

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1589/96
T.A. No.

199

(8)

DATE OF DECISION 11-9-96

Suresh Kumar Dhiman Petitioner

Shri A.K. Bhardwaj Advocate for the Petitioner(s)

Versus

U.O.F. And Ors. Respondent

Shri Madhav Panikar for R-1 to 3. Advocate for the Respondent(s)

Shri P. I. Oommen for R-4.

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The Hon'ble Mrs. Lakshmi Swaminathan, M.L.S.)

The Hon'ble Mr.

1. To be referred to the Reporter or not? *Y*

2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt Lakshmi Swaminathan)
Member (S)

Central Administrative Tribunal
Principal Bench.

O.A. 1589/96

New Delhi this the 11th day of September, 1996.

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

Suresh Kumar Dhiman,
S/o Shri Balwant Singh,
R/o 1467, Type-I, CGO Complex,
Faridabad (Haryana). ... Applicant.

By Advocate Shri A.K. Bhardwaj.

Versus

1. Union of India, through
The Secretary,
Ministry of Labour (DGET),
Sharam Shakti Bhawan,
New Delhi.
2. Shri D.S. Dagar,
Director of Training, DGET,
Ministry of Labour, Sharam Shakti Bhawan,
New Delhi.
3. The Regional Director,
Ministry of Labour (DGET), 3rd Floor,
A Wing, New CGO Building, NH IV,
Faridabad (Haryana).
4. Shri D.P. Rana, STA
(on deputation),
now repatriated as JTA,
Ministry of Labour (DGET),
Regional Directorate of
Apprenticeship Trg.,
3rd Floor, A - Wing,
New CGO Bldg., NH-IV,
Faridabad (Haryana). ... Respondents.

By Advocate Shri Madhav Panikar - for official respondents.

By Advocate Shri P.I. Oommen - for Respondent No.4.

O R D E R (ORAL)

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

The applicant has filed this application under Section 19 of the Administraive Tribunals Act, 1985 challenging the validity of the transfer order dated 24.7.1996 transferring him from R.D.A.T. to A.T.I. Ludhiana in the same unit *Faridabad* *L*

against the vacant post of Vocational Instructor (Arithmetic) for administrative reasons.

2. The applicant has challenged the transfer order mainly on two grounds, (1) mala fide on the part of Respondent No.2 who, he states, has ordered it with a view to accommodate/adjust Respondent No.4; and (2) that since on compassionate grounds, on the death of his wife in 1993 he had been transferred to Faridabad so that he can look after his minor children with the help of his family there, he should not be transferred to Ludhiana.

3. The case had been heard at length on 3.9.1996 and again today.

4. A preliminary objection has been taken by Shri Oommen, learned counsel for Respondent No.4, that Respondent No.4 is not a necessary party. He has relied on the Full Bench judgement of this Tribunal in T.S. Gopi Vs. Deputy Collector of Customs (ATR 1989(2) CAT 446). He submits that since the applicant has unnecessarily impleaded Respondent No.4, costs may be awarded in his favour against the applicant.

5. The respondents 1 to 4 have filed the reply in which they have controverted the above averments and submitted that, in fact, the applicant has been posted against the vacant post of Vocational Instructor (Arithmetic) on administrative grounds. They have submitted that this post has been lying vacant for the last six months and the applicant was originally recruited as Vocational Instructor (Workshop Cal. and Science) which has the same qualifications as Arithmetic Instructor. They have also submitted that Respondent No.4 who is a Vocational Instructor (Maintenance - Electrician) is not suitable to teach arithmetic. They have also denied the allegations of mala fide.

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6. Shri A.K. Bhardwaj, learned counsel for the applicant, has filed an additional affidavit on 9.9.1996 with 17 annexures, which he had submitted, was necessary in order to plead his case on the alleged mala fides on the part of Respondent No.2. Today, while arguing the case, the learned counsel referred firstly to the letter written by Respondent No. 2 dated 24.12.1993 (Annexure D-8) addressed to the Director of Apprenticeship Training, Ministry of Labour, D.G.E.T. - Respondent No.1. According to him, the contents of this letter are being relied upon to show the undue interest taken by Respondent No.2 to favour Respondent No.4 which is one of the letters relied upon by him to establish mala fides on the part of Respondent No.2. Para 2 of this letter as filed by the applicant and his counsel reads as follows:

"In case his work and conduct is found satisfactory during this period of two years, he will be absorbed in the post, otherwise he will be sent back to his cadre. In view of this, it is necessary that he should be shown in the seniority list of STAs in the cadre, so that no objection is raised by the others at a later date....case his services are not regularised, then his name will be.....from the seniority list and for that none of the candidates.....seniority list will object. However, Shri Rana will continue....have his name maintained in the seniority list of Vocationalctors at M.I.T.I. Haldwani till the final decision about his....larisation is taken".

7. In the first instance, it was pointed out to the learned counsel that this letter has not been properly attested as the true copy of the original document. To this, the learned counsel answered that this was not necessary as he did not

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have the original letter with him and it is for the respondents to prove its authenticity; and secondly that the affidavit has been filed by the applicant.

8. It may be mentioned here that it was noticed that in six lines of the document filed by the applicant (Annexure D-8), there were blanks which were not satisfactorily explained. Hence, the respondents were called upon to produce the original letter which they have submitted. The relevant portion of the original letter dated 14.12.1993 reads as follows:

"In case his work and conduct is found satisfactory during this period of two years, he will be absorbed in the post otherwise he will be sent back to his cadre. In view of this, it is necessary that he should be shown in the seniority list of STAs in the cadre, so that no objection is raised by the others at a later date. In case his services are not regularised, then his name will be deleted from the seniority list and for that none of the candidates in the seniority list will object. However, Shri Rana will continue to have his name maintained in the seniority list of Vocational Instructors at M.I.T.I. Haldwani till the final decision about his regularisation is taken". (the underlined words denote the blanks in Annexure D-8).

It is clear from the above referred to portions of the letter signed by Respondent No.2 in respect of Respondent No.4, and relied upon by the applicant to establish mala fide that he has not produced the true and accurate copy of the letter, but has sought to ^{reduce the letter to} mislead this Court that relief should be given to him. He has produced this document to obtain relief from the Tribunal on the ground that this and other documents show mala fides on the part of Respondent No.2. This is a very serious matter. In spite of drawing the attention of the learned counsel to these facts in the

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aforesaid letter which apparently had certain words omitted which appeared to be deliberate, he replied that he will be relying on the document he has filed. In the circumstances of the case, the inevitable conclusion that has to be drawn from this document is that there has been a deliberate attempt to try and mislead the court by filing an incomplete and inaccurate document and reading/relying upon it in the court during the course of the arguments. This has also to be seen in the context of the allegations levelled by the applicant against Respondent No.2. It is, therefore, clear that the applicant very well knew that the Annexure D-8 document is not the true copy of the letter, which was not even adhered to ^{by 13} him, but he has used it to get relief in this application. Therefore, the applicant has not approached this Tribunal with clean hands while praying for reliefs. In the facts and circumstances of the case, the rule laid down by the Supreme Court in Welcome Hotel Vs. State of A.P. (SCC 1983(4) 575), Vijay Kumar Kathuria Vs. State of Haryana (AIR 1983 SC 622) and followed by this Tribunal in Dr. Mahabal Ram Vs. Union of India & Ors. (1994(27) ATC 20) is fully applicable. Hence, the applicant by his conduct is not entitled to any reliefs in the O.A. and this application is liable to be dismissed on this ground alone at the threshold.

9. At this stage, Shri Bhardwaj, learned counsel, tenders his sincere apology and also submits that he may be given permission to withdraw the O.A. However, it may be added that lengthy arguments had been advanced by him earlier praying for quashing the transfer order. While in the circumstances of the case, the apology tendered by Shri Bhardwaj ^{is 13} accepted, apart from the fact that the

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applicant has come to this court with unclean hands which disentitles him to get any relief, from the other materials on record I am also satisfied that the impugned transfer order is legal and valid and has been passed for administrative reasons and there is no good ground to interfere in the matter.

10. In the result, the interim order dated 31.7.1996 is vacated and the O.A. is dismissed. Having regard to the judgement in T.S. Gopi's case (supra) and in the facts and circumstances of the case, cost of Rs.500/- (rupees five hundred only) is awarded in favour of Respondent No.4 against the applicant. The other parties to bear their own costs. /



(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'