

Central Administrative Tribunal
Principal Bench, N. Delhi

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O.A. No. 484/89

New Delhi, this the 7th Day of April, 1995

HON'BLE SHRI J.P. SHARMA, MEMBER(J)
HON'BLE SHRI B.K. SINGH, MEMBER(A)

Shri Vidya Sagar Sharma
s/o Shri M.P. Sharma,
9172, Gali No. 4,
W. Rohtas Nagar,
Shahdara,
Delhi- 32.

Applicant

(By Shri V.K. Malhotra, Advocate)

Versus

1. Lt. Governor, Raj Niwas, Rajniwas Marg, Delhi.
2. The Director of Education, Old Secretariat, Delhi Administration, Delhi.
3. The Deputy Director (East Delhi) Rani Garden, Khureji, Delhi Administration, Delhi- 110 051.
4. The Principal, Government Senior Boys Secondary School, Shahdara, II (BR) presently Govt. Boys Senior Secondary School, Shivaji Park, Shahdara, Delhi- 110 032.

Respondents

(By Shri Girish Kathpalia, Advocate)

Judgement

delivered by Hon'ble Shri J.P. Sharma, Member(J).

The applicant was working as Trained Graduate Teacher (T.G.T.) and filed this application aggrieved by non-payment of salary and arrears for the period from 25th Sept., 1986 to 31st December, 1986. He has assailed the order dated

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12th October, 1988 passed by the Dy. Director of Education, (East) to the fact that the applicant was transferred from GBSSS-II, Shahdara, Delhi to GBSSS, Tirlokपुरi, Delhi w.e.f. 24.9.1986. The applicant did not join in Tirlokपुरi school and remained absent from 25.9.1986 to 15.12.1986. He joined duty in GBSSS, G.T.Road, Shahdara only on 16.12.1986 after his transfer order was cancelled. It is also observed in this order that in reply to the office Memo dated 19.3.1987 it was stated by the applicant that he attended the District office under verbal directions of Dy. Director of Education (East) and marked his attendance. The said register maintained in the District office goes to show that the attendance was marked sometimes later at a false serial number. He was, therefore, asked to explain his conduct in that regard. The relief prayed for by the applicant in this application is for the direction to the respondent to make the payment of the salary of the period from 25th Sept., 1986 to 31st December, 1986 with penal interest. However, it was found that the applicant had already been paid salary from 16th December, 1986 to 31st December, 1986. Now the period in controversy remains from 25th Sept., 1986 to 15th December, 1986.

2. Respondents contested this application and took the stand that the impugned order has been passed as per records as the applicant did not join the school at Tirlokपुरi to which he was transferred. Since the applicant remained absent from duty till 15th December, 1986 having been relieved from the institution of Shahdara on 24.9.1986, cannot be granted the salary for this period as he has not performed any work for the said period. The applicant was supplied the original copy of the transfer order also. The transfer was on the administrative grounds. The representations of the applicant submitted on 26.9.1986 and 16.10.1986 were considered and in

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in that he has prayed for cancellation of his order of transfer. The respondents have denied in the counter that the applicant was allowed by the Deputy Director of Education (East) to mark the attendance in the attendance register meant for the staff under posting. It is also stated that this fact was got confirmed from the then Deputy Director of Education (East). It is, therefore, stated that the applicant is not entitled to any salary for this period.

3. The applicant has also filed the rejoinder re-iterating the facts already taken in the original application.

4. The applicant has further highlighted the fact that the under posting staff attendance register is always kept in the safe custody of the respondents officers not below the rank of Office Superintendent or Dy. Director of Education himself. No official can touch or mark the attendance in the said under posting staff register without the prior permission of the Dy. Director of Education. The attendance was marked in the said register by the applicant with due permission of the Dy. Director of Education. By the order dated 13th March, 1989 the respondents have declared this period w.e.f. 25.9.1986 to 15.12.1986 as 'Dies Non' and in the rejoinder it is stated that this order was passed in utter haste without giving any opportunity to the applicant to explain the same.

5. We have heard the learned counsel of the parties at length and perused the record. We have also got the original record of the attendance register maintained by the Dy. Director of Education in its office meant for the staff under posting. We have also shown the same to the learned counsel for the applicant. We are going to refer to that immediately hereinafter. We are first considering regarding the order of transfer. The applicant has been transferred

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with a valid order issued by the competent authority. He was transferred within Delhi from Sahadara School to Tirlokpuri School. The relieving order is also on record and is filled up and duly signed by the applicant himself on 24.9.1986. Thus, it is clear that the applicant was not on the rolls of the Sahadara School after 24.9.1986. Now the question remains whether the applicant has been directed to sign in the office of Deputy Director of Education(East). It may be pointed out that when a person is transferred, he may make a representation pointing out the inconvenience he is likely to suffer in the matter of transfer. Transfer is an incidence of the service but in the present case is only within the territory of Delhi from one school to another. Even though the action of transfer may be taken by the respondents, not so much with the administrative exigency, but when once order of transfer has been passed then it is open to the employee to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned employee must carry out the order of transfer. In the absence of any stay of transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of his own difficulty in moving from one place to other place. If he fails to proceed on transfer in compliance to the transfer order, a disciplinary action against the employees under the relevant rules is taken. The law has been clearly laid down in the case of Gujarat Electricity Board V/s. Atama Ram Sangbmal Roshani reported in AIR 1989 SC 1433. The Hon'ble Supreme Court again considered this point in the case of Union of India Vs. H.N. Kirtania reported in J.T. 1989 (3) SC 131. Thus, the applicant who was relieved from the Sahadara school on his own risk did not join the Tirlokpuri school. He made

representation on 26th Sept., 1986. That representation as well as the subsequent representation made in October, 1986 was disposed of by cancelling his order of transfer order and he was retained in the school at Sahadara where he joined only on 16.12.1986. The transfer order, therefore, is valid in every respect.

6. As regards the signing of the applicant in the office of Deputy Director of Education (E), the averments made by the applicant in the application are denied by the respondents in their counter. What is stated is that the then Deputy Director of Education did not orally direct the applicant to sign in the attendance register meant for signing of the officers/staff under posting, and the applicant was not under posting at all. He had already been posted to Tirlokpuri School and he may have obtained an order in writing regarding the stay of the transfer till the disposal of the representation made by the applicant, and in that event he should have reported for duty in the school located at Sahadara. Thus, the contention of the applicant on this account also is not acceptable.

7. We have seen the attendance register and the photocopy of the same has also been filed. It is better not to comment on the signatures made by the applicant at 1st, 2nd and 3rd pages. A clear picture goes to show that these signatures have not been done in due course at a proper place and at a proper serial number. There is a duplication of the serial number also. It is only from these facts that the genuineness of a document is to be considered when the document itself was seen. We do find that a perusal of the signatures of the applicant against his name does not show that the signatures was made in due course. The respondents have taken the stand in the impugned order as well as in their counter that these signatures were made by the applicant subsequently and that

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he was never directed to sign in that register. This fact in the counter is said to have been got verified from the then Deputy Director of Education(East) Delhi who was functioning at the relevant point of time. Since the respondents have taken the stand, the applicant was free to summon the then Deputy Director of Education(East) who had given him oral orders to sign in the register. Thus, when the document itself is of suspicious nature and the custodian of the document states that the applicant has subsequently signed not at the proper serial number but in a manner that there appears to be interpolation, so the contention of the applicant's counsel cannot be accepted at all. We refrain to give any positive findings in this matter but we do hold that the document relied upon by the applicant do not appear to be a genuine one and that the applicant was not given an oral permission by the then Deputy Director of Education to sign the register.

8. It is not the case of the applicant that his leave was due or he applied for the leave and that has not been sanctioned. It was open to the respondents to consider that point if the applicant had made any such request, it is because of the fact that the transfer order has subsequently been cancelled. If the leave of the applicant was due and he desired or prayed for the grant of the relief that the respondents could have considered the same but there is nothing on record nor there is a pleading to that effect so we also refrain to give any finding on that account.

9. In the conspectus of facts and circumstances on the basis of the averments made and arguments addressed by the applicant's counsel, the applicant is not entitled to the salary for the period on the principle of 'NO WORK NO PAY' unless and until the respondents treat that period as period

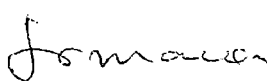
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spent on duty of any kind due to the applicant.

10. We, therefore, dismiss the application with no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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