

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. No.226 of 1997

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman

Surendra Prasad Singh, s/o Late Raj  
Narain Singh, residing at 165, The Park,  
Ishapore, Type-III, P.O. Ichapore Nawabganj,  
Dist. 24-Parganas(North), PIN-743144, work-  
ing as Teacher, Rifle Factory High School,  
Ishapore.

..... Applicant

-vs-

1. The Union of India, represented by the Secretary, Ministry of Defence, Deptt. of Defence Production, South Block, New Delhi-11;
2. The General Manager, Rifle Factory, Ishapore, P.O. Ichapore Nawabganj, Dt.24(Parg-N), PIN-743144

..... Respondents

For applicant : Mr. B.C. Sinha, counsel  
Mr. B.B. Chakraborty, counsel

For respondents : Mr. M.S. Banerjee, counsel

Heard on: 17.11.98, 15.12.98

Order on : 05.05.1999

and 9.3.1999 O R D E R

In this O.A., the petitioner has challenged the order of transfer issued by the respondent authorities as per their Memo No.01/07/A/W(School) dt.23.4.96 as per Annexure A1, whereby he has been transferred from Rifle Factory School at Ishapore to Cordite Factory Aruvankadu Inter-College, Tamilnadu and also the order of release issued by the respondent No.2 under Memo No.342/13/NI/Teacher dt.6.5.96 as per Annexure A/2. He has also prayed for a direction to be issued upon the respondents to allow him to join his present post at the Rifle Factory High School, Ishapore with immediate effect and to treat the entire period from 9.5.96 till the date of joining as on duty with consequential benefits.

2. <sup>unrecog</sup> Short of all details, the petitioner's case is as follows :

While serving as a Teacher in the primary school of the aforesaid Ishapore Rifle Factory High School, which is a Hindi Medium School recognised by the West Bengal Board of Secondary Education, the petitioner was promoted to the post of Non-Language Teacher, High School with effect from 16.3.33 and since then he has been teaching History as the main subject from Class-V to Class-X students in the said school as he had a post-graduate degree in history. Thereafter, he was placed in the senior scale of Trained Graduate Teacher in the said school w.e.f. 16.3.95 as per Factory Order Part-II, No.160 dt.28.2.85. His initial order of appointment on promotion dt.28.2.85 to the post of Non-language Teacher in the High School is Annexure A/3. As the petitioner was actively involved in the Teachers' Association activities, the Director General, Ordnance Factories, Calcutta issued the order of transfer dt.23.4.96(Annexure A/1) and the petitioner was released w.e.f. 9.5.96 as per Annexure A/2. After his representation dt.13.5.96 to the Chairman, Ordnance Factory Board was rejected, the petitioner moved this Tribunal against the aforesaid order of transfer through O.A. 741 of 1996, which was contested by the present respondents. The said O.A. was disposed of by an earlier Single Bench of this Tribunal as per order dt.6.9.96(Annexure A/5) with a direction upon the respondents authorities to consider a comprehensive representation to be filed by the petitioner to them and to dispose of the same in the light of the observations made in the body of the judgment within a specified period and they were further directed to communicate their decision to the petitioner within a period of two months from the date of filing such representation.

3. Thereafter, the petitioner filed another representation to the Chairman, Ordnance Factory Board, which is dt.24.9.96 (vide Annexure A/6). The said representation was rejected by the

Director General, Ordnance Factory and the order was communicated to the petitioner as per letter dt.4.12.96(vide Annexure A/7). The relevant part of the said speaking order runs as follows :-

" Shri Singh was teaching Hindi at RFI in High School Classes. He will be required to teach in Hindi at Cordite Factory, Aruvankadu. Since he is not teaching Hindi as a regular subject to students of Class - XI & XII. he cannot demand the Pay Scale for PGTs just like a PTI/Demonstrator cannot demand the pay scale of PGTs for instructing Higher Secondary Students".

4. Thereafter, the petitioner filed an appeal to the Chairman, Ordnance Factory Board dt.10.12.96(Annexure A/8), which was not replied to. Another representation dt.21.1.97 was again filed to the Secretary, Ministry of Defence, Govt. of India(Annexure A/9), which was also not replied to.

5. The petitioner's grievance is that the impugned order of transfer(Annexure A/1) dt.23.4.96 and the order of release dated 6.5.92(Annexure A/2) are absolutely arbitrary, vindictive and against the principles of natural justice and fair play. It is also stated that the aforesaid speaking order dt.4.12.96 as per Annexure A/7 has been passed without application of mind and without appreciating the observations made by this Tribunal in the judgment dt.6.9.96 passed in O.A. 741 of 1996(Annexure A/5).

6. The main contention of the petitioner against the impugned order of transfer is that he has been teaching history in Ishapeore High School in Hindi Medium and he has no knowledge of Tamil and as such the respondent authorities should not have transferred him to a place where the medium of instruction is Tamil. The petitioner repeatedly intimated the respondent authorities about his difficulty in the medium of instruction and he was informed by the respondent authorities as per Annexure A/10 dt.28.5.96 that he would have to teach Hindi and not in Tamil and hence no problem will arise.

7. In their affidavit-in-reply filed in the first O.A.741/96, the respondent authorities took the stand in para-6 that "..... the school at Aruvankadu has two medium of teaching, one in Hindi and the other in Tamil" and that "the applicant is required to take classes in Hindi medium only" (vide Annexure A/11).

8. It is further stated by the petitioner that the Secretary of the Teaching Staff Association at Aruvankadu informed the Vice-President of the All India Ordnance Factories Teaching Staff Association in the letter dt.27.8.96 that (i) the medium of instruction in the Cordite Factory Inter-College, Aruvankadu is English and Tamil ; (ii) There is no subject which is taught as Third Language; that they have only two languages taught in their school and (iii) Tamil or Hindi is taught as first language in their school. In another subsequent letter dt.29.8.96, it was further clarified by the said Secretary of the said Association that they have Tamil only as First Language upto High School i.e. Class-X standard and that there was no Hindi as subject of study or medium of instruction upto High School level in their school. It was further stated there that the school had optional Hindi or Tamil as First Language in XI and XII standards (vide Annexures A/12 and A/13).

9. It is the specific case of the petitioner that he was promoted to the present post as a Non-Language/Trained Graduate Teacher to teach history in the High School classes from Class-V to Class-X only and that he was not at all a regular Teacher in Hindi Language. The petitioner further challenges that there was no public interest in transferring him from Ishapore to Tamil Nadu as noted in the impugned order of transfer. It is his case that there cannot be any public interest in transferring him from Ishapore Rifle Factory High School, where he teaches history in

Hindi medium to Aruvankadu Inter-College, where the medium of instruction is Tamil or English and the position is not improved if the respondent authorities state that he is to teach in Hindi language there. Furthermore, as a Non-Language Teacher subsequently redesignated as Trained Graduate Teacher teaching History in Hindi medium, he cannot be compelled to teach Hindi in a school at Tamil Nadu, where the Hindi is not the medium of instruction, nor it is taught as first or optional language. Hence, the petitioner challenges the aforesaid decision of the respondent authorities as communicated to him by the speaking order dt. 4.12.96 (Annexure A/7), where the order of transfer as issued to the petitioner as per Annexure A/1 has been maintained.

10. The respondents have filed two replies to this O.A. challenging the case of the petitioner. In para-5 of the first reply filed on 30.6.97, the respondents state as follows :-

"With reference to the statements made in paragraph 4.2 of the said application it is stated that the applicant was promoted to the post of Non-Language Teacher with effect from 16.3.83. Applicant while posted in the Rifle Factory High School used to teach History as well as Hindi language in higher classes."

11. In the supplementary reply filed on 17.9.98, the respondents have tried to improve their case. It is stated in para-4 that there is no separate rules for Language Teacher or Non-Language Teacher and Teachers promoted to the post of Language Teacher/ Non-Language Teacher High School were assigned to teach some subjects in the School and the power of assigning subjects among the Teachers rests only with the Headmaster or his superior. It is stated that the designation of Non-Language Teacher/Language Teacher has since been abolished on the basis of the Chattpadhyay Commission's report and the Teachers have been classified as Primary Teacher, Trained Graduate Teacher and Post Graduate Teacher. The

petitioner is admitted to be a Trained Graduate Teacher. According to the respondents, there is no such rule that a High School Teacher should teach one particular subject and cannot be asked or detailed to teach other subjects in which he is capable to teach in addition to his own subject. The petitioner's mother tongue is Hindi and he has proficiency in such subject and as such he was teaching Hindi in Class-X in the instant school at Ishapeore before he was transferred.

12. It is the further case of the respondents that the Cordite Factory Inter College, Aruvankadu, where the petitioner has been transferred, is situated in Tamil Nadu and there is need to teach Hindi to the students in the said School "since Hindi is not only a National Language but also the Rastrabhasa of the country". It is further stated that the petitioner is required to teach Hindi as an additional subject. According to the respondents, the impugned order of transfer is a valid order issued in the exigency of the public service and it was issued in bona-fide exercise of the powers.

13. From the materials on record, the admitted position appears to be as follows :

The petitioner was promoted as per order dt. 28.2.85 (H.S.)/RFI (Annexure A/3) to the post of Non-Language Teacher/from the post of Primary Teacher, which was held in the Primary Section of the said School at Ishapeore. It is also admitted that the post of Non-Language Teacher is no longer there in view of the report of the Chattopadhyay Commission and the said post has been redesignated as Trained Graduate Teacher. It is also admitted by the respondents that after such promotion, the petitioner was teaching History as well as Hindi Language in the said Rifle Factory High School in higher classes. It is also undisputed that the petitioner was not teaching in Class-XI or XII either History or Hindi. It has been extended by

14. It has been contended by Mr.M.S. Banerjee, Lt. Counsel appearing for the respondents that the petitioner being capable to teach Hindi also, ~~he~~ used to teach Hindi in upper classes in Rifle Factory School and that since the petitioner is capable of teaching Hindi in higher classes and was actually teaching the said subject in the higher classes in Rifle Factory School, his services have been transferred to Cordite Factory Inter College, Aruvankadu to teach Hindi. It is surprising to note ~~at~~ <sup>f here</sup> this stage that the respondents have not made out any case in respect of the Annexures A/12 & A/13, which are communications from the Teaching Staff Association of Aruvenkadu. In the aforesaid Annexures, it has been intimated that the medium of instruction in Cordite Factory Inter College at Aruvenkadu is English and Tamil only and that the said Inter College has Tamil only as the first language up to High School i.e. up to Class-X standard and that there was no Hindi as subject of study or medium of instruction up to High School level in that school. These documents have gone unchallenged on the part of the respondents. Under such circumstances, it is difficult to accept the bonafides on the part of the respondent authorities in issuing the impugned order of transfer as per Annexure A/1 dt.23.4.96. In the said order of transfer, there is no mention which subject the petitioner was required to teach in the said school and in which medium. It has been remarked there that the transfer is against an existing vacancy. There is no answer to the question in which subject or subjects the said "existing vacancy" arose.

15. Mr.Banerjee has argued that although the petitioner was teaching history in Hindi medium to the upper class students in the Rifle Factory School at Ishapore, he was also teaching Hindi to the students there. But this does not change the basic character of the teaching post to which the petitioner was promoted

in view of the admitted fact that the petitioner had post-graduate degree in History and was required to teach History in the upper classes of the High School at Ishapore. In order to run the school, the services of the petitioner may have been requisitioned for teaching Hindi but that does not and cannot, by itself, change the basic character of the post which the petitioner was holding as a Teacher to teach History. We cannot ignore the modern age of specialisation and it would be a chaotic situation if a Mathematics Teacher having Mathematics as his specialised ~~teaching~~ subject is asked to teach, say, Sanskrit or Geography in upper ~~and vice versa~~ classes of a High School. The practice, which was prevalent in schools in few decades ago, cannot be continued in the best interest of the institution. In a Multipurpose School, there cannot be multipurpose Teacher to teach different subjects in which he has no specialisation.

16. My attention has been drawn to the order of appointment on promotion of the petitioner in the post of Non-Language Teacher(HS) as per Annexure A/3 dt.28.2.85. It has been stated there that the said promotion is "against" the vacancy sanctioned vide M.o.D letter No.12(46)/80/D(Proj-I) dt.15.9.82. It may be recalled that by my order dt.15.12.98, this Tribunal directed the Ld.Counsel for the respondents to produce departmental records containing the aforesaid order, which would explain as to which subject the petitioner was required to teach as a Non-Language Teacher in the High School at Ishapore. The order dated 2.2.99 passed in this O.A. shows that on the submission of Mr.M.S.Banerjee, Ld.Counsel appearing for the respondents, <sup>that</sup> dt.15.12.98 the said order/could not be traced out and the hearing was adjourned till 9.3.99 for the purpose of production of the said records. It was also made clear that if the records were not produced on the date fixed, the matter will be decided on the

basis of the materials on record taking an adverse presumption according to law for non-production of material documents. In the order dt.9.3.99, Mr.M.S.Banerjee's submission was recorded to the effect that the said documents being not made available to him by the respondents concerned, he was unable to produce the same. Under such circumstances, as there is no reasonable explanation for non-production of the aforesaid order of sanction contained in the letter under reference dt.15.9.82 as mentioned in Annexure A/3, this Tribunal has to draw an adverse presumption that had the said records been produced before this Tribunal, it would have gone against the respondents. It may also be recalled that the petitioner on earlier occasion moved this Tribunal by filing O.A. 741/96 challenging the impugned order of transfer, which was disposed of by an earlier Bench of this Tribunal on 6.9.96(vide final order at Annexure A/5). By the said order, as I have already noted, the respondent authorities were directed to consider the comprehensive representation to be filed by the petitioner to them and to dispose of the same in the light of the observations made in the body of the aforesaid judgment within a specified period with intimation to the petitioner. In the said judgment, the Tribunal recorded the submission of Mr.M.S.Banerjee, who appeared for the respondents in the earlier case also that the applicant teaches History in Hindi medium in Ishapore School and that under the impugned order of transfer, he will be required to do the same job in Tamil Nadu.

17. The materials on record, which we have already referred to i.e. Annexures A/12 and A/13, demolish the entire case of the respondent authorities. In pursuance of the Tribunal's final order dt.6.9.96 passed in O.A. 741/96, the respondent authorities passed the speaking order dt.4.12.96, which is Annexure A/7. We

may quote para-3 of the said speaking order below :-

" Shri Singh was teaching Hindi at RFI in High School Classes. He will be required to teach in Hindi at Cordite Factory, Arumankadu. Since he is not teaching Hindi as a regular subject to students of Class XI & XII, he cannot demand the Pay Scale for PGTs just like a PTI/Demonstrator cannot demand the pay scale of PGTs for instructing High Secondary Students. "

18. The dubious and the malafide role of the respondent authorities in making such observations in order to support the impugned order of transfer has been rightly criticised by Mr. B.C. Sinha, Id.Counsel appearing for the petitioner. Mr. Sinha contends that in the speaking order, the respondent authorities suppressed that the petitioner was teaching History in Hindi medium in the High School at Ishapore. The materials on record clearly show that there was no post of Hindi Teacher in the High School Classes in Cordite Factory School or Inter-College at Aruvankadu. The observation of the respondent authorities that "he will be required to teach in Hindi at Cordite Factory School, Aruvankadu, is absolutely baseless because the stand of the respondents is that Hindi being the Rastrabhasa, the petitioner had to be sent to Aruvankadu to teach Hindi in the said school. There is nothing to show on the part of the respondents that there was a post of Teacher in Hindi Language in the said Cordite Factory School, Aruvankadu and the petitioner being appointed as a Teacher to teach Hindi as a language was to dis-charge his duties there. On the other hand, the undisputed position is that Hindi as a subject is not taught in the aforesaid school in Tamil Nadu. Furthermore, the petitioner was not transferred there as a subject Teacher in History to that school and at the same time, the fact cannot be ignored that the medium

of instruction in the Cordite Factory School is English and Tamil. It may be recalled that the petitioner teaches History in Ishapore Factory High School in Hindi medium. Under such circumstances, as has been rightly contended by Mr. Sinha, the impugned order of transfer cannot be taken as a bonafide order of transfer issued by the respondent authorities in public exigency. The speaking order dated 4.12.96 is only a jugglery of words on the part of the respondent authorities on suppression of material fact. It has been contended by Mr. Sinha that the petitioner has incurred displeasure of the respondent authorities for his taking active participation in Teachers' Union or Association works.

19. Be that as it may, I am not inclined to go into that aspect of the matter. But the materials on record indicate that the impugned order of transfer has been passed in a most arbitrary and malafide manner having the character of a penal transfer, the sole purpose of which appears to be to harass the petitioner. The purport of the impugned order of transfer, as has been rightly contended by Mr. Sinha, is to get rid of him by any means and to put him in unnecessary harassment keeping him idle in the said school at Aruvankadu, where the petitioner will not be able to do or teach anything. Thus the impugned order of transfer cannot be allowed to stand and the O.A. must succeed.

20. Accordingly, the O.A. is allowed. The impugned order of transfer dated 23.4.96 (Annexure A/1) is set aside along with the speaking order dated 4.12.96 as per Annexure A/7. The respondent authorities are directed to allow the petitioner to join his present post at the Rifle Factory High School, Ishapore forthwith. The respondent authorities are also directed to treat

the petitioner as on duty in his place of posting at Rifle Factory High School with effect from 9.5.96 till the date he joins back there with all consequential benefits. Considering the facts and circumstances of the case, I award Rs.1000/- (Rupees one thousand) only as costs in favour of the petitioner to be paid by the respondent authorities within a fortnight from this date.

*S.N. Mallick*  
( S.N. Mallick )  
Vice-Chairman