

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.438 of 2001

New Delhi, this the 9th day of August, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Sh. M.S. Khanna
S/o Late Shri S.R. Khanna
R/o 149, RPS Flats, Sheikh Sarai-I,
New Delhi-110 017.

-APPLICANT

(By Advocate: Shri M.K. Gupta)

Versus

1. Union of India,
Through its Secretary,
Department of Secondary Education &
Higher Education,
Shastri Bhawan,
New Delhi-110 001.

2. Navodyaya Vidyalaya Samiti
Through its
Joint Director (Administration)
A-39, Kailash Colony,
New Delhi-110 048.

3. Shri M.L. Sharma
Deputy Director,
To be served through respondent No.2
i.e. Navodaya Vidyalaya Samiti
A-39, Kailash Colony,
New Delhi-110 048.

-RESPONDENTS

(By Advocate: Shri S. Rajappa)

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant in this OA has challenged an order dated 31.2001 passed by respondent No.2 whereby the applicant has been transferred from the post of Deputy Director (Administration) on NVS Headquarters to the post of Deputy Director at NVS Regional Office, Shillong. It is submitted that this transfer order is bad on various grounds that since the applicant has been transferred out of cadre which is otherwise illegal, arbitrary and mala fide as it has been done in colourable exercise of power by respondent No.2 and even the directions given by

for

(9)

Hon'ble Minister of State, Government of India, who is also the Vice-Chairman of the respondent No.2 Society, to keep the said order of transfer in abeyance till the disposal of the applicant's representation has not been obeyed and without any justification and reasons much less than the tenable reasons. It is further submitted that the appeal against the said order has not been disposed of till date.

2. The cadre of Deputy Director (Administration) and that of Deputy Director (Finance) are two different cadres and the mode of appointment and promotion from the post of Assistant Director are different and the applicant who had been working as Deputy Director (Administration) do not possess the requisite qualifications for the post of Deputy Director and the experience required for the said post, but still he has been transferred to the post of Deputy Director from the post of Deputy Director (Administration). It is also submitted that his son is studying in 9th standard and transfer order has been passed in mid-academic term and his wife is also a Government employee and she is working in the Ministry of HRD so on that ground the applicant should have been posted closer to his spouse as per the DOP&T instructions which has also been flouted.

3. Besides that it is also submitted that earlier a Writ Petition was filed by respondent No.3 before Punjab & Haryana High Court wherein the respondent No.2 had submitted a reply that there are three different cadres of Deputy Director - Deputy Director

k

10

(Administration), (Academics) and (Finance) which stand was taken by the respondents before the Punjab & Haryana High court but still the applicant has been posted from the post of Deputy Director (Administration) to the post of Deputy Director which amounts to change of cadre. It is further stated that this order is a mala fide one and the same has been passed in colourable exercise of power as such the same should be quashed.

4. The respondents have filed their reply and after passing the impugned order the applicant was relieved of his duties to join at NVS Regional Office, Shillong.

5. It is also submitted that upon applicant's transfer from Delhi to Shillong, the respondent No.3 had already joined and because of his joining, there is no vacancy available now which may be given to the applicant at Delhi.

6. With regard to the contention of the applicant about the change of cadre, the same is denied and it is also submitted that the post to which the applicant has been transferred is also a post of Deputy Director and not Deputy Director (Academics) as the applicant has made out his case and in the past also officers similarly situated had been transferred and posted in this fashion.

7. It is further stated that the order of stay passed by the Tribunal on 23.2.2001 is continuing and is causing great prejudice and hardship to the respondents as the NVS Regional Office, Shillong is without any

ka

Deputy Director so it is further stated that the applicant has not been asked to perform the duties of Deputy Director (Academics) rather he has been asked to work as Deputy Director (Administrative and Financial Matters) as such he cannot say that he should not be transferred to Regional Office, Shillong and as such the OA should be dismissed.

8. I have heard the learned counsel for the parties and gone through the records of the case.

9. As regards the challenge to the transfer order is concerned, the main contention of the learned counsel for the applicant is that there is a change of cadre and no transfer order can be passed effecting the change in the cadre.

10. The second ground taken up by the applicant is with regard to mala fide in transferring him so on that ground also it is liable to be quashed.

11. I have given my thoughtful consideration to the matter and it is an admitted case of both the parties that there are no statutory rules or policy governing the transfer matters in the office of the respondents so possibly the applicant could not have challenged the impugned order of transfer to be in violation of any statutory rules or policy. The applicant is only stating that the transfer order is bad because there is a change in the cadre but to that extent I find that the respondents have categorically stated that the applicant has been posted as Deputy Director (Administration and

K

Finance) and in the past also such like officers had been posted and they have placed on record similar orders vide Annexure R-3, though Shri Gupta appearing for the applicant has referred to the Recruitment Rules with regard to the post of Deputy Director (Academics), Deputy Director (Administration) and (Finance) which provide different feeder cadres for promotion for different Deputy Directors. But the fact that in the past certain officers have been transferred in similar fashion has not been controverted by the applicant. Moreover the designation given to the applicant even after his transfer is that of Deputy Director (Administration and Finance) and he has not been asked to perform the duties of Deputy Director (Academics).

12. Shri Rajappa appearing for the respondents also explained that the Deputy Director (Administration) and (Finance) is the feeder cadre for the post of Joint Director also it is for the management to see that what sort of work they have to obtain from the Deputy Directors because on their promotion as Joint Directors they are able to function properly e.g. to supervise the functioning of the Deputy Directors whether it is Deputy Director (Finance) or Deputy Director (Academics or Administration) as such it is submitted that the applicant has no case and he can be posted as Deputy Director (Administration and Finance).

13. Counsel for the applicant has also referred to a judgment reported in 2001 (5) SCC 540 entitled as Harmohinder Singh Vs. Kharga Canteen, Ambala Cantt. wherein it has been held that a petitioner could not take

h

13

a different stand before the Hon'ble High Court when they had taken a different stand before the Labour Court. From this judgment the applicant's counsel wanted to draw an analogy that once the respondents have taken a stand before the Punjab and Haryana High Court that the cadre of Deputy Directors (Academics), (Administration) or (Finance) are three different cadres so now they cannot take a different stand and say that Deputy Director (Administration) can be posted as Deputy Director without Administration and Finance. To my mind also the judgment relied upon by the applicant on this aspect does not support the case of the applicant because in that case the stand taken by the Writ Petitioner before the Allahabad High Court was on the question whether the institution concerned was a 'State' or 'Other Authority' which depended upon the question of fact about which a different stand was not allowed to be taken but the policy with regard to change of cadre and the posting of a Deputy Director (Administration) to a post of Deputy Director (Administration and Finance) is a policy which the respondents should have followed and it is not a question of fact which could not be changed and even otherwise the Writ filed by the petitioner referred to by the counsel for the applicant has not been finally decided and there was no final verdict by the Punjab and Haryana High court if these posts belong to three different cadres and whether these could be interchanged or not.

14. As regards mala fide is concerned, I do not find that the applicant has been successful to allege any mala fide towards the respondents for his posting at

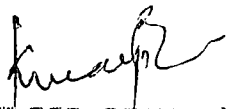
fu

14

Shillong. In these circumstances, I find that the interim order passed by this Court on 23.2.2001 is liable to be vacated. Accordingly, I vacate the interim order.

15. As far the OA is concerned it is stated by the applicant that his appeal is pending before the Vice Chairman of Respondent No.2 so I find that the OA can be disposed of with a direction to the respondents to dispose of the appeal of the applicant within a period of one month from the date of receipt of a copy of this order and till then the respondents shall not insist upon the applicant to join at Shillong and applicant may avail of any leave which is due to him as per the leave rules.

16. OA is disposed of with the above directions.
No costs.


(KULDIP SINGH)
MEMBER (JUDL)

/Rakesh