

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 1997/97
T.A. No.

199

DECISION

DATE OF DECISION 14.10.1997

Smt. Uma Lohani

Petitioner

Sh. Mahesh Srivastava

Advocate for the Petitioner(s)

Versus

NCT of Delhi

Respondent

Sh. B.S. Gupta

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. Sh. S. P. Biswas, Member (A)

1. To be referred to the Reporter or not? *yes*2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1997/97

New Delhi this the 14th day of October, 1997.

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Sh. S.P. Biswas, Member(A)

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Smt. Uma Upreti,
W/o Sh. B.C. Upreti,
R/o 75-B/AC-IV,
Shalimar Bagh,
Delhi.

.... Applicant

(through Sh. Mahesh Srivastava, advocate)
versus

1. NCT of Delhi through
the Secretary Education,
Old Sectt., Delhi.
2. The Director of Education,
Old Sectt., Delhi.
3. The Deputy Director,
Patrachar Vidyalaya,
Timarpur, Delhi.
4. Shri O.P. Naim,
Vice-Principal,
Patrachar Vidyalaya,
Timarpur, Delhi.

.... Respondents

(through Sh. S.K. Gupta for Sh. B.S. Gupta, advocate
with Sh. Khushal Jaide departmental representative)

ORDER(ORAL)

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

The applicant who was working as Librarian
at Patrachar Vidyalaya from 1977 is aggrieved by the
transfer order dated 11.12.96 transferring her from
Patrachar Vidyalaya to District North West.

2. The learned counsel for the applicant
submits that the transfer order dated 11.12.96
transferring her to District North West has not been
served on her. He further submits that the impugned
transfer order dated 11.12.96 was kept in abeyance by
the order dated 2.1.97. Thereafter the applicant has

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submitted a representation on 6.1.97 stating that she is willing to join at Patrachar Vidyalaya but she was not allowed to join duty there. The learned counsel has submitted that despite that, the applicant continued to present herself at Patrachar Vidyalaya w.e.f. 2.1.97 but respondent No.4 did not allow her to join duty there. In the original application itself the applicant has made a number of personal allegations of harassment against her by Respondent No.4. It has also been stated that the applicant had approached the higher authorities, including the Lieutenant Governor of Delhi, to direct Respondent No.2 to look into the matter and release her salary for the intervening period. On 11.2.97, the respondents have stated that the office order dated 12.1.97 keeping the earlier transfer order dated 11.12.96 in abeyance has been cancelled with the approval of the competent authority i.e. Respondent No.2. The applicant has further submitted that because of intolerable harassment and torture by Respondent No.4, she had no option but to lodge an FIR against Respondent No.4, who is the Vice-Principal of Patrachar Vidyalaya. The learned counsel has also drawn our attention to the letters written by the Special Secretary to the Hon'ble Lieutenant Governor Delhi dated 9.5.97 and 19.5.97 to Respondent No.2 to look into the matter regarding non-payment of salaries and arrears to the applicant. However, he claims that no action has been taken for release of the due payments to her so far. He has also further submitted that the Lt. Governor of Delhi has set up an enquiry to look into the

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conduct of Respondent No.4 regarding the allegations of torture and harassment of the applicant by that person.

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3. The official respondents have filed their reply but we note that inspite of notice to Respondent No.4 having been issued, no separate reply has been filed on his behalf. The official respondents have, however, submitted that the allegations of harassment and torture by Respondent No.4 are baseless. We, however, do not accept this explanation in view of the facts given above. We note that as per the letters available on record, the Lt. Governor of Delhi himself is stated to have ordered an enquiry into the complaints made by the applicant in this regard. The ld. proxy counsel appearing on behalf of respondents has submitted that consequent upon the cancellation of the abeyance order dated 2.1.97, the transfer order dated 11.12.96 is in operation, and consequently the applicant is required to report to ^{the} Dy. Director (Education) District North West and from that office she will receive the orders of posting. They have also submitted that the transfer order dated 11.12.96 has been addressed to her by registered post and, therefore, service is deemed to be complete. We accept this explanation and under law service of the transfer order dated 11.12.96 is complete. They have also submitted that the fact that the applicant has stated that Respondent No.4 has not permitted her to join Patrachar Vidyalaya is untenable because she can only be transferred to that place by the competent authority and she has, therefore, to report to the Dy.

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Director (Education) District North West in accordance with the transfer order dated 11.12.96. The ld. counsel has also submitted that the applicant will be paid salary if she joins in the office of District North West.

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4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. As mentioned above, we have no doubt that the transfer order dated 11.12.96 transferring the applicant from Patrachar Vidyalaya to District North West has been served on her by registered post. The learned counsel for the applicant has submitted that from 12.12.96 the applicant was on sanctioned leave and thereafter from 25.12.96 to 1.1.97, it was a period of school holidays and the order placing the transfer order in abeyance was passed on 2.1.97. From the records, it is, therefore, seen that the transfer order dated 11.12.96 is in operation and as required by the respondents, the applicant is directed to report to Dy. Director (Education) District North West for further orders of posting.

6. Having regard to the settled principles of law in transfer matters, normally we would not have interfered in this transfer order, including where an employee should be posted. However, in this case the applicant, a lady employee, has made certain allegations of harassment and torture by Respondent No.4 for which no reply has been filed by respondent No.4. By the

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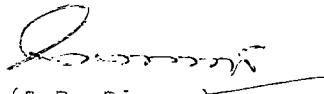
impugned transfer order dated 11.12.96 the applicant has in fact been transferred from Patrachar Vidyalaya where Respondent No.4 is Vice-Principal to District North West. It is also relevant to note that FIR No.202/97 has been lodged by the applicant at P.S. Timar Pur against Respondent No.4. Taking into account the submissions made by the respondents in the reply, if the applicant reports for duty to the Dy. Director (Education) District North West, the above facts should be kept in view and that authority shall not post the applicant under Respondent No.4 for the time being i.e. atleast till the finalisation of the criminal case pertaining to FIR No.202/97 against him, to avoid any further embarrassment to the lady employee.

7. As regards the payment of salary, in view of the fact that necessary directions have already been given by the Lt. Governor of Delhi to the respondents to consider the matter as early as May 1997, we consider it appropriate to direct the respondents to finalise the matter within a period of three weeks from the date of receipt of a copy of this order and pay the arrears of pay in accordance with the rules within a week thereafter. If this is not done within the time stipulated herein, the respondents shall pay the due amounts to the applicant with interest at 18% for the delay in payment. We, however, make it clear that interest, if it is to be paid, has to be recovered by the respondents, from the

pockets of the individual officer(s) responsible for
the lapses and delay since the national exchequer
cannot be burdened.

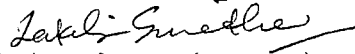
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The O.A. is allowed as above. No costs.



(S.P. Biswas)
Member(A)

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(Smt. Lakshmi Swaminathan)
Member(J)