaya Vidyalaya, Ashok Vihar to Sarvodaya Vidyalaya, Sector-VI, R.K.Puram in October 1995 where she had worked. By an order dated 20-9-2002, applicant was transferred from R.K.Puram School to

Inder Puri School against the vacant post. Applicant filed OA 2671/2002 and by an order dated 9-10-2002, respondents have been directed to dispose of the representation of the applicant which was disposed of on 20-9-2002 rejecting his request. Applicant ultimately joined Inder Puri School in October 2002.

(9)

3. Learned counsel of the applicant Sh. Bhardwaj contended that transfer was neither in public interest nor for an administrative exigency but on account of malafides of the respondents as well as in violation of statutory rules and guidelines. By referring to an incident of 17-9-2002 it is contended that the Principal of the School at R.K.Puram pulled the chair of the applicant. Applicant on account of this humiliation requested for grant of leave. She complained to the respondents on 18-9-2002 about the incident. By a memo dated 18-9-2002 applicant has been asked to give details of the leave availed between January, 2002 to 17-9-2002.

4. According to her, respondents transferred her to a far place about 25 Kms from her residence arbitrarily against the transfer policy which envisages that in so far as lady teachers are concerned, they may be posted as much as possible to the nearest place of residence.

5. It is contended that in R.K.Puram School, there were only two PGT English teachers to teach six sections of Class 11 and Class 12. Applicant has not been rendered surplus as per the load of work. Applicant remains on medical leave up to 16-10-2002.

Applicant through representation dated 3-10-2002 complained about the harassment and also the fact that on her transfer, teaching in R.K.Puram School has been adversely effected which is not in the interest of the students and also highlighted her personal problems on account of illness and inability to travel such a long distance. Applicant was asked to give her presence on a plain paper and was told to have been relieved on 24-9-2002.

(b)

6. Sh. Bhardwaj contended that neither the administrative exigencies nor public interest warranted transfer of the applicant. As per policy on transfers it is mandated upon the Deputy Directors (Education) to issue posting orders of all teachers by 15-6-2002 so that on immediately reopening of the Schools, teacher knows his posting. Moreover transfer in the midest of session would adversely affect the studies and interest of students. It is contended that in Inder Puri School as per the respondents there were no English teachers for the last three months which cannot be countenanced as Mr. Y.P.Kohli and Mrs. Deb Shree have been teaching English subject in Inder Puri School. Infact after transfer of the applicant from R.K.Puram School, there has been a shortage of PGT English at R.K.Puram which was not in the interest of students as per circular dated 6-10-93 in the transfer policy, teacher is to be posted to the nearest place of residence and also ensures that the senior most is transferred. It is stated that the applicant's LPC was also delayed which is against Delhi Administration letter dated 16-2-63 and as per DPT OM 6 10 1993 independence and impartiality to be

maintained in official dealings, the respondents had adopted an attitude which smacks of malafides and transfer has been resorted to against the policy.

(11)

7. Sh. Arun Bhardwaj in rejoinder also denied the contentions that Inder Puri School is in the same district but in a different zone. At R.K.Puram there are 180 students in 6 sections and one PGT to teach them, whereas in Inder Puri School there are 7 teachers.

8. On the other hand strongly rebutting the contentions of the applicant Sh. George Paracken, learned counsel for the respondents stated that where as the transfer was on administrative grounds in the interest of students at Inder Puri School, where no English subject Teacher was available. Applicant was transferred being senior most in the School where there was urgent need of English subject Teacher. In so far as malafides are concerned regarding issue of chair, it is stated that inabsence of impleadment of Principal in person, no malafides could be alleged. Moreover it is stated that this trivial incident is not sufficient to establish the malafides. Infact the transfer and posting are to be done by the concerned Deputy Director (Education) and Principal has no role to play in it. According to Sh. George applicant who was a senior most in the School has been transferred and despite her being relieved from R.K.Puram School, she had not complied with the orders and even at Inder Puri School she has not been regular in attending classes. As per the guidelines, general transfers are to be effected keeping in view the interest of the

students. As per the policy to post the teachers to the nearest place of residence. School at Inder Puri is within the district and distance is easily traversable. Applicant has been posted only when the respondents had no English subject Teacher in Inder Puri School. The Department first post the teachers who so ever applied for the particular area and thereafter the posting would be effected to the needs and necessity of the particular School and subjects.

9. In their additional reply on the directions of this Court, it is contended that applicant was transferred from R.K.Puram to Inder Puri School. There are 6 sections of 11th and 12th standards in the School. As such because of shortage of teachers, students of class 12th A & B are put together and in so far as class 11th is concerned, 2 sections have been clubbed. The regular number of teaching periods were 8 since the sections have been reduced to four. One PGT is sufficient to teach 11th & 12th classes. Whereas at Inder Puri, there were no PGT, to teach English subject. There are 5 sections in 11th and 12th standards and English is to be taught to 4 sections combined to two sections. Temporary arrangements have been made by engaging retired teacher as guest teacher as such administrative exigencies warranted transfer of the applicant, which cannot be found fault with. He has also produced a teachers attendance register and the documents regarding the strength of students and sections for the perusal of the Court.

10. I have carefully considered the rival contentions of the parties and perused the material on record including the record produced by the respondents.

(B)

11. At the outset as settled by the Apex Court in various pronouncements that transfers, in a judicial review, cannot be interfered by this Court acting as a appellate authority and wheels of Administration should be allowed to run smoothly and working of the administrative system cannot be industed by the Tribunal unless the transfer is without jurisdiction, malafide and in violation of statutory rules. The aforesaid conclusions have been dealt with by the Apex Court in N.K.Singh Vs. UOI,^{& ors.} (1994 (28) ATC 246) and UOI Vs. S.L.Abbas (1993 (2) SLR 585) and State of M.P. Vs. S.S.Kourava & ors. (JT 1995 (2) SC 498).

12. In the light of the ratio laid down by the Apex Court on examination and the evaluation of the facts of the present case, we find that at Inderpuri School, where no PGT was deputed to teach English to students of class 11th and 12th whereas in R.K.Puram by clubbing of the sections a lone teacher could have managed English classes. Applicant being senior most has been transferred to Inder Puri School in purely exigencies of administration and in public interest as studies at Inder Puri have been adversely effected which was not in interest of the students. From the data furnished by the respondents, no malafides are proved and rather at Inder Puri

temporary arrangements have been made to engage a retired teacher as a guest teacher which necessitated transfer of the applicant.

(V)

13. In so far as the plea that the guidelines for transfer issued through Circular dated 26-2-2001 enjoining upon the Deputy Director (E) to ensure that the teachers may be transferred and posted to the nearest place of residence is not a thumb rule. What has been provided that it should be done as far as possible. Applicant being senior most has been transferred to Inder Puri School from R.K.Puram School to save the academic session of the students there and to ensure that their studies are not adversely effected for want of a PGT. The contention that the applicant has been arbitrarily picked up cannot be countenanced as the transfer has been made within the district and the applicant has no indefeasible right to claim a particular place of posting to remain there till superannuation. Not only applicant but other teachers have also been transferred. It shows that as a policy decision, the applicant's transfer has been resorted to.

14. In so far as the plea that Principal has humiliated and harassed the applicant and few incidents to establish the same is not sufficient to prove malafides as firstly the Principal by name has not been made party, moreover Principal has no role to play in transfer of a teacher from School to School. It is to be done by the DD (E) of the concerned district.

15. As regard the LPC and delay in payment is concerned, even if there are directions that the same may be paid earliest and fixing of responsibility of the concerned officer, the same has no relation with the transfer of the applicant and is only anterior to the transfer which would not render the order of transfer which is in public interest and administrative exigencies as illegal.

(6)

16. I have also seen the order passed by the respondents on representation of the applicant which clearly shows that the applicant had firstly avoided the receipt of the relieving orders and pasting of orders on house door after the same has been avoided to my considered view is one of the modes of communication and the contention that Rule 30 of the CCS (CCA) Rules is violated, cannot be countenanced.

17. As at Inderpuri where number of students were more than that of R.K.Puram, the transfer of the senior most teacher was justified as per policy. As the study of students was being effected for want of teacher. Merely because the place is far from her residence cannot be a ground to interfere in the order of Transfer.

18. I am satisfied from the material that the transfer does not suffer from any legal infirmity or is in any manner contrary to the statutory rules or policy guidelines. However, once the applicant has been transferred to Inder Puri School and joined in October, 2002 and had remained there for more than three months, her shifting from that place would

rather be not in public interest and would adversely affect the interest of students at Inderpuri School in the midst of session having regard to the approaching annual examinations. However, though not finding any infirmity in the order of transfer, as the applicant has prayed for his posting at the nearest place of her residence directions are issued to the respondents that after the present academic session is over, they shall consider her request in the light of their policy guidelines and extent rules. With these observations, OA is found bereft of merit and is accordingly dismissed. No costs.

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S. Raju

(Shanker Raju)
Member (A)

/vksn/