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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2805/92

Date of decision 11.2.1993

Shri V.K. Bhatnagar .. Applicant

v/s

Union of India .. Respondents
& Others

CORAM:

The Hon'ble Mr. C.J. Ray, Member (J)

For the Applicant .. Shri B.S. Mainee, counsel.

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 ?

J_U_D_G_E_M_E_N_T

[Delivered by Hon'ble Shri C.J. Ray, Member (J)]

I have heard the case and reserved the case for orders on 3.2.1993. The brief facts of the case are that the applicant filed a petition under Section 19 of the Administrative Tribunals Act, 1985 to quash the impugned order No. F1(PGT)/DUE/A/92/10056, dated 17.6.1992 (Annexure 1) of transfer to Government Boys Senior Secondary School, Kalyan Vas immediately against the post of PGT (Chemistry) issued by the Deputy

Director (Education) who is the respondent No.3.

The applicant was appointed as Trained Graduate

Teacher (TGT) under Delhi Administration w.e.f.

22.1.1973. Later on, he was posted to Gandhi

Memorial Boys Senior Secondary School, Shahdara

in October, 1985 as TGT (Science). Later, he was

selected and promoted from TGT to PGT from the

scale of Rs. 1400-2600 to Rs 1640-2900 and was posted

in South District vide Office Order No. 68, dated

29.9.1991 (Annexure A-2).

2. The applicant made a representation on

which the Department issued a ~~copy~~andum on

27.10.1991 and the applicant was posted in District

East from South as per Annexure A-4. His name appears

at page 2 of Annexure A4 as 1A.

3. The applicant further alleges that the

respondent No. 3 posted the applicant as PGT in

the same school i.e. Gandhi Memorial Boys Senior

Secondary School, Shahdara in which the applicant

had been working already against an existing vacancy.

This fact could be ascertained from Annexure A-5.

Further allegation of the applicant is that there

are two posts of PGT (Chemistry) out of which one was transferred from Gandhi Memorial Boys Senior Secondary School, Shahdara to Government Girls Senior Secondary School No. 2, Bholi Nath Nagar by order No. D/22/11/91/PFC/TFR/G/60-61-63-60 dated 20.12.1991. Out of these two posts, one Shri J.P. Gupta was working and the other post was occupied by the applicant. It is alleged that Shri J.P. Gupta was working there since last 5-6 years and when a post is transferred a senior person should be transferred from there as per the rules and guidelines.

4. It is also alleged that in case a teacher is rendered surplus due to abolition/surrender of post in a particular school, the teacher having longest stay in a particular school would be declared surplus and the break of six months or less should be ignored in reckoning the longest service. The guidelines further states that as per the allegation that an attempt would be made to adjust the teacher declared surplus in the same zone initially even if not possible in the District and if both the situations are not available then only his/her case would be recommended for another district transfer.

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The Director is also empowered to relax the condition of posting of a teacher in rural area either on recruitment or on promotion for particular station as mentioned in the guidelines. The guidelines are at page 23.

5. The applicant alleged that in violation of the aforesaid guidelines, the respondent No. 3 had passed orders vide office order No. 677 dated 17.6.1992 transferring the applicant from Gandhi Memorial Boys Senior Secondary School, Shahdara to Government Boys Senior Secondary School, Kalyan Vas. The transfer order, as stated above, is at Annexure 1 (supra). It is further alleged that in violation of the guidelines this transfer was made. The applicant further alleged that as per Annexure A-5 dated 1.1.1992, he has taken over the post of Post Graduate Teacher (Chemistry) on 2.1.1992, and he had put in only six ~~years~~ ^{months} of service ~~7~~ The other PGT (Chemistry) Teachers, Shri J.P. Gupta had been working in the said school as PGT (Chemistry) for the last more than five years and is in accordance with the rules and guidelines he was the teacher with longest stay as PGT (Chemistry) who was to be transferred on the surrender of the post.

6. It is also alleged by the applicant that when the post was surrendered, Shri J.P. Gupta was adjusted for pay purposes only to Government Cooperative Education Middle School Welcome Colony, Seelampur against a vacant post of Head Master which is vacant from 1.3.1992 till further orders as per Annexure A-7. The allegation under para 4.16 of the aforesaid letter i.e. A-7. It is absolutely clear that on the surrender/transfer of the post Shri J.P. Gupta was declared surplus and also he was detained physically in the Gandhi Memorial Secondary School but his pay was being charged against a vacant post in a school in Seelampur. Since Shri J.P. Gupta was declared surplus in view of the allegations cited supra, the applicant states that his transfer from Shahadra School did not arise and he also states that his transfer is malafide and in violation of the guidelines. He also submitted representations which are at Annexures A-8, A-9 and A-10. He further submitted some more representations that is Annexures A-11, A-12. Ultimately, he claims that a non-speaking order rejecting the representation of the

applicant was received by him (Annexure A-2) dated 15.9.1992. This order, according to the applicant, is a bald one, without reasoning as to why the guidelines have been violated and why the applicant was transferred when his stay is shorter than another person who had a longer stay in the school. Thereby he attacks the order of transfer as illegal, arbitrary, malafide, void, ab-initio and seeks the relief of quashing the order.

7. The respondents have filed counter to the allegations of the applicant by stating that the transfer being purely administrative is not malafide, no violation of the rules were there and as the TGT(Chemistry) of the service is also taken into consideration, the applicant's stay is longest than the stay of Shri J.P. Gupta and hence more or less the rest of the allegations they have accepted but sought the dismissal of the application. The applicant filed a rejoinder. In the rejoinder, the applicant states that the content of the application in para 1.1 and 1.2 are not denied by the respondents. Para 1.3 of the respondent's counter is wrong and denied and he states that it is malafide and in violation of guidelines. He also

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states that the respondents have not denied para 2
and 3 and upto para 4.7 but paras 4.8 and 4.9 the
arguments made by the respondents in the counter
are wrong and denied by the applicant. He further
states that the PGT Post (Chemistry) was transferred
only in the month of March 1992 and in January as well
as February 1992 both the occupants of PGT (Chemistry)
Shri J.P. Gupta and the applicant were paid the salary
in the school itself because there were two posts
of PGT (Chemistry) in the said school. He also states
that in the counter the respondents have admitted
that the Principal of GMVSS School declares Shri
J.P. Gupta surplus from the school as he was the
senior-most PGT (Chemistry) teacher. He also questioned
the determination of the length of the stay of the
applicant which has been wrongly shown. He further
alleges that in case the post of PGT has been transferred
then the length of stay is to be only in the post of
PGT. But any teacher having longer stay in any other
category cannot be transferred when a post in Chemistry
has been rendered surplus. The rest of the allegations
in the counter are more or less repetitive and assertive.

3. I have heard the Ld. Counsel for the applicant.

In spite of the fact that an opportunity was given to argue the case today after hearing the counsel for the applicant, the respondents have not made their appearance.

9. The short point involved in this case is whether the transfer suffers with arbitrariness, malafide or discriminatory to accommodate one person, the other person (applicant) is transferred against the guidelines.

10. It is an admitted fact that the applicant is promoted on ad hoc basis no doubt from TGT to PGT (Chemistry). Shri JP Gupta is alleged to be working as a PGT in Chemistry for more than five or six years in the said school before the transfer. The applicant is promoted on ad hoc basis under Annexure A-3 dated 20.11.91 from TGT to PGT (Chemistry) subject and posted to South Division. This ad hoc promotion does not confer other rights for regular promotion, seniority, confirmation etc. in the PGT post subject to a decision of CPWD communication No. CWP/24/84 pending the Supreme Court of India and various other cases pending in the courts under CAT regarding promotion to PGT post. It may be noted that so far this ad hoc promotion of the applicant has not been altered. He continues to be even after

transfer in the PGT cadre only. It is also an admitted fact that Shri J.P. Gupta, who is also a PGT (Chemistry) is also working in the said school since five to six years. Obviously, he is a seniormost compared to the applicant's stay in the said school after the ad hoc promotion this ^{as PGT and the} applicant joined there only on 2.1.1992.

11. Under Annexure A-5 consequent upon the promotion to the post of PGT, the applicant is posted to Gandhi Memorial BSS School, Shahdara against a vacant post. It may be noted that at the time of his transfer after promotion to the Shahdara cadre it is stated in Annexure A-5 that his transfer ^{is} against a vacant post (emphasis added).

12. The guidelines given on p. 23 are with reference to the transfer or posting of teachers of the Directorate of Education, Delhi. The guidelines contained in para 5 states that teacher falling under category at S.No.4 of the guidelines which reads " teacher on their recruitment or promotion shall be posted against vacancies in difficult and rural areas. However, under para 5 of the guidelines it is ~~stated~~ that while making such transfer to urban areas it will be seen that the reasonable length for service of the teacher

concerned in rural/difficult areas is not less than

two years. Rule 7 says that the reasons for transfer could be -

(i) On being rendered surplus due to

abolition/surrender of post in particular school;

(ii) Administrative reason.

13. It is pertinent to mention that on the surrender

of the post the Principal of the School of Shahdara

declared Shri J.P. Gupta as surplus and his salary is

charged against a vacant post in a school at Seelampur.

This action of the respondents in the first blush

appears ⁱⁿ consonance ~~in~~ the guidelines issued by the

Department. But on second thought, probably to accommodate

Shri J.P. Gupta, the applicant was transferred under

the impugned order at Annexure A-1 to Kalyan Vas School

counting his seniority to TGT post also but this fact

is not mentioned in the transfer order i.e. Annexure A-1.

It simply says that "Shri V.K. Bhatnagar, PGT (Chemistry),

Gandhi Memorial Boys Senior Secondary School, Shahdara

is hereby transferred to G.B.S.S.S. Kalyanvas School

against a post of PGT (Chemistry)." This transfer

order is a second thought. This transfer order clearly

mentions PGT (Chemistry) only. That shows his ad hoc

promotion is not disturbed. But the reasons given in the counter that his seniority is counted right from the TGT and that his length of stay is more at that time from where he is transferred is not mentioned either in the transfer order or in the reply of the respondents dated 15.9.1992 by Annexure A-1 to the representations of the applicant against his transfer dated 8.7.1992, 16.7.1992, 23.7.1992 and 31.8.1992. While rejecting his representations, nothing has been mentioned. While a cryptic order is passed without reasoning, the reasoning cannot be given in the counter i.e. against the principle of law and natural justice as laid down in L1(1991) CSJ(HC)318 - Nanki Devi v/s Food Corporation of India & Ors. of the Calcutta High Court to Allahabad wherein His Lordship observed " unfortunately in the order no reasons have been recorded for rejecting the claim of the petitioner and further observed that in their opinion the Lt. Counsel for the respondents cannot be permitted to supplement the order by giving reasons, now" that is to support the cryptic rejection order the reasoning is now sought to be given in the counter which is not permissible now."

Besides it is also a settled law that when a bald order is passed violating the guidelines

that any order which is appealable, herein though a transfer order is not appealable yet a representation is tenable, must be a speaking order so that the employee concerned can put up an effective appeal.

14. In spite of the several representations, cited supra, made by the applicant, the cryptic order of rejection of representation containing no reasons or application of mind, cannot be justified by giving elaborate reasoning in the counter. If the reasons are given, he could have defended his case by meeting the reasoning of the respondents. It is virtually a violation of the principle of natural justice.

15. In Gujarat Electricity case [AIR 1989 SC 1433 Gujarat Electricity Board v/s Atma Ram] the Supreme Court held that on being transferred a person should join there and then make a representation. Here, this applicant joins the place of transfer and also then made several representations. It appears to me that the applicant has followed the guidelines laid down by the Supreme Court compared to the respondents.

16. It is clear that this subsequent transfer of the applicant after declaring Shri Gupta surplus and charging his salary from a different school and later on transferring this applicant is clearly discriminative in nature.

17. Therefore in [1989 SC(SSL) 471 Union of India v/s

Keerta Niyas case⁷ the Supreme Court held that a transfer can be interfered by the Tribunal when the facts and circumstance on records clearly indicates discrimination, arbitrariness and unfairness in transferring a public servant from one place to other, the transfer orders are liable to be quashed. In para 3, they also observed that on the ground of violation of statutory rules or on the ground of malafide also a transfer can be interfered with.

18. In O.A. No. 262 of 1990 [Sisir Kumar Mukhopadhyay vs. Union of India & Ors.] Calcutta Bench of the CAT has stated -

" 5. We have already stated that there no statutory rules regarding transfer and there are instructions in the CPWD Manual in the matter of rotational transfer and these rules have a binding force, of course subject always to the exigency of the administrative convenience.

In the instant case the allegation of the applicant that persons having longer stay than he have been retained in Calcutta even after their promotion has not been adequately denied.

Therefore, by retaining persons having longer stay in Calcutta and transferring the applicant, there has been a discrimination. We would, therefore,

quash the order of transfer. We give no other direction except that the instructions in the C.P.W.D. should be followed".

So it follows that a transfer against the guidelines cannot be upheld and besides in All India Service Law Journal Vol. 40 1991(2) All India Services Law Journal/109₇ the Ahmedabad Bench of the CAT observed in paras 8 & 9 that transfer order against guidelines can be interfered by the Tribunal. If the representation is rejected on extreemous matters, and no record produced before the court to justify the transfer order, it was held to be malice in law and that is not approved.

19. Following the guidelines laid down by the above rulings cited, I have no hesitation in coming to the conclusion that the transfer of the applicant suffers with arbitrariness to help another person which is clearly discriminative in nature and borders on the malafide. Under the circumstances,

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I quash this transfer order. The respondents are at liberty to follow the guidelines and make necessary adjustment in accordance with the guidelines, rules. This exercise should be carried out within three months from the date of communication of the order. The above application is allowed with no orders as to costs.

Wesley
(C.J. ROY)
Member (J)