

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1462/99

New Delhi, this 11th day of February, 2000

Hon'ble Smt. Shanta Shastry, Member(A)

Raj Kishore Sharma
Anubagh, 35A, Prem Nagar Phase 2
Najafgarh, New Delhi .. Applicant

(By Shri K.N.R.Pillai, Advocate)

versus

1. Director of Education
Govt.of NCT of Delhi
Old Secretariat, Delhi
2. R.M. Mohla
General Secretary
Govt. School Teachers Association
Room No.227A, Old Secretariat
Delhi .. Respondents

(By Mrs. Sumedha Sharma, Advocate for R-1
Shri R.L.Sethi, Advocate for R-2)

ORDER(oral)

The applicant, who is a PGT, was transferred from Co-Ed.SSS, Paprawat to Govt.Boys Senior Secondary Schoool No.1, Najafgarh (GBSSS/N, for short) on 29.6.98. However he could not join the place of his posting as the incumbent of the post in GBSSS/N got extension for one year. Thereafter the applicant approached the higher authorities and his transfer order of 29.6.98 was implemented on 31.5.99 and he immediately joined the GBSSS/N on the same day. Later on, this transfer order of 31.5.99 was cancelled with retrospective effect vide order dated 17.6.99. Aggrieved by this, the applicant has approached this Tribunal to quash this impugned order and to direct the first respondents to allow

2

him to continue in the present school. Applicant has obtained interim stay on the impugned order which was continued till this date. (2)

2. The applicant submits that the Govt. of NCT of Delhi has a transfer policy for teachers and guidelines have been laid down for the posting and transfer of teachers. According to these guidelines if a person has put in more than one year in a particular school, he becomes eligible for transfer. Applicant accordingly applied for transfer to GBSSS/N and was transferred vide order dated 29.6.98. Applicant has also made reference to his being a member of a rival union and pressures being brought on by the other union to cancel his transfer. Learned counsel contends that no transfer order can be issued with retrospective effect. He cites two judgements viz. Major A.A.Aphraim Vs. DG, NCCC (1989) 9 ATC 763 decided on 25.1.89 by the Ernakulam Bench and Sujit Kumar Singh Vs. UOI (1991) 17 ATC 893 decided on 18.1.91 by the Patna Bench of the Tribunal to draw support that transfer cannot be cancelled with retrospective effect.

3. Learned counsel for R-1 while confirming the factual position has submitted that since there is internal rivalry amongst two different unions and the same is causing disturbance in the school atmosphere government decided to post a teacher senior to the applicant and accordingly considering the seniority of another teacher issued the impugned

order, cancelling the earlier order dated 31.5.95 and posting Shri Sagli Ram, PGT(English) from GBSSS, Kair.

4. Learned counsel for R-2 submits that the applicant has misled the court and has concealed the information. As a General Secretary of the Govt. School Teachers Association, the association has every right to make recommendations in the interest of teachers. He points out that the transfer policy referred to by the applicant of 1998 is no longer in operation. Further the transfer order becomes effective only if there is a substitute to relieve the person transferred. According to the learned counsel, it is mandatory that the teacher has to be relieved upto 3rd July, 1998. Since the applicant was not relieved before that period and also because no substitute was posted in place of the applicant, the applicant has no claim for implementation of his earlier transfer order. Senior most person had a better right for transfer than the applicant. According to the learned counsel, applicant has brought pressure through the Hon'ble Minister instead of approaching through the right channel and therefore the applicant has no claim and the impugned order should not be cancelled.

5. I have heard the learned counsel for the applicant as well as Respondents No.1 and 2. Factually speaking, the applicant has rightly applied during the year 1998 for his transfer and R-1 had agreed to his request and transferred him to

GBSSS/N on 29.6.98. The problem had arisen because the incumbent whom the applicant was to replace got extension for one year and therefore transfer order could not be implemented during that year. I have seen the relevant file. It is true that the applicant has approached the Hon'ble Minister concerned and directions were given for implementing the earlier order of 29.6.98 as far as the applicant is concerned. Accordingly Government issued the order dated 31.5.99 and the applicant took over charge. One is not concerned here with the internal rivalry amongst teachers and that the applicant had brought political pressure in the matter of his transfer. It is for the government to decide in the matter or to initiate disciplinary action, if necessary. The only reason given for cancelling the earlier order of 31.5.99 is that there are other teachers who had a better claim being senior to the applicant. There is nothing wrong in considering the claim of senior teachers. If seniority had been the main reason for transfer of a teacher, this ground does not appear to have weighed with R-1 when the applicant was originally transferred on 29.5.98. Having transferred the applicant once, the ground of seniority cannot now be brought in to cancel the transfer with retrospective effect. Even otherwise, cancellation of transfer order with retrospective effect is bad in law as has been held in the cases of Major Aphraim and Sujit Kumar Singh (supra). I do not find any merit in cancelling the transfer order of the applicant. In any case, the applicant has continued in GBSSS/N, where he was transferred earlier since May, 1999 and since the Government

also do not have any strong reason to cancel his transfer order, I therefore allow the prayer of the applicant. Accordingly, the impugned order dated 17.6.99 is set aside and R-1 is directed to allow the applicant to continue in GBSSS/N. The OA is allowed. No costs.

have 8-
(Smt. Shanta Shastry)
Member(A)

/gtv/