

Central Administrative Tribunal
Principal Bench, New Delhi.

OA-1831/2004

New Delhi this the 4th day of March, 2005.

Hon'ble Sh. Shanker Raju, Member(J)

Shri Harpal Singh Kashyap,
PGT (Economics)
Sarvodaya Kanya Vidyalaya,
Gokul Pur Village, Delhi.

..... Applicant

(through Sh. Amit Anand, Advocate)

Versus

1. Government of NCT of Delhi through
Secretary Education,
Old Sectt. Delhi.
2. Director of Education,
Govt. of NCT of Delhi,
Old Sectt. Delhi.
3. Dy. Director of Education,
Distt. North-East,
Dte. Of Education,
Govt. of NCT of Delhi,
Yamuna Vihar, Delhi.

... Respondents

(through Sh. Vijay Pandita, Advocate)

Order (Oral)

Heard the learned counsel.

2. Applicant impugns Annexure P-I dated 12.1.2004 whereby he has been transferred while working as PGT (Economics) from SKV, Gokalpur Village to Govt. SSS, Jaffarpur Kalan. Earlier to aforesaid transfer, a show cause notice has been served upon him as to why an enquiry be not conducted against him. The same when was responded to culminated into a charge sheet under Rule 16 of CCS (CCA) Rules, 1965 on the allegation that the applicant had indulged into quarrel and misbehaved with the husband of Smt. Surekha, TGT (English). On enquiry a penalty of with holding of two increments without cumulative effect for a period of two years was inflicted which has been separately assailed before this Tribunal.

3. Learned counsel of the applicant states that as per compodium transfer policy as per Clause-6(ii) transfer has to be made at the beginning of the academic session i.e. April. It is also stated that in case in misc. provision under Clause-12 if any deviation is made from the norms shown in the column, the same has to be done with the proper approval of the Director.

4. In view of the backdrop, it is stated that the transfer order has been passed by the Additional Director of Education and there is no whisper as to the approval of the Director.

5. Learned counsel further states that a transfer order passed is actuated with mala fide both legal as well as factual and resort punitive basis is neither in administrative exigency nor in public interest and the same is liable to be set aside in view of the decision of the Apex Court in U.O.I. Vs. Sri Janardham Debanath & Anr. (2004(1)SC SLJ 351. It is contended that if the transfer is the out come of mala fide exercise, the same would not stand scrutiny of law. A reliance has also been placed on the decision of the Apex Court in National Hydroelectric Power Coproration Ltd. Vs. Shri Bhagwan & Ors. (2001(8)SCC 574).

6. Learned counsel states that in the reply filed by the respondents it is stated that a teacher can be transferred within the territory of Government of NCT of Delhi and wherever the need of a teacher is more keeping in view the interest of the students will be served properly and there is no compulsion upon the department to give the posting to a teacher as per his/her choice. Guidelines obligates the authorities in the matter of option sought from them to post the employees as far as possible near to their residence. It is stated that whereas two vacancies exist in Govt. Seema Puri School yet posting the applicant at a place 40 Km. Away from his residence certainly shows mala fide action.

7. Learned counsel vehemently stated that the applicant has been shown to be transferred on the basis of a complaint made against him which is punitive.

8. Learned counsel for the respondents vehemently opposed the contentions and stated that as per the guidelines a government servant is liable to be posted

anywhere in the Govt. of NCT of Delhi and in the light of exigency and welfare of students and proper running of the school though the option is not final it is subject to the exigency of service. Accordingly, the applicant has been posted at Seelampur which was approved by the Director. Learned counsel referred to a decision of the Apex Court in State of U.P. & Anr. Vs. Siya Ram and Anr. (2004(20SC SLJ 210) and also U.O.I. Vs. Sri. Janardham Debanath and Anr. (2004(1)SC SLJ 353) to contend that transfer order can be made even if there are complaints without holding an enquiry.

9. After careful consideration of the rival contentions and as a trite law an employee has no right to choose his posting. Transfer made in administrative exigency and public interest cannot be interfered in a judicial review by the Court exercising the power of an Appellate Authority to re-assess the administrative exigency. However, an exception to the above is that when the transfer on the face of it on lifting the veil is punitive and actuated with mala fides legal or factual or is against the statutory rules, the same has to be interfered and to be set aside. To establish mala fide one has to lay a foundation and mere assertions would not be a valid compliance. In this view of the matter, the contention of the learned counsel of the applicant that the guidelines which are only instructions to govern the transfer of non-teaching as well as teaching staff under the Directorate of Education provides that the teacher before being transferred an option has to be sought and transfer shall normally take place at the beginning of the academic session of the children and the efforts should be made to post the employees near to their residence. While the options are being invited, it is unfair that the employees are not posted near to their residences. However, it is subjected to the administrative exigency and interest of the school as well as employees.

10. In these guidelines if a teaching staff is posted at a far place from his residence would be treated as a deviation and in that event this has to be resorted to with the prior approval of the Director of Education.

11. Learned counsel of the respondents states that the transfer order has been approved by the Director and deviation was allowed.

12. On perusal of the reply for want of any document to show that the transfer is approved by the Director where there was a deviation from the guidelines. This has to be deemed that this transfer is not approved by the Director. Moreover, the approval is not to be secured in slip short manner and reasons are also to be recorded for such a deviation.

13. In Janardham Debanath's case (supra) the Apex Court has come to the conclusion that the transfer in administrative exigency even on complaint is permissible. However with a rider that if the order of transfer has been shown as an out come of mala fide exercise the same would vitiate. In Siya Ram's case the Apex court was dealing with a case where during the pendency of disciplinary proceedings the employee was transferred.

14. In National Hydroelectric Power case the Apex Court has ruled that transfer on mala fide against the rules and on punitive basis is liable to be interfered in judicial review.

15. The trite law is that one cannot choose his posting and one has no right to be posted at a particular place is recognized and is well respected. But once the option has been sought and accorded by the concerned employee, it is equally obligatory upon the authorities to ensure that the transfer is in consonance with the guidelines and if in case of any deviation prior approval of the Director has to be sought. Failing which the ground taken by the learned counsel of the respondents that these instructions are mere guidelines would change the entire structure and object of transfer policy for teaching as well as non-teaching staff and its objects would be defeated. In this view of the matter, this transfer policy with the passage has assumed the character of a statutory instruction and is valid.

16. Applicant who has been punished in disciplinary proceedings an opinion was sought from him and was posted about 40 Km. From his residence. One of the grounds to resort to this transfer as reflected from the reply is that there was

a complaint against the applicant. Accordingly respondents have not acted in accordance with their own guidelines, the transfer cannot be in administrative exigency. Moreover, when the issue of administrative exigency is raised before the Court it is mandated upon the respondents to explain the exigency and the circumstances under which a deviation from the rule has been taken to transfer an employee.

17. Clause 1,3 and 5 of the Policy *ibid* has been relied upon by the respondents to contend that the transfer cannot be claimed as a right. In this view of the matter I am of the considered view that Para-6 provided that non teaching staff should be posted nearest to their residence and if this is the import of the guidelines, these two clauses of the Policy are contradictory to each other. In that event the misc. part which provides that these guidelines are to be resorted to and no deviation is possible clearly shows that each clause of the guidelines has to be respected and acted upon and in case of deviation the reasons are to be stated as I have earlier observed that for want of any evidence in this regard the transfer is *mala fide* and punitive as well.

18. In the result, I find that the transfer of the applicant is *mala fide* and punitive in nature. The same cannot sustain scrutiny of law in judicial review. Accordingly, OA is allowed, transfer order is set aside. Respondent are directed to consider posting the applicant in accordance with the option and subject to availability of vacancy within one months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)
Member(J)