

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(15)

O.A. NO. 2721/89

DATE OF DECISION : 14.08.1992

Miss Parveen Chopra ... Applicant  
Vs.  
Delhi Administration & Anr. ... Respondents

CORAM

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

For the Applicant ... Shri P.P. Khurana  
For the Respondents ... Shri Pawan Bahel

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

The applicant is Physical Education Teacher in Government Girls Senior Secondary School No.2, Modipur. She has assailed the order dt. 23.11.1990 by which the applicant has been transferred from the Government Girls Senior Secondary School No.2, Modipur, New Delhi which falls in district-West to district-Central. The applicant has prayed that the order dt. 23.11.1990 be quashed. This order dt. 23.11.1990 was stayed by an interim direction issued on 31.12.1990 which was extended from time to time, though on some of the dates the order of interim direction was not extended. However, that is not

material because the order dt. 5.6.1992 has been passed by the Bench that interim order to continue until further orders.

2. The case of the applicant is that she fell seriously ill in September, 1988 and remained on leave upto May 4, 1989. The applicant applied for leave, but the Principal of the institution found some fault in the said draft of the leave application and the applicant was asked to submit correct application. She was further asked to produce medical certificate in support of her leave application for the period from 28.2.1989 to 31.3.1989 and 1.4.1989 to 29.4.1989. The case of the applicant is that she duly applied with the same. However, the case of the applicant is that she was harassed by serving certain irrelevant Memos and fault was also found with the girls guide fund collected <sup>from</sup> by the students. The applicant was also not paid her salary on flimsy and untenable grounds for the months of July, August and September, 1989 which was ultimately paid in November, 1989. Thus the applicant has made

various averments against the Principal of the institution to show that she was keeping bias against the applicant <sup>as per applicant</sup> and so the order of transfer is malafide. Thus the order of transfer dt.13.11.1990 cannot be said to be an order passed with an open mind in the public interest in the exigency of service.

3. The respondents contested the application and stated that the present application is not maintainable as the mandatory provision of exhausting the departmental remedy have not been observed by the applicant. On merits, it is stated that the transfer has been ordered in the public interest. The respondents received certain complaints from the applicant against respondent No.2. Since respondent No.2 was on the verge of retirement and there was also complaint of respondent No.2 against the applicant, it was taken advisable to take administrative action rather than to take the disciplinary action against the applicant or respondent No.2 and accordingly the applicant has been transferred to the school which is near her residence. The order of transfer is valid and proper as per the facts and circumstances of the case. It is, therefore, prayed by the respondents that the present application be dismissed with costs.

4. I have heard the learned counsel for the parties at length and have gone through the record of the case. The transfer order has been issued by Joint Director of Education. The case of the applicant is that because the Principal of the institution was aggrieved with her, and she was serving her with the Memos of irrelevant and insignificant nature from time to time, so the Principal procured this transfer order. It is a fact that the Principal of the institution Ms. G.K. Gupta has given certain Memos to the applicant, but that is in the normal discharge of the duties as Principal. As Head of the institution, she has every right to call for any reply either by serving a Memo or orally. The day-to-day work is performed by the employee and the Head of the institution has to watch the same work in the course of the discharge of the duties and there should be no grudge why an employee has been asked about certain facts either by Memo or orally by the Head of the institution. Merely because the Principal served certain Memos and questioned the applicant time and again on certain facts, it will not by itself make the Principal prejudiced against the applicant.

5. Though it appears from the record that G.K. Gupta was the Principal at the relevant time, but in the

19

application respondent No.2 impleaded is Mrs.Krishna Kalia.

If the applicant alleged malafide on the part of the Principal, Ms.G.K. Gupta, then she should have been made a party to these proceedings so that she could have been heard on various allegations made against her in the present application. The arguments of the learned counsel, therefore, that the Principal was annoyed with the applicant and so the transfer has been effected cannot be accepted as a fact. The Head of the institution is the best judge to have best administration and the manner inwhich it can be enforced. There is a letter dt.15.2.1990 addressed by the applicant to the Director of Education wherein she has stated that she is being harassed at the hands of the Principal and salary for the period of December and January, 1990 has not been released. There is another letter on record written by the applicant on 12.12.1989 to the Principal of the institution that Mrs.Krishna Kalia, Vice-Principal snatched the attendance register from her hands. She has further written in this letter that another teacher Mrs.S.Gupta signed in her presence and the said Vice-Principal did not say anything to her. All this goes to show that the applicant herself was making certain complaints. The Principal in order to keep the administration tight, particularly in an education institution can take administrative steps and recommend to the Director of Education in that light. The transfer effected in such a manner is not punitive as held

20

in the case of Kamlesh Trivedi Vs. Union of India, Full Bench Decision 1989 Bihari Brothers, p-80. <sup>Vol(1)</sup>

6. The law has now been clearly laid down in a number of cases by the Hon'ble Supreme Court that the applicant has to make a representation regarding her inconvenience arising due to such transfer, but in this case no such representation has been made by the applicant. The applicant has come directly to the Tribunal without exhausting the remedy of representation. The law has been clearly laid down in the case of Gujarat Electricity Board Vs. Atma Ram Sangomal Poshani, AIR 1989 SC 1433.

Again in a recent decision in Ms. Shilpa Bose Vs. State of Bihar, 1992 (February Part) SCC Labour and Service Cases, the Hon'ble Supreme Court laid down that the order of transfer is to be least interfered with unless the transfer is malafide. The learned counsel for the applicant has tried to show that the order is malafide because the applicant has been questioned time and again on certain minor matters and the applicant was also furnished certain Memos. But merely this will not go to show that the Principal of the institution was aggrieved with the applicant.

le

...7...

She wanted the best administration because the applicant has also complained against the Vice-Principal, Krishna Kalia and the applicant too has submitted certain applications. The contents, manner and mode of representing the facts in those applications leave no doubt that the applicant too had adopted a rigid stand against the authorities. Thus it is not a case where the transfer has been effected in a malafide manner.

7. Transfer is an incidence of the service and in the present case, the applicant has only been shifted from Western district to Central district and he is yet to be posted in an institution in the Central district. The order was dated 23.11.1990 and the present application has been filed by the applicant on 21.12.1990 and she obtained an interim direction that the transfer order dt.23.11.1990 be not given effect to. Thus this order is continuing till today. The respondents in their reply stated that provisional posting of the applicant shall be nearer to her residence, Old Rohtak Road. Thus it cannot be said that the present transfer order in any way will cause

29  
22

inconvenience to the applicant, if she is made to serve in an institution near her residence.

8. In view of the above facts, the present application is totally devoid of merit and is dismissed leaving the parties to bear their own costs. The interim order dt.21.12.1990 is vacated.

*J. P. Sharma*  
14.8.92  
(J.P. SHARMA)  
MEMBER (J)