

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1464
T.A. No.

1988.

DATE OF DECISION

6th Sept. 89

Shri P.C.Gupta, Applicant (s)

Shri S.M.Rattanpal, Advocate for the Applicant (s)

Versus

Union of India & Ors. Respondent (s)

Shri Mukul Talwar, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. T.S. Oberoi, Member (Judicial).

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Shri T.S.Oberoi, Member (Judl.)

Trained

The applicant is presently posted as a Trained Graduate Teacher (General) in a Government Boys Senior Secondary School, Kalkaji. He has brought the present application with the prayer that he may be posted back to Government Boys Senior Secondary School, Hari Nagar Ashram, New Delhi, from where he was transferred to the present school, barely about seven months ago. He has mentioned that during the last few years, he has been transferred to various schools, at short intervals. He has attributed his frequent transfers due to arbitrariness, discriminatory and malafide reasons, on the part of the Principal of Hari Nagar Ashram School in connivance with Smt. Usha Menon, Deputy Director, Education, South District. By referring to the guidelines, laid down the policy regarding transfers, he has mentioned that, his transfer from Hari Nagar Ashram School to a school in East of Kailash and later to Kalkaji and earlier to some other school, was not in accordance

with the said guidelines. He has also mentioned that, for various reasons, mentioned in paragraph 6.8(i) to 6.8(vii) of the application, he had incurred displeasure of the then Principal who in connivance with the above named Deputy Director, manipulated his transfer from Hari Nagar Ashram School, firstly, on deputation, from 24th July, 1986 onwards for a small spell, and later, to East of Kailash School, from 1.5.87, on regular basis, as against an instance of another teacher Shri O.P.Gupta, who, in spite of his transfer to a Defence Colony School was allowed to function, at the Hari Nagar Ashram School, thereby showing undue favour to the latter, as against ~~the~~ bias shown towards the applicant. He also alleged discriminatory treatment on the part of the Principal towards the applicant, as teachers, with longer stay at Hari Nagar Ashram School, were allowed to stay on, in the said school, while the applicant was made to shuttle to various schools at short intervals. He alleged arbitrariness, discrimination as well as malafide reasons in the matter of his transfer, in spite of the fact that, according to him, he was quite popular amongst the teaching community, as evident from the fact that he was the General Secretary to the Staff Association, besides, being good in showing the results in the examination.

2. As against the above contentions put forth by the applicant, the case of the respondents was that the applicant was a problem teacher so far as his stay at Hari Nagar Ashram School was concerned. He created many problems for the Principal, and thereby made the smooth running of the school administration quite difficult for him. Not only that, even the parents of the students were unhappy with his functioning in the school, inasmuch as they represented to the Chief Executive Councillor, complaining against the applicant, as well as against another teacher and requesting for his immediate shifting to

Dhruv

some other place. They also alleged that the applicant was indulging in group fighting and factionalism and thereby polluted the school atmosphere to the extent of disobeying and insulting the Principal. Allegations regarding connivance of the Principal with the Deputy Director, Education were also vehemently denied. On the contrary, it was averred that in view of the complaints of the students, and in the interest of school administration, the applicant's transfer was considered necessary, and the same could be hardly termed as governed by any reason of vindictiveness, as the applicant was placed nearer to his place of residence i.e. to a school in East of Kailash, (and later to Kalkaji itself), as he happened to be residing in Kalkaji. The maintainability of the present application was also questioned as the applicant has not exhausted the departmental remedy, before coming to the Tribunal, by way of the present application.

3. In the rejoinder filed on behalf of the applicant, the various contentions put forth by him in the application were reiterated adding that he was even promoted as a post graduate teacher on adhoc basis, besides having been given senior scale w.e.f. 1.1.1986, which could not have come about, but for his good work and appreciation by all concerned, which nullify the various allegations levelled against him in the counter filed on behalf of the respondents.

4. During arguments, by and large, the contentions mentioned above, were urged by the learned counsel for the applicant, as well as the learned counsel for the respondents. Recapitulating the same, it may be mentioned that while the learned counsel for the applicant urged applicant's case on the basis of arbitrariness, discrimination and malafide reasons, on the part of the respondents, in his frequent transfers, from one school to another; the resistance thereto, by the learned counsel for the respondents, was mainly based on that transfer

is an essential incident of service, and in a case of the present nature, where the applicant was posted to a place nearer to his residence, the transfer was devoid of any reason of vindictiveness and was solely guided by the interests of school administration. The learned counsel for the respondents also pleaded that the allegations regarding connivance of the Principal with the Deputy Director, Education, also do not stand to reason, as there could hardly be any influence of the Principal over the Deputy Director concerned, and the latter, herself had, decided to transfer the applicant, in the interest of school management, coupled with the complaints of the parents body, sent to the Chief Executive Councillor.

5. The learned counsel for the applicant by referring the A.I.R. 1966, S.C. 1238 pleaded that as held in this ruling, if an order of transfer is found to have been made malafide, then it ought to be set aside, as in the present case, in which various instances have been shown, to prove malafide intentions on the part of the Principal, to see that applicant is ousted from the Hari Nagar Ashram School. The learned counsel for the applicant also referred to a Full Bench decision in ATR 1988(2) CAT 116, in which it was held that any transfer must not be an arbitrary and colourable exercise of power and not intended with a view to settle scores between the parties. Likewise, he referred to ATR 1987(1) CAT 393, wherein it was held that the order of transfer must be in accordance with the rules and must not be discriminatory or arbitrary.

6. The learned counsel for the respondents, in support of his contentions cited a judgement of the Delhi High Court in Civil Writ No.912 of 1980 (Mrs. Santosh Gopal Vs. Director of Education, Delhi & Ors.), decided on 18.7.1980, in which, in a similar case, the High Court declined to interfere. The learned counsel for the respondents also referred to

1989(7) A.T.C. 768 (Utter Railway Karamchari Union Vs. General Manager Northern Railway) and 1988(6) A.T.C. 196 (Babu Lal Jain Vs. Union of India), in support of his contentions that the present application is not maintainable.

7. I have carefully considered the various contentions put forth by the learned counsel for both the parties. I have also carefully perused the various citations referred to by them.

8. The main point to be looked into in this case is whether the transfer in this case involves a stigma on the applicant or the order of transfer was arbitrary, discriminatory or malafide. The perusal of the impugned order dated 4.8.1988 shows that none of such eventuality is discernible from it. It is a simple order of transfer in respect of the applicant, on the same scale and on a similar post, in a nearby school. In one of the rulings relied upon both by the applicant as well as the respondents (A.T.R. 1988 (2) C.A.T. 116, Smt.Kamlesh Trivedi Vs. Indian Counsel of Agricultural Research), it was, on page 125, held as under: -

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a chargesheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that the question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed."

9. The other ruling referred to on behalf of the applicant i.e. A.T.R. 1987(1) C.A.T. 393 Chiranjit Lal Vs. Union of India does not help the case of the applicant, as

it pertains to a transfer to another station, out of Delhi, whereas in the case of applicant, it was a transfer within Delhi in a nearby school.

10. As against the ruling cited on behalf of the applicant, the rulings referred to by the learned counsel for the respondents, are on all fours ~~with~~ to the case of the applicant. In Mrs. Santosh Gopal Vs. Director of Education Delhi decided as Civil Writ No.912 of 1980, ~~High~~ Court of ~~Delhi~~ dismissed the application, in limine, holding that they were not inclined to interfere with the order of that nature, ^{from} which sought to transfer the petitioner ~~to~~ East of Kailash to R.K. Puram. In Utter Railway Karamchari Union Vs. General Manager Northern Railway, 1989 (9) A.T.C.768, while dismissing the application, it was, in para 3 thereof, held as under:

..... Assuming that the instructions contained in Annexure 'A' have statutory force and must be ordinarily followed and do not admit of any deviation, it is seen that the second petitioner who is due to retire in October 1987 has been transferred from New Delhi Railway Station to Shakurbasti which is just a few kilometres away and is within Delhi Metropolis. Such a transfer does not cause any dislocation to the petitioner; he is neither required to change his residence nor is his children's education affected in any manner. Irrespective of the fact whether his transfer contravenes the instructions contained in Annexure 'A' or not, no court would interfere with such an order of transfer merely because it contravenes those instructions. The transfer is an incidence of service and where it does not cause any dislocation whatsoever, it would not be interfered by this Tribunal even if *prima facie* it is not in strict compliance with the standing instructions."

11. The case of the applicant has to be viewed from another angle. Before his present posting, he had an earlier for a considerable period from 1.9.81 to 24.7.86, stint ~~at~~ this very school. Therefore, from the point of view of his own interest also, he should not give the impression of having any vested interest of remaining in the same school. The applicant has claimed that he has shown much better results with the exception of only one subject i.e. Social Studies, in which the result was only 35%, as against much better percentage in other subjects. He has also claimed his ~~to~~ good relations with other fellow members of the staff

as he was elected as some office bearer of the staff Council.

If that be really so, let the benefit of all these good aspects, be availed of by others, where he has now been posted

12. At this stage, the learned counsel for the applicant particularly emphasised the case of the applicant, on aspects that it was against the guidelines of transfers, as prescribed by the department (Appendix A-2(i)), and secondly, that he has been victimised, by transferring him from Hari Nagar Ashram School to the present school, because of his criticism against the Principal, ventilated by him in the Staff Council. We have carefully considered this aspect of the case as well, but find it not possible to accept applicant's contention, on the ground that even assuming that the Principal of the school might have some unhappiness with the applicant, it does not stand to reason that even Deputy Director concerned, would become an ally of the Principal, so as to be dictated by the Principal, with regard to shifting of the applicant from the school concerned. In our opinion, the Administrative authorities concerned must have been guided by the requirement of the situation, as prevalent in the school at the relevant time.

12. As regards the plea regarding applicant's transfer being against the guide-lines, it may be mentioned that as held in Kamlesh Trivedi Vs. Indian Council of Agricultural Research, New Delhi (1988) 7 A.T.C. P.255 (Para 19) =

A.T.R.1988(2) C.A.T. 1167 referred to earlier, any transfer made in violation of, transfer policy by itself would not ^{be} a ground for quashing the order of the transfer, for instruction embodying the transfer are more in the nature of guide-lines to the officers.

14. In the above circumstances, we feel disinclined to interfere in the applicant's transfer, vide the impugned order dated 4.8.88, and, as a result, the application is

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dismissed, without, however, any order as to costs.

Dec 6.9.89
(T.S. Oberoi)
Judicial Member