

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

...

Date of decision: 7. 2.1989.

Regn. No. O.A. 1982/88.

Smt. G.K. Gupta ... Applicant

Vs.

Lt. Governor & Ors. ... Respondents.

CORAM:

Hon'ble Mr. B.C. Mathur, Vice-Chairman.

For the applicant: Shri S.K. Bisaria, counsel.

For the respondents: Smt. Avnish Ahlawat, counsel.

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed by Smt. G.K. Gupta against the order transferring her from the post of the Principal, Government Girls Senior Secondary School, Nangloi, to the Ranikhera School under the Delhi Administration.

2. The brief facts of the case are that the applicant was promoted as Principal on 30.6.1970 and has been working as the Principal of the Government Girls Senior Secondary Schools and during this period, she has served for more than nine years as Principal in rural areas and re-settlement colonies. She was posted to Nangloi on 1.8.1986. The applicant claims that due to her devoted service, she was able to give 100 per cent result of the Senior Secondary School examination. The applicant is suffering from bronchial ashtma due to dust and as she is allergic to dust, her movements are restricted. While working as Principal at Nangloi, she received a letter dated 12.9.1988 on

8

17.9.1988 transferring her from Nangloi to Ranikhera. As she is residing at Paschim Vihar, to reach Ranikhera the applicant has to change two buses and then walk on foot for about two kms. in dusty area. She is over 58 years of age and is due to retire on 31.3.1990. Her transfer is against the public policy and against the interests of her health. She has claimed that this transfer has been done at the instance of the Deputy Director, Education, Central District, as the applicant had refused to relieve the Head Clerk working in that school till a substitute was posted and, therefore, the transfer was in colourable exercise of power. She has also developed angina trouble and it would be very difficult for her to work at Ranikhera. She has also claimed that she has not been relieved properly and she has still not handed over charge of her post as Principal at Nangloi.

3. The respondents have stated that the applicant, who had already been at Nangloi for ^{over} ~~about~~ two years, has been transferred in public interest as they had received a report that the applicant and the Vice-Principal of the School, Smt. Malhotra, were on bad terms with each other. The continuous infighting between the Principal and the Vice-Principal was causing multiple loss to the students' study and, therefore, the Education Officer/D.D.(E) concerned had recommended the transfer of the applicant on administrative grounds. The post of the Principal is a transferable post. It has been stated that there is a direct bus service to Ranikhera and if such excuses are accepted, then it would not be possible to post teachers in rural areas of Delhi. There is no transfer policy as such and the transfer policy cited by the applicant is only for teachers

and not for Principals of schools. According to the transfer order dated 12.9.1988, Smt. V.C. Mehta has been transferred to Nangloi and the applicant to Ranikhera. The order states that Smt. Mehta will move first. In pursuance of these orders, Mrs. Mehta took over charge of her duties as Principal, Nangloi on 17.9.1988 in the absence of the applicant who was informed by Mrs. Mehta that she had been relieved by the E.O./Zone II vide his orders dated 16.9.1988. The respondents have stated that the Department is short of nearly eighty Principals and about 150 Vice-Principals and steps have already been taken to fill in the vacancies. About eighty Principals are being recruited and their cases have been referred for medical examination and it is hoped that they will join in a couple of months or so. The academic session of 1988-89 is at its peak and, as such, it would not be in public interest to leave any school without a Principal ^{or Vice Principal} and transferring some other Principal from any other school would also adversely affect the studies of the students of that school. The applicant had made a request to the Director of Education, Delhi Administration and also met him personally. In the application, she had made a request for transfer from Ranikhera to Madipur or any other convenient posting near her residence. The Director of Education, after giving her a personal hearing, noted down on her application (Annexure R-1 to the reply of the respondents filed on 3.2.1989) that the reason for transfer was satisfactory and the applicant might be posted to Madipur against a newly created post. In pursuance of the instructions of the Director of Education, the Additional Director issued orders on 23.1.1989 transferring the applicant to Madipur against a post likely to be created. In the transfer order, it was mentioned that she would continue to look after the

work of the Ranikhera school till a Vice-Principal/Principal was posted there and she would continue to draw her salary from that school. The applicant, however, proceeded on medical leave till she got an interim order from the Tribunal maintaining the status quo which was also subsequently vacated.

4. I have carefully gone through the application and all the papers filed by the respondents as reply and by the applicant as rejoinder including the additional papers filed subsequently. I have also heard the arguments of the learned Advocates for the applicant and the respondents. The main argument put forward by Shri Bisaria on behalf of the applicant is that the transfer is not in public interest and is in colourable exercise of power by the Deputy Director of Education, who had malice against the Principal. The applicant was doing very well as would be indicated by the results of the school. The administrative reasons for transfer were not mentioned in the transfer order which was a transfer simpliciter. The transfer was contrary to general policy and not bona fide. He said that the applicant was on the verge of retirement and by her posting at Ranikhera, her condition would further deteriorate. He cited the following three cases to support his contentions:-

- (i) 1980 (1) SLR 309
C. Ramanathan Vs. Acting Zonal Manager,
Food Corporation of India, Mount Road, Madras
and ors.
- (ii) 1984 (2) SLR 329
Sheshrao Nagarao Umap Vs. State of Maharashtra,
and ors.

The above two cases deal with colourable exercise of power and violation of transfer policies.



(iii) ATR 1986 (1) CAT PB 304
K.K. Jindal Vs. General Manager, Northern
Railway & Ors.

5. Shri Bisaria also said that the applicant was willing to join at Madipur unconditionally and that he has learnt that one Shri Prabhu Dayal Sharma has been nominated by the respondents as Drawing & Disbursing Officer (D.D.O.) at Ranikhera and, as such, there was no need for the applicant to go to Ranikhera to draw money.

6. Smt. Ahlawat mentioned that there was no transfer policy as such for the Principals; that the applicant had been transferred in public interest as the relations between the applicant and the Vice-Principal of the Nangloi school were not cordial and were affecting the studies. The bad relations with the Vice-Principal have already been admitted by the applicant in her letter dated 19.9.1988 to the Director of Education and to the Lt. Governor, Delhi, in her letter dated 21.9.1988, both annexed to the application. In these letters, the applicant has mentioned about the deteriorating atmosphere being created by the Vice-Principal Mrs. Malhotra who was trying to create an ugly exposure to mass media (A.I.R.) about which the authorities were aware. She also mentioned that the Vice-Principal was being supported by the District level officers. Mrs. Ahlawat said that since the Principal and the Vice-Principal were having bad relations, it had become necessary to transfer one of them from that school in the interest of the students and the authorities decided that the applicant should be transferred from Nangloi in public interest even though in the order, the reason for transfer was not mentioned. She stated that the applicant as Principal of Ranikhera school was continuing on leave and was not drawing salaries of the staff of that school, the staff was, therefore, suffering and they made a representation and, as such, an

Don

officer had been nominated as D.D.O. to draw the salary of Ranikhera school staff on a temporary basis but he could not work as the Principal and it was necessary that there must be a Principal especially during the end of the academic session. She said that the applicant had made a mercy petition for transfer to Madipur which had already been accepted. The post of Principal at Madipur school is, however, yet to be created and a proposal has been sent to Government. She clarified that the applicant is not required to work both at Madipur as well as Ranikhera simultaneously. Although she has been transferred to Madipur pending creation of the post of Principal, she will continue to work at Ranikhera as Principal till fresh appointments are made for the posts of Principal and Vice-Principal. She hopes that it would be possible for the applicant to join at Madipur on a regular basis, as requested by her, within three months but she must resume duty at Ranikhera immediately. She pointed out to the fact that although the applicant was on medical leave, she was attending the court.

7. It is noticed from the orders passed by this Tribunal on 25.1.1989 that the applicant, after vacation of the order of stay, had reported at Ranikhera and thereafter, according to her statement, she reported sick.

8. Having considered the points raised by the applicant as well as the respondents, I am willing to accept that since the relations between the Principal (the applicant) and the Vice-Principal of the ^{Nanglon} Ranikhera ^{Bar} school were not cordial, the respondents were justified in transferring one of them and it is for the competent

12

authorities to decide whom they would like to transfer. It cannot be said that Mrs. Mehta has not ~~reported~~^{joined} *ma* at the Nangloi school merely because there has been no formal handing and taking over charge. This is so because the applicant had proceeded on medical leave and having been relieved from Ranikhera, Mrs. Mehta had to take charge at Nangloi. The applicant has alleged malice on the part of the Deputy Director, Education but he has not been made a party to this application. No malafide or arbitrariness has been alleged on the part of the Director of Education or the Additional Director. On the other hand, the Director of Education has accepted her request for transfer to Madipur. In the circumstances, the applicant should also respond to the gesture of the Director of Education in allowing her request for her transfer to Madipur and work as Principal at Ranikhera immediately. It has already been assured by the respondents that she would join at Madipur as soon as new Principals report for duty after some formalities are completed. In the circumstances, there is no merit in the application which is dismissed. There will be no order as to costs.

B.C. Mathur

(B.C. Mathur)
Vice-Chairman.
7.2.1989