

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

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O.A. No.2685 of 1993

Date of decision: 11th January, 1994

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

Shri H. S. Yadav
S/o Shri Sardar Singh Yadav
Trained Graduate Teacher (Maths),
Govt. Boys Senior Secondary School No.3,
Bhola Nath Nagar, Shahdara,
DELHI-32

-- Applicant

By Advocate Shri M. L. Sharma
Vs.

1. Delhi Administration - through

Director of Education,
Old Secretariat Building,
DELHI-54

2. Deputy Direction of Education (East)
District East, Govt. Boys Senior
Sec. School, Rani Garden, Geeta
Colony, DELHI-32

3. Shri K. C. Gupta
Vice Principal,
Govt. Boys Senior Secondary
School No.3, Bhola Nath Nagar,
Shahdara,
DELHI-32

-- Respondents

By Advocate Mrs Meera Chibber

ORDER (ORAL)

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

The applicant is serving as Trained Graduate Teacher (Maths) in the Government Boys Senior Secondary School No.3, Bhola Nath Nagar, Shahdara, Delhi-32. He is aggrieved by the order dated 17th November, 1993 issued by the Deputy Director of Education whereby along with 10 other teachers, the applicant has been declared surplus from the

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institute where he was serving and ordered to be posted to G. Comp(M) B.S.S.S., Gautampuri. This order also shows that this order shall be deemed to be effective from 1.11.93

2. The applicant has prayed for grant of relief that the aforesaid order be quashed and further to direct the respondents to pay him the salary for the month November, 1993 and onwards by treating his absence from 11.12.93 as on duty.

3. A notice was issued to the respondents on 23rd December, 1993 when an interim relief was also granted directing the respondents not to implement the transfer order dated 17.11.93 for a period of 14 days.

4. Mrs Meera Chibber appeared for the respondents and argued the case for admission and further continuation of interim relief.

5. The case of the respondents is that the applicant has also been spared by a relieving order dated 10.12.93 with effect from that date and in the said institute the applicant was seniormost T.G.T.(Maths). The Principal of the institution, seeing to the strength of the boys in a particular subject on the order issued by the Deputy Director of Education dated

13th October, 1993 directing the Principal/Vice Principal/Head Master under Zone VI of District East, that the seniormost teacher in the institution be declared surplus and in case, the said seniormost teacher is in the verge of superannuation, the second seniormost teacher may be rendered as surplus. He has also been given discretion to take option from the serving T.G.T. if they want their transfer to another institution. It is further argued by the learned counsel for the respondents that one post of T.G.T. has been declared surplus and in its discretion the Principal of the said institution desired that one post of T.G.T. (Maths)/Science be rendered surplus.

6. I have heard the learned counsel for the applicant at length. The learned counsel for the respondents at the time of hearing also placed certain documents of the said institute where certain other teachers who had been working in the said institution, are junior to the applicant and they are in the discipline of science. It is argued by her that Science teacher can also teach Maths as a subject in the High School.

7. The first contention of the respondents is that the applicant is handicapped. The applicant was present in the court. The percentage of handicap of which he is affected, normally does not fall in the total percentage. He can easily walk, easily go and do work and come up even in the first

floor of the Tribunal. It may be another thing that he might have come in an appointment on Handicap Quota, but this fact is also not accepted by the learned counsel for the respondents.

8. The applicant is working in this institution since last 4 years. It is not a case of frequent transfer order, malafide exercise of discretion by the Principal in order to uproot the applicant from the institute. The only thing pointed out is that the applicant has been discriminated as there are senior teachers to the applicant in the T.G.T. grade who should have been picked up for being declared surplus in view of the order of Deputy Director of Education dated 13th October, 1993. This aspect of the matter required a perusal of the pleadings and the averments made by the applicant in the application. The case of the applicant is that he has been picked up and the seniormost teacher in T.G.T. had been retained. The learned counsel for the applicant emphatically argued that mostly the Principal had acted in an unjustified manner in not declaring the post surplus of other T.G.T. There is no direct allegation of any malice in fact or law. It has been clearly held by the Hon'ble Supreme Court in a catena of cases that in transfer matter the Tribunal or court should interfere only when order is based against

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the statutory rules or that has been in exercise of power malafide and arbitrary. The case of M/S Shilpi Bose Vs. State of Bihar AIR 1991 p.532; U.O.I. Vs. H. N. Kirtania J.T.1989(3)S.C.131 and Rajendra Roy Vs. U.O.I. J.T.1992(6) S.C. 732 are relevant on the point. In view of this, it has to be scanned whether the power has been exercised by the Principal, Shri K. C. Gupta in malafide manner or not. The applicant has also been working there for 4 years. No other T.G.T. (Maths) has been ordered to be posted in this place. Merely because the applicant has not been paid salary for the month of November, 1993 would not by itself account for malafide exercise of power. The applicant will get his salary from the place of posting as the order of Deputy Director of Education is to come into force retrospectively w.e.f. 1.11.1993, and therefore the applicant can be paid salary from that institution after he joins in compliance with the aforesaid order of 17th November, 1993.

9. As for other relief prayed for by the applicant, he will be paid salary for the month of November, 1993 and for the period he had worked, according to rules.

10. The D.A. is dismissed at the initial stage itself with the direction to the respondents that the applicant's salary for the month he has worked

and also if he is entitled for any leave, that
leave be granted to him when he joins, as per rules.

No costs.

J. P. Sharma
(J. P. Sharma)
Member (J)

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