

(16)

Central Administrative Tribunal
Principal Bench

O.A. 1433/99

New Delhi this the 27th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Amar Singh Tomar,
S/o Shri Anang Pal Singh,
R/o Thakurdwara,
Bhagpat.

... Applicant.

By Advocate Shri Surinder Singh.

Versus

1. The Director of Education,
Old Secretariat,
Delhi.

2. The Dy. Director of Education,
(North East),
B Block, Yamuna Vihar,
Shahdra,
Delhi-32.

... Respondents.

By Advocate Shri Vijay Pandita.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the transfer order No.191 dated 10.5.1999 issued by Respondent 2 in which his name figures at Serial No.31 transferring him from GBSSS No.1, M.S. Park to GBSSS 'E' Block, Nand Nagri.

2. The applicant joined service as TGT (Natural Science) on 19.9.1989. He was transferred to GBSSS No.1, M.S. Park w.e.f. 27.7.1990. He has stated that he is a part-time NCC officer since 1997 and he had also received training from 13.7.1998 to 10.10.1998. According to him, if he is transferred, his training will also be wasted as there is already a part-time NCC officer in the school where he has been transferred. The learned counsel for the applicant relies on

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the letter dated 6.5.1999 which has been issued according to him by the Principal of GBSSS M.S. Park recommending posting and transfer of two other teachers, namely S/Shri S.N. Verma, TGT (Maths) and B.K. Shukla, TGT (Maths) instead of whom the applicant and another TGT have been transferred. During the hearing, Shri Surinder Singh, learned counsel has submitted that the applicant, who is TGT (Natural Science) has been transferred in place of Shri S.N. Verma, who is TGT (Maths) for no rhyme or reason, as he has not been rendered surplus. It is, however, seen that this letter dated 6.5.1999 relied upon by the applicant has been denied by the respondents and further that the same has not been attested as true copy by the applicant's counsel. According to the learned counsel for the applicant, the transfer of the applicant is arbitrary and against the laid down policy of the respondents. The applicant alleges that the entire action has been taken to protect Shri S.N. Verma as he is a TGT (Maths) and should not have been taken in the 'Science' stream. His main contention is that as the applicant has not been declared surplus or one among the "mal-adjusted persons, he could not have been transferred by the impugned Annexure A-1 order No.191.

3. Shri Surinder Singh, learned counsel has very vehemently submitted that the respondents are not producing the relevant records to show that they have declared certain teachers as surplus on the basis of which the impugned transfer order has been issued on 10.5.1999. Learned counsel for the respondents has submitted a copy of the note of DDE dated 26.4.1999 (copy placed on record). Learned counsel for the applicant has submitted that this note cannot be relied upon as what is relevant is only the note of the Principal dated

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6.5.1999 (Annexure A-5). The applicant has prayed that the impugned transfer order may be set aside and he should be allowed to stay in GBSSS No.1, M.S. Park.

4. The respondents in their reply have submitted that the impugned transfer order has been passed in accordance with the rules and norms. They have submitted that there is hardly 1-1/2 Km. distance between the two schools i.e. from the school where the applicant was working to where he has been transferred after nine years of his posting in the earlier school. According to the respondents, as there was no post of TGT (Natural Science) at GBSSS No.1, M.S. Park, the applicant could not be continued there and he was directed to join the school at Nand Nagri. They have submitted that the Addl. Director of Education (Planning) issued orders dated 30.3.1999 ordering surplus of posts of four TGTs and thereafter the head of the School was required to give the name of four senior TGTs whose services were no more required there according to the time table and the number of students. Shri Vijay Pandita, learned counsel, has also shown me the file in which I note that in case of Shri S.N. Verma, who was originally TGT (Science 'A'), his option has been accepted on 2.9.1998 and he has been treated as TGT (Natural Science). According to the respondents, four senior-most persons in the school have been transferred, including the applicant who had joined the school on 27.7.1990. Out of the four persons, the other three have already joined their respective posts and in the case of the applicant because of the status quo order passed by the Tribunal he has continued in the old school. During the hearing, Dr. Naresh Kumar, Education Officer, was also present and in consultation with him, learned counsel had submitted that the applicant's contention that because he is a NCC

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officer, his training would be wasted and so on will be fully taken care of in the new assignment. They have also submitted that the letter relied upon by the applicant issued by the Vice-Principal (Annexure A-5) has been done without following the norms laid down by the Department which has been considered and revised by the competent authority. In the list shown by the respondents, the applicant is among the four persons who have been declared surplus as per the requirement of the time table, teaching periods and requirements of the school. Learned counsel for the respondents has, therefore, prayed that the applicant is not entitled to any relief and he may be directed to join the school where he has been transferred and the interim order may be vacated.

5. Shri Surinder Singh, learned counsel has been heard at length where he has reiterated his arguments that it is only the letter of the Vice Principal placed at Annexure A-5 which shows four other teachers as surplus which should have been relied upon and not any of the documents which have been produced by the respondents. According to him, the respondents have not produced the relevant records to show that the applicant has been declared as a surplus teacher to be included in the transfer order.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties and the departmental records submitted by the respondents.

7. During the hearing, it was pointed out to the applicant's counsel that the letter placed at Annexure-5 on which he relies upon, has not even been verified as a true copy of the original and it is also relevant to mention that the

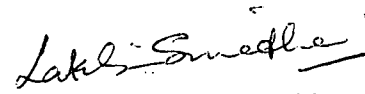
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respondents have also denied the correctness of this document. They have submitted that the Vice-Principal has later changed his stand without following the norms of the Department in submitting the names of the four teachers, namely, S/Shri Vinod Kumar, Raj Pal Singh, B.K. Shukla and S.N. Verma which is relied upon by the applicant. They have further clarified that the Deputy Education Officer, Zone-VI had visited the school on 23.4.1999 and found four other teachers surplus, who were senior-most in their category as per the school records which includes the names of the applicant. I have also perused the relevant records submitted by the respondents and I am satisfied that the option given by Shri S.N. Verma for change of the subject has been accepted on 2.9.1998. The vehement denial of these facts by the applicant's counsel is not supported by any other documents on record. Taking into account the replies filed by the respondents, sole reliance placed by the applicant on the letter of the Vice-Principal dated 6.5.1999 is misplaced. The contention of Shri Surinder Singh, learned counsel, that the respondents have also not followed the laid down principle and guide-lines for postings and transfers as only teachers who become surplus could be transferred and the applicant is not one of them, cannot be accepted in the facts and circumstances of the case. The applicant has himself stated that the Maths teachers have been rendered surplus as they have given their options in September, 1998. His further contention that he cannot be declared a surplus teacher or transferred is also without any basis as it is settled law that who should be transferred and where is a matter for the appropriate authority to decide. (See the observations of the Supreme Court in *Union of India Vs. S.L. Abbas* (1993(2) SLR 585). I find that on the facts of this case, the transfer is neither vitiated by any grounds of mala

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fides or has it been made in violation of any statutory provision or guide-lines to warrant any interference in the matter. Therefore, under power of judicial review, there is no justification to set aside the impugned transfer order which has been passed by the competent authority. Another ground on which this application is also liable to be dismissed is that the necessary parties have not been impleaded as respondents, namely the Govt. of NCT, Delhi.

8. For the reasons given above, O.A. fails and is dismissed. Interim order dated 11.6.1999 is accordingly vacated. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'