

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 614/92
T. A. No. 109

DATE OF DECISION 30.6.92

R.Sadasivan Nair Applicant (s)

Mr. M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Director of Education, Respondent (s)
Union Territory of Lakshadweep,
and 2 others.

Mr. N.N.Sugunapalan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? N
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

P.S.Habeeb Mohamed

Shri Sadasivan Nair, Primary School Teacher,

Govt. High School, Kadamat, under the Lakshadweep

Administration has challenged the orders of his transfer

as contained in Annexure-I, transferring him from the

Govt. High School, Kadamat to Junior Basic School (N),

Amni and posting Respondent-3 (Sl.No. 35 in the transfer

order) in his place. Though his transfer is contained

in a general order issued by the Directorate of Education

and gives the appearance of one of the transfers in a

series ordered by the Administration, it is averred in the

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application that the order, in so far as he is concerned, is vitiated by malafides on the part of the present Director of Education and has not been ordered in public interest to which the respondents 1 and 2 have stated in their reply that there is no illwill on the part of the Director of Education towards him and it has been ordered on general administrative grounds. It is stated that the transfer of the applicant has been on account of a situation created by the applicant himself who is allegedly involved in the offence of leakage of question papers at the Government High School, Kadamat and the Director of Education received a complaint against him that he had engaged the students of the Secondary classes in private tuition etc. It is stated that the leakage of question papers is a serious offence. There were continuous representations from the parents/counsels of the students of the J.B. School, Kadamat and he was, on account of that, transferred to Government High School, Kadamat.

When the O.A. came up for hearing, attention of the learned counsel of the applicant ^{drew attention} was drawn to reports sent by the Headmaster of the School/^{to} the Director of Education which gives an impression that the applicant had a hand in the ^{stated} leakage of the question papers and this letter dated 25.3.92 would not have influenced the order of transfer vide the impugned order at Ann. I as it is dated 5.3.92.

[Handwritten signature/initials at the bottom left]

Besides, he also drew attention to a revised letter F.No. 4/1/92-GHSK dated 29.5.92 in which the Headmaster makes the following statement.

"Shri Pali Yousuf, TGT and Shri R.Sadasivan Nair were not in good terms and the report given to me by him as stated above, was prejudicial and far away from truth. On enquiry from the U.D.Clerk in Office (Office Supdt), I was told that the question papers were not typed from the office. Hence there is no possibility to see the question paper-Eng-II of Std. IX by Shri R.Sadasivan Nair.

It is failed to understand how the representation dated 4.1.92 of the so-called Secretary, Indian Union Muslim League, Kadamat was taken seriously. When I enquired with the Addl. Sub Divisional Officer, Kadamat, i was informed that there are only two main Political Parties having offices such as Congress (I), the Ruling Party and the Janata Dal, the Opposition and that there is no such I.U.M.L Unit in existence at Kadmat. Shri P.P.Muthukoya and one or two followers claim themselves as I.U.M.L Unit. He was the man who instigated the students for the strike and agitation at Kadmat schools during the year 1990-91.

Considering the above facts, my earlier report cannot be taken as a proof against Shri R.Sadasivan Nair, P.S.T. "

The stand by the learned counsel was that there have been no proper enquiry into the allegation of the leakage of question papers or of the grounds like private tuition,etc. There is also a reference to the involvement of certain political parties and instigation for his transfer by one or other of the members of one political party.

2. The stand of the learned counsel of the respondents was that it was ordered on administrative grounds and it was not desirable to retain the applicant at his present place of posting taking into account the seriousness of the various allegations against him. On the basis of the interim order passed by the Tribunal on 27.4.92 the status quo in so far as the applicant and Respondent-3 were ^{was} ✓

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concerned was maintained and they have not been shifted on the basis of the impugned orders of transfer.

3. We find after perusal of the papers filed by the parties and hearing the respective counsel that even if there are any administrative grounds, there has been no proper scrutiny of the grounds on which the transfer has been effected. While it is ordinarily true that a transfer is an incidence of service and not a condition of service and a catena of decisions of the Hon'ble Supreme Court have laid down that orders of transfer by administrative authorities are not to be interfered with and judicial interference is called for only in case of absolute arbitrariness or violation of statutory rules or motivation by malafides, ⁱⁿ this case, we find that the transfer order in so far as the applicant is concerned has not been passed on a proper scrutiny of the allegations. In the case of Municipality of Bhiwandi and Nizampur Vs. M/s Kailash Zizzing Works, 1975 AIR SC 529, their Lordships of the Supreme Court have held as follows:

"An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries."

Various other decisions of the Courts of our country and also decisions of the Hon'ble Supreme Court have been referred to in a case of transfer where orders of the Tribunal were passed in K.K.Jindal V. General Manager, Northern Railway, ATR 1986(1) 304. The decisions cited may be seen from paragraphs 7 to 10 of K.K.Jindal V. General Manager, Northern

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Railway, supra. They run as follows:

"7. Lord Denning Master of Rolls in Laker Airways Ltd. V. Department of Trade 1977(2) WLT 237 declared:

"Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive."

8. In General Assembly of Free Church etc. V. Overtoun, 1904 A.C. 515 at 695, the House of Lord said:

"I take it to be clear that there is condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purposes for which they are conferred."

9. The Supreme Court in the Management of Syndicate Bank V. The Workmen, 1966 A.I.R SC 1283, specifically considering when an order of transfer may be interfered with by Courts and Tribunals, declared:

"If an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds."

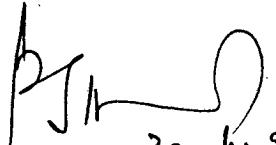
10. In Lachman Dass V. Shiveshwarkar and others, AIR 1967 Punjab 76, Shri H.R.Khanna, J. (as his lordship then was) observed:

"When a transfer is made in violation of any legal provision or is otherwise mala fide can be quashed by the court, is now well settled."

4. Since it is a case of non-scrutiny of the grounds on which his transfer was ordered and the Headmaster's letters from time to time show different stands taken by the Headmaster himself in respect of the allegations against the applicant, we find that, while it may not be a case of malice, in fact, it is a case of malice in law and the

orders cannot be sustained. There are occasions when sometimes the question of malice in law or malafides run into questions of fraud on power or ultravires and it may not be possible to disentangle the various elements in an order, as the present type, where we have no doubt that it is a case of malice in law. In the circumstances, we do not see any ground for upholding the transfer orders of the applicant and posting the third respondent in his place and the impugned orders, in so far as the applicant is concerned (and also transferring the third respondent) cannot be sustained. It is accordingly quashed. The applicant ^{or} petition is accordingly allowed without any order as to costs. However, these directions do not preclude the respondents 1 and 2 from making proper enquiries and after they have arrived at proper conclusions, they may take appropriate action ^{in respect of} against the applicant in accordance with law.


 30/6/92
 (A.V. Haridasan)
 Judicial Member


 30.6.92
 (P.S. Habeeb Mohamed)
 Administrative Member

30.6.92