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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No.1833 of 1995 Decided on: 5-6-1996

Shri Kartar SinghApplicant(s)

(By Shri B.S. Charya Advocate)

Versus

U.O.I. & OthersRespondent(s)

(By XXX Ms Jyotsna Kaushik and Advocate)
Shri S.K. Gupta

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter *yes*
or not?

2. Whether to be circulated to the other *No*
Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1833 of 1995

New Delhi this the 5th day of June, 1996

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Shri Kartar Singh
S/o Shri Chandan Lal
R/o Atri Niwas, Ganaur Mandi,
Sonepat (Haryana). ...Applicant

By Advocate Shri B.S. Charya

Versus

1. The Director of Education,
National Capital Territory of Delhi,
Old Secretariat,
Delhi.
2. The Deputy Director of Education,
District North-West,
Office of the Directorate of Education,
District North-West,
Hakikat Nagar,
Delhi.
3. Secretary-cum-Commissioner (Education),
Government of National Capital
Territory of Delhi,
Old Secretariat,
Delhi.
4. Shri O.P. Dahiya ...Respondents

Shri Ajesh Luthra, proxy counsel for Ms. Jyotsna Kaushik, Counsel for respondent Nos. 1 to 3.

Shri S.K. Gupta, Counsel for respondent No.4

ORDER

The applicant is a Post Graduate Teacher (History) under the respondents. He was posted on promotion in the Government Boys Senior Secondary School (G.B.S.S.S for short), Banker, New Delhi with effect from 17.4.1989. Prior to that he was working in the same school as Trained Graduate.

Teacher (T.G.T. for short). The applicant's grievance is that respondents by their impugned order dated 25.9.1995 had transferred/posted the applicant at GBSSS, Adarsh Nagar w.e.f. 1.9.1995 against the vacant post of P.G.T. It is stated in the said order that the applicant had been rendered surplus and there was removal of maladjustment also by his transfer and posting. By an interim order obtained by this Tribunal, the applicant continued in the same school. The applicant has prayed that the aforesaid impugned order be quashed as it is illegal, invalid and arbitrary.

2. Among the grounds for challenging the impugned order, the applicant submits that the order has been given retrospectively with effect from 1.9.95 and transfer orders cannot be given retrospective effect in this manner. Secondly, the applicant contends that there had been no maladjustment of the applicant in the G.B.S.S.S., Banker as the applicant had been continuing in the same post eversince on his promotion as P.G.T. He further contends that the actual maladjustment was in the case of one Shri O.P. Dahiya inasmuch as he was adjusted against the vacant post of P.G.T. (History) and was being paid salary till August, 1995. It is alleged that the respondents had shown special favour to the said Shri O.P. Dahiya and at the same time had caused grave and serious prejudice to the applicant and, therefore, the impugned order had not been passed in a bona fide

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manner. The applicant further contends that the Principal of the said school had himself intimated the respondents that it was Shri Dahiya, PGT (History) who was declared surplus and his name was sent by the Principal. It was also intimated in that letter that Shri Dhiya was allowed to work and draw his salary against the vacant post of PGT till further orders on the orders of the Deputy Director Education (North District). The applicant further contends that by the letter dated 6.9.95 of the Principal of the G.B.S.S.S., Bankner Shri Dahiya was adjusted against the vacant post of P.G.T. and he was allowed to remain and draw salary till further orders from the Deputy Director of Education (North). Later it was intimated by the Principal that since one post of PGT (Hindi) was transferred from that school, it would no longer be possible to draw the salary of Shri Dahiya as there was no vacant post of PGT in that school. In the light of this, the applicant contends that it was Shri Dahiya who had been declared surplus and as he was maladjusted against the post of P.G.T. (Hindi) the action of the respondents in transferring the applicant on grounds of maladjustment could not be in order and, therefore, was not tenable.

3. The applicant further contends that in terms of the guidelines for transfer/posting of TGT/PGT on being rendered surplus due to abolition/surrender of post in a particular school, the teacher having the longest stay in a particular school would be declared surplus. As

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Shri Dahiya has been PGT (History) from January, 1984, he should be deemed to have the longest stay and should have been declared surplus, as was rightly concluded by the Principal of the G.B.S.S.School in his aforesaid letter.

4. It is contended on behalf of the respondents that:-

(i) That the true spirit of the guidelines suggest that the teacher having the longest stay in a particular school would have to be declared surplus and not the senior-most. The applicant had joined the school as TGT as early as in October, 1979 and even on his promotion as PGT, was posted in the same school and, therefore, he should have been declared surplus and, therefore, his transfer by the impugned order was in accordance with the guidelines.

(ii) Shri Dahiya on the other hand was posted in the school only in January, 1984 and, therefore, as compared to the applicant, he had joined the school later than the applicant.

(iii) When the applicant was promoted and posted as PGT (History), the Principal had reported that there were only two sections each for 11th and 12th for history subject and taking into account the total periods for four sections, the workload justified only one PGT(History). On enquiry it was revealed that when the applicant was posted in the said school as PGT on promotion, there was no need for a second PGT, but just to accommodate the applicant in the same school, the Principal had increased the enrolment in the Art stream by

admitting students from the neighbouring states and such an increase was neither as per the admission plan nor it was with the sanction of the competent authority. In view of the initial posting of the applicant as PGT itself was by way of maladjustment against the then existing vacant post of a PGT the initial posting itself was on account of maladjustment, although he continued to draw salary against post of PGT. Subsequently, PGT (Histroy) post was also declared surplus to the requirements of the school, the applicant was maladjusted against this post which has to be considered surplus from this point of view.

5. Shri O.P. Dahiya joined the case as an intervenor and has filed his affidavit and also his written submissions.

6. The learned counsel for the applicant strenuously argued that there was no question of maladjustment of the applicant inasmuch as by the respondents letter at Annexure P-5 to the rejoinder, the intervenor Shri O.P. Dahiya's name has been mentioned as the seniormost teacher for transfer. The learned counsel argued that as revealed, there were 18 posts of PGTs and there were two posts of PGT (History) and since 1987, there were three sections each of 11th and 12th Class. The creation of the second post was necessitated due to the increase in the enrolment and subsequently the number of students from Delhi state declined since 1992 and so on this account, one post each of PGT Histroy, English and

Hindi were rendered surplus with effect from 1.1.1995 only and the PGT (Hindi) was rendered surplus with effect from 1.8.95. Since the intervenor Shri Dahiya has been having the longest stay in the school since 1984, he was to have been declared surplus and transferred. Learned counsel also relied on the Corrigendum issued by the respondents dated 13.4.89, Annexure-I page 32 of the counter-reply in which it was stated that on promotion, the applicant was being posted at G.B.S.S.S., Bankner against the vacant post. That itself would show that the PGT (History) was vacant and if ^{the} applicant would have been occupied by the vacant post, this itself would show that there were two posts and the other post was occupied by Shri Dahiya. Learned counsel also further contends that the Principal's letter dated 28.4.95 and subsequent letter regarding maladjustment at Annexure P-8 of the rejoinder make it abundantly clear that it was Dahiya who was declared surplus and was offered for transfer as he was drawing salary against the vacant post of PGT (History) and, therefore, he was, in fact, maladjusted and not the applicant and he should not have been transferred. The learned counsel for the applicant referred to the decision in Satyendra Nath Karmakar Vs. Union of India & Others, (1990) 12 ATC 895, to contend that the transfer policy contrary to the policy decision, cannot be sustained. He also relies on Mahendra Kishore Sharma Vs. Union of India and Others, (1992) 20 ATC 66 to support his contention that

transfer of the applicant solely on the ground of longer stay will not be reasonable and there were no other grounds or public interest served by the transfer. In another decision relied upon by the learned counsel for the applicant, it was held that the transfer can interfere if there is arbitrariness though mala fides are not proved M.C. Barke and Others Vs. Employees State Insurance Corporation and Others, (1992) 20 ATC 803. These decisions will be referred to in the later part of the order.

7. The intervenor in his submission has contended that Shri D.S. Jain was working as PGT (History) at G.B.S.S.S., Bankner and he was transferred to G.B.S.S.S. Jahangir Puri on his post and he was mutually transferred with Shri D.S. Jain as PGT (History) and he joined the G.B.S.S.S. Bankner on 5.1.1984 in the PGT (History) post in which Shri Jain was working earlier whereas the applicant had joined on promotion from the same school against the promotee quota on 17.4.1989 and the Principal had misinterpreted the policy of transfer and he had declared him as the person with the longest stay in the school whereas the applicant had been working in the school since 1979 and had also been maladjusted and when this matter was enquired into, the position was rectified and the transfer of the applicant was made on his being declared surplus for want of post and also for removal of maladjustment, as this maladjustment has been

going on in this school for long. The intervenor also contends that there was no vacant post of PGT (History) in the G.B.S.S.S., Bankner when the applicant was allotted to this school and, therefore, there was no need for original posting order by which the applicant was posted to the West District which was subsequently modified and he was posted to the North District in the G.B.S.S.S., Bankner when there was no post of PGT (History).

8. The learned counsel for the respondents stresses that at the time when the applicant was promoted in 1989 there was only one post in the PGT scale although this has been denied in the rejoinder by the applicant. The learned counsel for the respondents submitted that the impugned transfer was made after obtaining the report of the School Principal on the issues raised in the complaint of the intervenor. It is averred by the respondents that even though the name of Shri O.P. Dahiya was sent by the school, the confusion of post fixation and subsequent declaration of Shri O.P. Dahiya as surplus was in the consideration of the department. It was revealed at the time of posting of the applicant as PGT that there was only one post of PGT (History) and Shri Dahiya was working against that post. The learned counsel for the respondents also pointed out that the Principal had increased the enrolment by admitting students from the neighbouring states just to accommodate the applicant and this was not

authorised by the competent authority.

9. The learned counsel for the applicant, however, strongly denied this and submitted that there were two posts of PGT (History). Since this matter related to the actual position of the posts, the respondents were directed to file necessary affidavits in this behalf. Accordingly, an affidavit on behalf of the Deputy Director of Education, North West District was filed. It is submitted in the aforesaid affidavit that one post of PGT (History) continued in the said school till 1989-90 as mentioned in the statement given by the school Principal in Form 'C' pertaining to the post fixation that has been filed alongwith the affidavit. This, of course, has been rebutted by the applicant in his rejoinder to the additional affidavit filed by the respondents and the applicant maintained that the respondents had failed to show how the number of posts of PGT increased from 15 to 18. According to him, one of the posts related to PGT (History) against which the applicant was promoted in the year 1989-90.

10. In the light of the rival contentions, I have carefully perused the record placed before me and have also heard the learned counsel for the parties. These rival contentions will be dealt with in the later part of the order. Regarding the contention of the applicant that the transfer was not in accordance with the policy inasmuch as Shri O.P. Dahiya, the intervenor had the longest stay in the school as he was working as PGT from 1984 onwards, I have considered this question.

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According to the guidelines for transfer annexed by the applicant, the transfer guideline is as follows:-

" Reasons for transfer

(i) On being rendered surplus due to abolition/surrender of post in a particular school.

(ii) The teacher having a longest stay in a particular school would be declared as surplus if the circumstances so warrant while deciding about the longest stay of a teacher in a particular school, the break of six months or less in two postings of the same teacher in the same school in an academic year would be ignored".

From this it would appear that the guideline is for transfer solely due to abolition/surrender of a post. It is an admitted position that the posts are identified subjectwise and, therefore, if a particular post in a particular subject is declared surplus, one possible interpretation would be that the teacher in a particular subject having the longest stay will have to move first. It is on this ground that the learned counsel for the applicant contends that Shri Dahiya has the longest stay whereas the applicant was PGT (History) only from 1989 and his earlier posting as TGT (History) in the same school will not be relevant. It can be generally inferred that on being rendered surplus due to abolition/surrender of a post in a particular school, the teacher having longest stay in a particular school would be declared surplus. This would mean that the teacher having the longest stay in the category of post in the relevant subject which has been rendered surplus due to abolition or surrender of

that category of post in that subject. However, the impugned order of transfer of the applicant clearly states that this has been issued on being rendered surplus and also on removal of maladjustment and, therefore, the reason given for the transfer is not merely on the ground of the post having been rendered surplus but also on the ground of maladjustment of the applicant that was sought to be removed by the impugned transfer order. It is an admitted position that there were 15 posts of PGT in the said school in 198182 as is evident from the statement of posts attached to sanction No.F.12/4/81/Edn. filed by the respondents with their affidavit. These posts are as follows:-

(i)	English	2
(2)	Hindi	1
(3)	Maths	2
(4)	History	1
(5)	Pol.Science	1
(6)	Economics	1
(7)	Geography	1
(8)	Physics	1
(9)	Chemistry	1
(10)	Biology	1
(11)	Commerce	1
(12)	Accountancy	1
(13)	Sanskrit	1
Total=		15

The following categories of posts were sanctioned as per RA-2 filed with the additional affidavit for the years 1987-88 and 1988-89. In 1987-88 and

1988-89 and 1989-90 total number of PGT posts shown is 18. Between 1981-82 and 1989-90, the number of the posts in the following categories were added:-

- (1) Hindi 1
- (2) Pol.Science 1
- (3) Phy. Education 1

The total then becomes 18. As far as PGT (History) post is concerned, there is nothing on record to show that the PGT (History) post was added during the intervening period. The applicant was promoted as PGT History by the order dated 24.2.1989 as modified by the order dated 13.4.89 posting him to the G.B.S.S.S., Bankner against the vacant post. Since in the academic year - 1988-89, there was only one post of PGT (History), the posting of the applicant apparently has been done against some other vacant post of PGT as is evident in the order dated 13.4.1989 of the respondents and not against the post of PGT (History) and there was only one teacher who was working against this post and, the number of posts subjectwise in the year 198990, as well as the total number of 18 posts had remained. The learned counsel submits that similar order had been passed in other cases also. Even so, there is no clear indication that as far as the applicant is concerned, that he was posted as PGT (History) when he was promoted and posted in the said school. The fact that in some other cases also, similar order posting PGT in vacant posts, instead

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of specifying the subject, does not help the applicant, as there might have been maladjustment in those cases also. Therefore, the contention of the applicant that there had been no maladjustment at the time of his initial posting as PGT (History) in the G.B.S.S.S., Bankner cannot be accepted. From the facts as revealed in the document placed before me, it is abundantly clear that the initial posting was by way of adjusting the applicant against some vacant post of PGT and not against the only post of PGT (History) and, therefore, ab initio there had been maladjustment in the posting of the applicant. The respondents have averred in their additional affidavit that they could not procure the copy of the sanction order of the posts from 1990 onwards. Even presuming that the respondents might have created subsequently the post of PGT (History) in the academic year 1990-91 or subsequently and would have adjusted the applicant in the said post, it is averred by the respondents that the whole matter regarding the increase in the enrolment and subsequent decline in the enrolment was examined and it was found that the additional post was not justified and, therefore, the applicant was declared surplus. The Principal however had shown Shri Dahiya who had been working as PGT (History) from 1984 against the surplus post in 1995 by his statement in September, 1995. In the light of this, the clear position that emerges is that the impugned order was not only on grounds of

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declaration of surplus post but also on ground of maladjustment of the applicant even as early as in 1989 when he was initially promoted as PGT and was accommodated in the said school although there was only one post of PGT (History) at that point of time. In view of this matter, the impugned order of the respondents which attempts to rectify the maladjustment which was done originally in favour of the applicant, cannot be called in question and cannot be declared arbitrary.

11. As regards the decisions cited by the learned counsel for the applicant it may be pointed out that these decisions are not parimateria to the facts and circumstances of the case at hand. The impugned transfer order is not only on account of declaration of the post as surplus but also for rectifying the maladjustment that was done earlier whereas in Satyendra Nath Karmakar (Supra), the impugned transfer was found contrary to the revised transfer policy. The claim of the applicant that he was not having the longest stay would be valid subject to the policy guidelines if the impugned transfer order is only on that ground but the transfer, as mentioned above, is not only on the ground of surrender of surplus post but also for rectifying the maladjustment which was done in favour of the applicant and, therefore, the aforesaid decision is not very relevant here. The other decision in M.C. Barke (Supra) will also not be relevant as in that case it was held that the transfer was

arbitrary although no mala fides were proved. In the present case, however, I find no arbitrariness in the action of the respondents, and there is no allegation of mala fide.

12. In the conspectus of the above discussion, there is no merit in the application. The application is, therefore, dismissed.

13. The interim order already passed stands vacated.

14 In the circumstances, there shall be no order as to costs.



(K. MUTHUKUMAR)
MEMBER (A)

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