

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2797/2004

This the 4th day of March, 2006

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)

Smt. Meenu Mehta,
W/o Sh. Kulbhushan Mehta,
D/o Sh. Uma Shankar,
Now resident of E-2-2/57,
Sector-15, Rohini, Delhi-110085.

(By Advocate: Sh. S.C. Munjal with
Ms. Harvinder Oberoi and Sh. M.K. Bhardwaj)

Versus

1. Government of N.C.T. of Delhi
Through its Chief Secretary
Secretariat, Indira Gandhi Indoor Stadium
New Delhi-110002.
2. The Director
Directorate of Education,
Govt. of N.C.T. of Delhi,
Old Secretariat, Sham Nath Marg,
Delhi-110054.
3. The Joint Director of Education (Admn.)
Directorate of Education,
Old Secretariat,
Delhi-110054.
4. Mrs. Sanjeev Arora (TGT)
Government Co-education School,
Sector-15, Rohini, New Delhi.

(By Advocate: Ms. Simran proxy for
Mrs. Avnish Ahlawat for official respondents
Sh. Anil Singal for respondent No.4)

ORDER

Applicant who is a Trained Graduate Teacher (Domestic Science) was transferred from Government Co-Ed. Senior Secondary School, Sector-15, Rohini to Sirsapur Govt. Co-Ed School vide order dated 18.11.2004. She is challenging this order in the present OA. She has also prayed that respondent No.4 Smt. Sanjeev Arora, TGT (Domestic Science) posted to Rohini School be also transferred out of that school.

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2. Applicant has assailed her transfer and the posting of respondent No.4 in the school on diverse grounds. It is stated that the applicant had served rural schools for more than 10 years when she was transferred on her request on medical grounds to the present school in Sector-15, Rohini; she was required to serve in the school located in rural area at the first instance which condition she had already fulfilled; there is no reason or ground for her transfer either to Govt. Senior Secondary School, Sirsapur or to any other school except to the Schools opted by her in her transfer application, i.e. Sector 15, Rohini school where she was posted on a regular post and is discharging her functions without any complaint; the posting of respondent No.4 in the said school is not for any exigency and she is also not interested to work in the said school; the transfer of the applicant is a contravention of the transfer policy laid down by the Government; there is no need of posting of two Domestic Science Teachers in Sector-15, Rohini school and respondent No.4 has not served in rural area and had already requested for her transfer; the transfer is violative of Article 12 of the Constitution of India as she is not being paid salary from the same district and she is also made to perform the duties of the English teacher; the transfer of the applicant is illegal, arbitrary and discriminatory and has been made in order to adjust the respondent No.4 who had been posted to Sector-15, Rohini school when there was no vacancy in the said school; the respondent malafidely offered to post the applicant in Sector-2 Rohini school which is farther away than Sirsapur school and; her transfer at Sirsapur would cause immense hardship and inconvenience to the applicant.

3. The respondent contested the OA and have refuted the allegations of the applicant. It is submitted that in order to rationalize the Student Teacher ratio to make it 1:40 the computer processed the matter and detected quite a large number of schools where the ratio was far below the ratio of 1:40, so about 406 teachers were picked up by the computer data and their transfer orders were issued from the schools where ratio of teachers was below 1:40 and the applicant was one of them whose transfer order was issued according to the said criteria. All these transfers were made within 10-15 kms of the residence of the teacher against a vacant post. The distance between the residence

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of the applicant and Sirsapur school was only 2.68 km. (ariel) which is within limits. It was submitted that transfer was an incidence of service and nobody has a right to continue on the post for an indefinite period. Allegations of discrimination, malafide etc. have also been refuted. It was also stated that the transfer of teachers were done considering various factors like administrative exigency, availability of posts, strength of the students and length of the posting and keeping in mind the overall welfare of the students. The employee do not have a right to be posted to a place for all the time as the transfer was inherent in the system and may be ordered in public interest and to promote efficiency in public administration. No rule of transfer policy has been violated. The transfer of the applicant from Prehladpur Bawana Road school was on the request of the applicant. She has already completed more than 2 years so was eligible for transfer. Respondent No.4 was transferred along with 159 teachers/Lab. Assistants.Librarians on 8.9.2004 on the basis of the online request received from the available vacancy as per the computer. She was posted against a vacant post shown by the computer at that time at Sector 15, Rohini school. For rationalization of 1:40 ratio 406 teachers were transferred on the basis of the data generated by computer. It was not possible to post all the fresh candidates to rural areas and the same depends upon the availability of rural posts, if any, at all. The Directorate of Education had issued guidelines on 16.4.2003 for transfer of teachers and in supersession of these guidelines another guideline was issued on 24.6.2004 wherein it was mentioned that as per initial appointment one has to be posted in rural area/re-settlement colonies for a minimum period of two years and maladjustment was allowed to female teachers. Applicant had applied for online transfer on 19.7.2004 and opted for Sector-15 Rohini School out of the three options available. She was maladjusted against the post of W.E.T. at SKV No.1, Keshav Puram. A vacancy was shown in the Sector-15 Rohini school in the computer because of some error because the data has not been properly entered by the school authorities. The senior most of the two teachers posted in the school was, therefore, transferred as per the guidelines. Other allegations were also denied.

4. In the rejoinder applicant has reiterated her own case.

5. At the time of first hearing on 22.11.2004 the operation of the impugned transfer order was stayed. The applicant as such continued to work in Sector-15 Rohini school. Applicant was posted in Sector-15 Rohini school vide order dated 6.7.2002. She has already served there for over three years. Learned counsel for applicant has fairly conceded that she may now be transferred to another school as per the transfer guidelines, copy of which is filed as Annexure-E to the OA. He, however, submitted that the applicant has already served in rural area for over 10 years, therefore, her transfer to Sirsapur School which is in the rural area was not in conformity with the transfer guidelines. It is also submitted that during the pendency of the case the respondent had offered to consider the applicant's transfer to Sector-2 school and the applicant is now willing to be posted to that school. He has fairly conceded that the applicant cannot be posted to that school now since the said vacancy has already been filled up and no vacancy is available there any more. Any how the applicant is not averse to her posting in a school which is at a convenient distance from her place of residence. Counsel for respondents has submitted that respondents will consider the applicant's transfer to a school which is within the radius of 5-6 kms. (surface) from her residence. Interestingly in the counter reply the respondent stated that the Sirsapur school to which the applicant was transferred by the impugned order was at a distance of about 2.6 km. (airiel) and the applicant had to obtain a certificate from DTC that the surface distance by road transport, by a DTC bus, was above 11 kms. This fact has not been denied by the respondents. Counsel for respondents himself could not justify the calculation of the distance between the residence of the applicant to the school in Sirsapur by air. Any how it is submitted that respondent will try to post the applicant within the radius of 5-6 kms. from her residence.

6. It will be pertinent here to notice that the applicant has prayed in para 8 of the OA that the respondent No.4 should be transferred out to another school or to a rural school. To our considered view the applicant has no locus standi to assail the order of posting of the respondent No.4 either at the school in Sector-15 Rohini or her transfer from that school to a rural school or any other school. Applicant could challenge her own transfer

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on permissible grounds. Admittedly, respondent No.4 was transferred to the school in September, 2004 because of an error in the computer which showed another vacancy was available in Sector 15 Rohini school. She was one of 159 transfers made at that time. In November 2004 another exercise was done to streamline/rationalize the teacher student ratio with the help of computer data and the applicant having been in the said school for a longer period in the two teachers was transferred out.

7. Any how going into the grounds which have been set up by the applicant in the OA for assailing the transfer order is of only academic interest. Now the applicant as per transfer policy is due for her transfer to another school and she is also not averse to her transfer but she had prayed that she should be transferred to another nearby conveniently located school. The respondents have agreed to consider this request.

8. It has been held in *Rajendra Roy vs. Union of India* AIR 1993 SC 1236 that an order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee but on that score the order of transfer is not liable to be struck down unless the order passed mala fide or in violation of the rules of service and guidelines for transfer. It was further observed that in a transferable post transfer order was a normal consequence and personal difficulties are matters for consideration of the department. In another case of *Chief G.M., N.E. Telecom Circle vs. Rajendra Ch. Bhattacharjee* AIR 1995 SC 813 has observed that a government employee had no legal right to insist for being posted at any particular place; he has no legal or statutory right to claim his posting at his home town where he had served for most of the part of his service, transfer of respondent to another place is proper and merely it was not on administrative ground. In yet another case of *State of M.P. vs. S.S. Kourav* AIR 1995 SC 1056 it was observed that the Courts or Tribunals are not the appellate forums to decide the transfers made on administrative grounds. The wheels of administration can be allowed to run smooth and Courts or Tribunals are not expected to interfere in the working of the administrative system and transferring the officers to proper places. It is for the administration to take a decision in such matter and such decision shall stand unless they are either by mala fides or by extraneous consideration without any further

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factual background. In another case of Mrs. Shilpi Bose and others vs. State of Bihar AIR 1991 SC 532 Hon'ble Supreme Court held that where a competent authority issues transfer orders with a view to accommodate public servant to avoid hardship, the same cannot and should not interfere with by the court merely because the transfer orders were passed on the request of the employee concerned. It was further observed that the court should not be interfered with the transfer orders which are made in public interest or administrative reasons unless the transfer orders are made in violation of mandatory statutory rule or on the ground of mala fide. A government servant holding the transferable post has no vested right to remain posted at one place or the other or he is liable to be transferred from one place to another. The transfer order do not violate any of the right unless there is violation of executive instructions or orders of the Courts ordinarily should not interfered with the order instead affected party should approach the higher authorities in the department for redressal of his grievances. Likewise in Union of India and others vs. S.L.Abbas AIR 1993 SC 2444 the Hon'ble Supreme Court observed that while ordering the transfer of the government employee the authorities must keep in mind the guidelines issued on the subject but the guidelines do not confer upon the government employee a legally enforceable right. Who should be transferred where, is a matter for the appropriate authority to decide unless the order of approval is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it.

9. To summarise the principles of law laid down in the above cited judgments, it may be held that the transfer of an employee working in a transferable service is an ordinary incidence of service and the transfer made on administrative ground or in public interest cannot be interfered with by the Tribunal, unless it is established that the transfer is in violation of the statutory rules or is mala fide or is for some extraneous reasons. The transfer cannot be questioned simply because of being strictly not in conformity with the transfer guidelines, which is on administrative ground. Applying these principles of law on the facts of the present case, we find that the applicant having already surpassed the minimum requisite period of posting in Sector-15 Rohini school cannot any more

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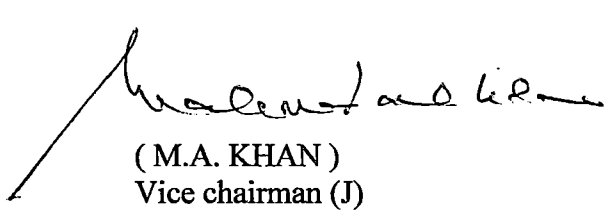
resist her transfer on any ground. It seems to be the reason why she has requested for her transfer, if the respondents intend to transfer her, to a school which is at the convenient distance from her residence so that she could discharge her duties as a teacher efficiently. Reference to order of the Ernakulam Bench of this Tribunal in K.P.Prasad vs. Union of India and others 2004 (3) ATJ 97 where it was observed that the authorities would show that the transfer had been made on account of administrative exigency or the transfer had been taken in public interest after an application of mind to all the relevant facts does not advance her case. A transfer of a Film/Video Editor in Doordarshan Kendra in Thiruvananthapuram was quashed in the peculiar facts and circumstances of the case which are not at all comparable with the facts of the present case. Applicant is sought to be transferred from one school to another in the same city. This order does not apply to the case of the applicant. Similarly reference to an order of the Hon'ble High Court dated 23.3.2005 in WP (C) No.1361-62/2005 in the case of Union of India and others vs. R.S.Sharma etc. is also out of place since the option for posting at a particular station were required under transfer guidelines for promotion at any other station and on the basis of the said option, cases of transfer of the concerned official were to be considered by the department in the light of the transfer policy. But in the cited case no option was called before issuing the transfer orders, so the transfer was held to be bad in law and in violation of the transfer policy. In the present case, it is fairly admitted that the transfer guidelines do not require option as a pre-condition of the transfer. Annexure E transfer policy which has been filed by the applicant at page 31 of the OA inviting options for transfer of Principals/Vice-Principals/Teachers for their transfers from one Government school to another Government school by a cut off date of 9.5.2003 on a proforma or the circular dated 24.6.2004 at page 57 of the OA whereby similar options were invited for transfer by cut off date 10.7.2004 are not part of the transfer policy much less a condition precedent to the effecting of a transfer in accordance with the guidelines which have been circulated vide letter dated 24.6.2004

(Annexure-A).

M. C. Chellappa

11. It is also to be borne in mind that the paramount consideration in the matter of the transfer of a teacher to a particular school is the welfare of the students and not the convenience of the teacher. Therefore, transfer of a teacher to a particular school on administrative ground is the prerogative of the authorities in the Education Department and the convenience or hardship of a particular teacher, though may be relevant for consideration at the time of taking the decision, but it is not the good ground for vitiating the transfer order.

12. In the above said circumstances of the case, ^{we} do not find merit in the OA. The present OA is dismissed. But in view of the statement made by the learned counsel for respondents at the Bar that the respondents will consider to transfer the applicant from Sector-15 Rohini school to another school situated within the radius of 5-6 kms. by (surface) ^{we} do hope that the respondents will bear in mind this assurance while transferring the applicant, if any, from the present place of her posting. No costs.


(M.A. KHAN)
Vice chairman (J)

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