

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

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O.A. No. 1899/1990

Date of decision. 30-9-94.

Hon'ble Shri S.R. Adige, Member (A)

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

Smt. Krishna Sharma,  
W/o Shri P.C. Sharma,  
R/o 336, Pocket 2, Paschim Puri,  
New Delhi-63

... Applicant

(By Advocate Shri G.D. Gupta )

Versus

1. Delhi Administration  
through its Chief Secretary,  
5 Sham Nath Marg,  
Delhi-54
2. The Director of Education,  
Delhi Administration,  
Old Secretariat, Delhi-54
3. The Joint Director of Education  
(Administration)  
Delhi Administration, Old Secretariat,  
Delhi-54

... Respondents

(By Advocate MS Ashoka Jain )

O R D E R

∟ Hon'ble Smt. Lakshmi Swaminathan, Member (Judicial) ∟

The applicant being aggrieved by the rejection  
of a request to be permanently absorbed as a Trained  
Graduate Teachress (General) in the Directorate of  
Education, Delhi vide the respondents' memo dated

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10th September, 1990 has filed this O.A. praying that the impugned memo. may be quashed and she be absorbed permanently in the service of the respondents.

2. The applicant was initially appointed as Social Studies Mistress on 21st August, 1976 in the Education Department, Punjab. Since her husband was employed in <sup>the</sup> Indian Council of Agricultural Research, Delhi, in 1984 she requested that she may be taken on deputation by the respondents. She was advised by the respondents vide letter dated 22nd May, 1984 to get her application forwarded through the Education Department, Punjab along with a no objection for taking her on deputation, which was duly sent by the Punjab Government in 1985. By Memo. dated 12.1.1987 (Annexure A-5), the applicant was informed by the respondents that she can be appointed by transfer on deputation subject to certain conditions, namely -

- (1) That she will not claim any seniority;
- (2) That she will not be entitled for promotion to a higher grade while on deputation;
- (3) That the appointment on deputation will be a fresh <sup>appointment</sup> in the scale of Rs. 1400-2600 subject to general conditions of transfer.

- (4) That she will have to pay amount equivalent to leave salary and pension contribution to respective State Government; and
- (5) That the deputation will be for a period of three years on year to year basis.

On her acceptance of the conditions, she was transferred on deputation, which was extended upto 17th September, 1990. Later, the applicant had requested for her transfer from the Education Department, Punjab to the Directorate of Education, Delhi. She has relied on the Government of India's O.M. dated 3rd April, 1986 on the subject of posting husband and wife at the same station as far as possible. Further, as directed by the respondents in their letter dated 5th March, 1990 (Annexure A-9), the applicant submitted the various certificates asked for by 10th September, 1990, which included a certificate from the Punjab Government that they have no objection in the applicant being permanently absorbed in the Education Department, Delhi Administration (Annexure A-12). After receipt of the necessary certificates, the respondents had issued the rejection memo. dated 10.9.1990 (Annexure A-15) and directed her to report back to her parent department i.e. Punjab Government.

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3. In the rejoinder filed by the applicant, the applicant had specifically mentioned that in the case of three other persons, namely, Smt. Madhuri Malhotra, Smt. Satya Palan and Smt. Vijay Kumari Rathor, they had been employed in various State Education Departments and were on deputation with the respondents where they were permanently absorbed. She had, therefore, alleged that since her case was similar to the three cases, there was hostile discrimination against her and violation of Articles 14 and 16 of the Constitution of India. The decision in State of Mysore v. Srinivasamurthy has been relied upon.

4. The reply of the respondents on this point is vague but they have not denied that in the cases of the other three persons cited by the applicant, they have been permanently absorbed. They have tried to surmise that perhaps in the case of the applicant, permanent absorption was not allowed keeping in view the availability of the eligible candidates within the Union Territory of Delhi which factor might not have been considered in the other cases of "two teachers." They have not cared to explain the position regarding the third teacher nor have they referred to any rules or instructions governing the absorption of teachers who have come on deputation from State Government service. This lends credit to the submission of the learned

counsel for the applicant that the respondents have been taking action for absorption in a pick and choose manner which is arbitrary and illegal.

5. In State of Mysore & Ors. v. H. Srinivasamurthy

[AIR (Vol.63) 1976 SC 1104], the Supreme Court held

as follows :-

" The petitioner had been invidiously discriminated against when six other employees who were similarly situated, were absorbed in the department of polytechnics from the dates on which they initially joined duties after deputation in polytechnics. There was no justification whatever to depart from the principle of policy evolved by the State Government viz., of relating back the date of absorption in the case of the petitioner who was in all material respects in the same situation."

The Supreme Court dismissed the appeal of the State Government with costs.

6. As mentioned above, the reply of the respondents is vague and does not reveal clearly the reasons that weighed with the authority for rejection of the applicant's request for permanent absorption, which had been earlier allowed to other similarly situated persons. They have also not referred to any Rules/instructions in this matter, which would justify their action. In the circumstances of the case, <sup>and</sup> having regard to

the observations of the Supreme Court above, therefore, we find that the action taken against the applicant is arbitrary and in violation of the principles of equality enshrined in Articles 14 and 16 of the Constitution of India and is liable to be quashed and set aside. In this view of the matter, we do not think it necessary to express any view regarding the applicability of the Govt. of India's instructions on transfer policy relied upon by the applicant dated 3rd April, 1986.

7. In the result, the application is allowed. The Tribunal has, vide interim order dated 17.9.1990, stayed the operation of the impugned order at Annexure A-16 and also the order dated 10.9.1990 as a result of which the applicant continues in her present post of TGT (General) in the Government Girls Senior Secondary School, Khyala, New Delhi. In the circumstances of the case, the respondents are directed to consider the applicant for permanent absorption in their service, keeping in view the aforesaid observations and the other similar cases, and pass a speaking order, with copy to the applicant, within three months of the receipt of a copy of this order. There will be no order as to costs.

*Lakshmi Swaminathan*  
(Lakshmi Swaminathan)  
Member (J)

*S.R. Adige*  
(S.R. Adige)  
Member (A)