

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 569/90

DATE OF DECISION : 24.7.92

Shri Chotey Lal

...Applicant

Vs.

Delhi Administration & Anr.

...Respondents

CORAM

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

For the Applicant

...Shri D.S. Mahendru

For the Respondents

...None

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

JUDGEMENT (ORAL)

The applicant, Shri Chotey Lal was working as Vice-Principal, Government School, J.J. Camp, Naraina, Delhi since August, 1988. By the order dt. 21.3.1990, the applicant was transferred in the same capacity to Government school, Ujwa, a suburb of Delhi. The applicant has assailed the order of transfer and prayed that this order be quashed.

2. The respondents contested this application and stated that the impugned order has been passed in the public interest and in the exigency of the service, the applicant being on a post carrying transfer liability to any place within the state of Delhi.

3. I have heard the learned counsel for the applicant. None appears from the side of the respondents. While filing this application, the applicant was granted an ad-interim relief by the order dt. 30.3.1990 that the status-quo be maintained. But the Division Bench vacated this status-quo order on 12.4.1990, though reasons of vacating are not mentioned in that order. However, the learned counsel has mentioned certain facts in the rejoinder that this order of status-quo was vacated because the then counsel appearing for the respondents stated before the Bench that an enquiry in the whole of the matter against the lady teacher, Kaushalya is going to be commenced. What is mentioned in the rejoinder, cannot be taken as a substitute in the order itself. The rejoinder is meant only to meet the points raised in the counter and not to elucidate or in any way explain an order passed by the Bench.

4. Since the applicant had already joined at Ujwa, the application being only for quashing the transfer order becomes infructuous. However, it survives to the extent to consider his case whether the order of transfer has been made in the exigency of the service or is motivated because

of certain accusations made against the applicant in complaint as alleged. The contention of the learned counsel is that when an order of transfer is effected on the basis of a complaint, then it tantamounts to a punitive order and in this connection he has placed reliance on a decision of Punjab and Haryana High Court in the case of N.S. Bhullar Vs. State of Punjab, reported in 1991 (1) SLR held p-378. Be that it may be, the Full Bench has / in the case of Kamlesh Trivedi, reported in Bihari Brothers, Full Bench Judgements, CAT, 1989 Edition, p-80/ ^{that} an order simplicitor has been passed on the basis of a complaint cannot be said to be punitive order unless and until it is shown that the order has been passed with pre-notions amounting to mala fide act on the part of the person issuing such an order. What is, therefore, to be seen is whether there was a malice, in fact or in law while passing the present impugned order dt. 21.3.1990. It is undisputed fact that lady, Kaushalya when reported at the institution in February, 1990 placed before the applicant her transfer order from J.J. Camp school, Naraina to Ujwa and the applicant, as has been averred in the application, desired her to wait till the clerical staff comes and joins. It is said that the lady teacher whose husband was also waiting outside resorted to certain use of unpalatable words

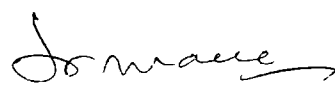
Against the applicant. The no. of complaints are said to have been set into motion by the teachers, by the parents of the wards and even some report appears to have been lodged at Tilak Nagar Police Station. On the other hand, it appears that there were counter complaints on behalf of the lady teacher against the Principal. In such a situation when the applicant is not proceeded with against an enquiry, then the action of the respondents in transferring the applicant cannot be said to be an outcome of malafide action. In another manner, since the applicant has a transfer liability to any place in Delhi, he cannot challenge the same while he has not impleaded any of the persons by name against whom he wants to allege that the order has been passed in a malafide manner.

5. However, the apprehension which is harboured by the learned counsel for the applicant is that this order of transfer should not attach any stigma on the service career of the applicant. It is clearly and categorically laid down that the transfer has not been punitive and when it is not punitive, then this transfer will not in any way come in the way of any adverse inference against the working of the applicant at that place. However, it will not be read on either way in favour of the applicant or against him while an enquiry is being conducted by the

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respondents.

6. In view of the above discussion, the present application is disposed of with the above observation having also become infructuous leaving the parties to bear their own costs.


(J.P. SHARMA)
MEMBER (J)
24.07.1992

AKS