

Central Administrative Tribunal
Principal Bench: New Delhi

TA No.7/2013

Reserved on: 18.04.2016
Pronounced on: 31.05.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Sandeep Dabas,
Village and Post Office
Ladpur, Delhi – 110 081.

...Applicant

(By Advocate: Shri Neeraj Rathore)

Versus

1. North Delhi Municipal Corporation (NDMC),
Through its Commissioner,
4th Floor, Civic Centre,
Jawaharlal Nehru Marg, Delhi.
2. Sh. Jasram Kaim,
Additional Director (Education),
North Delhi Municipal Corporation,
15th Floor, Civic Centre,
Jawaharlal Nehru Marg,
Minto Road, Delhi.
3. Smt. Nirmala,
Assistant Director of Education,
North Delhi Municipal Corporation,
Rohini Zone Office, Rohini, Sector-5,
Delhi – 110 085.
4. Sh. Bajraj Singh,
School Inspector,
North Delhi Municipal Corporation,
Rohini Zone Office, Rohini, Sector-5,
Delhi – 110 085. ...Respondents

(By Advocate: Sh. R.K. Jain for Sh. Arun Bhardwaj)

ORDER

The applicant initially approached the Hon'ble High Court of Delhi for redressal of his grievances by filing WP(C) No.632/2013. Since the dispute between the respondents

and the applicants is admittedly subject to the jurisdiction of the Central Administrative Tribunal, the same came to be transferred to this Tribunal by the Hon'ble High Court vide order dated 01.02.2013 and re-numbered as TA No.7/2013.

2. The applicant in the instant OA is aggrieved with impugned transfer orders dated 23.11.2012, 19.12.2012 and 28.12.2012 passed by respondent no.3 with the prior approval of respondent no.2, which he assails as being arbitrary, illegal with prejudice and against the principles of natural justice.

3. The facts of the case, in brief, are that the applicant joined the respondent organization as Teacher (Primary) on 03.10.2006 having qualified the recruitment examination conducted by Delhi Subordinate Services Selection Board. The applicant, in addition to his teaching duty, was also assigned the duties of in-charge of mid-day meal and computerized marking of attendance since 2011 when the respondent-Corporation introduced online computer based teachers' attendance system. It is the case of the applicant that since mid August, 2012, his two colleague teachers namely Anupma and Sunita wanted him to permit proxy attendance. This was declined by the applicant; yet they continued to mark proxy attendance of each other. The applicant, being in-charge of computer cell circulated

information to all the teachers of the school to mark their own attendance in the computer as per official instructions in this regard. At this, the said Anupma, knowing that now her college Sunita would not be able to mark her proxy attendance, applied for transfer. However, she subsequently entered into the dispute with the Principal and withdrew her application with a view to teach a lesson to the applicant. It is the case of the applicant that on 14.09.2012, Anupma and Sunita made a false written complaint against the applicant to the respondent nos. 3 & 4 alleging professional misconduct and indecent behaviour with them by him with some ulterior motives. Upon receiving the complaint, the respondent no.4 visited the school and, without even conducting an enquiry, informed the applicant that the respondent no.3 ordered to transfer him to some other school. He further stated that on the complainants would also be transferred out later on. The applicant made a request to respondent no.4 to provide him a copy of the complaint so as he could rebut the same which was not acceded to. However, the applicant tried to prove himself as innocent in the matter with documentary proof, but the respondent no.4 left the school as he could not take any action against the applicant.

4. It is the case of the applicant that during a casual conversation in the presence of the Principal, Anupma, one of the complainants, revealed the fact that respondent no.4 had forced the complainants to levy false allegation of indecent behaviour against the applicant. She further revealed that one Naresh Sharma, Principal of some other school, who was present on 14.09.2012 in the Zonal Office, made some defamatory statements against the applicant and his family members, which the applicant claims, was recorded by him secretly without her knowledge.

5. The applicant, after having collected evidence against the respondent no.4 and the complainants, made a verbal complaint to the respondent no.3 who, instead of taking action against them, created a situation compelling the applicant to pursue the matter. The applicant filed an application under RTI Act on 08.10.2012 seeking the complaint made by the complainants on 14.09.2012 and other related documents but the same was denied to him vide reply dated 22.11.2012, which proves the prejudice of the respondent nos. 3 & 4. It is further submitted that on 30.10.2012, an enquiry panel comprising of respondent no.4 along two other school Inspectors visited school armed with a questionnaire of 36 questions, the replies whereof were

kept confidential. However, no chargesheet was ever served upon the applicant before such an enquiry.

6. The applicant submits that the respondent no.3 in connivance with respondent no.4 transferred his wife working as contract teacher, declaring her surplus in the school where she was working, to be cancelled subsequently. The applicant also filed a police complaint with a prior information to the respondent-organization against the respondent no.4, Anupma, Sunita and Naresh Sharma under sections 116, 120B(2), 166, 203, 500 read with Section 34 and 511 of the IPC in PS Mangolpuri on 26.11.2012. On the very next day i.e. 27.11.2012, the applicant was transferred to M.C. Prv. School, Shalimar Gaon-II - an evening shift school from 1.00 pm to 5.30 pm. This made it difficult for the applicant to pursue LLB course from 4.00 pm to 6.00pm from Law Centre-I, Delhi University for which prior permission had already been granted to him. Aggrieved with this order of transfer, the applicant submitted a representation to the Deputy Commissioner, Rohini Zone on the same date. He was, however, relieved vide order dated 19.12.2012 to join the new place of posting. The applicant once again met the Deputy Commissioner, Rohini Zone who changed his transfer to NDMC School Shahbad Daultatpur (Boys) without any vacant post in place of NDMC School

Shalimar Gaon-II (Evening Shift) where he joined on 29.12.2012.

7. The applicant has prayed for the following relief(s):-

- “(i) *issue an order or direction to quash and set aside declaring void ab initio, the impugned transfer order D-7805/DDE/RZ dated 23.11.2012, D/8607/ADE/RZ dated 19.12.2012 and D/AD/EDU/R/12/8973 dated 28.12.2012 issued by the respondent no.3 with the prior approval of respondent no.2 and/or;*
- (ii) *issue any other appropriate order to the respondent no.1 to initiate enquiry against respondent nos. 3 & 4 as both of them have misused their administrative powers to harass the applicant with malafide intention and/or;*
- (iii) *issue an appropriate order to the respondent no. 1 to initiate enquiry against Smt. Anupma and Smt. Sunita as the allegations against them are of very serious nature and/or;*
- (iv) *issue an appropriate order to the respondent no.1 to allow all consequential benefits for which the petitioner is entitled and/or;*
- (v) *issue an appropriate order to the respondent no.1 to pay the cost of this litigation to the applicant with interest thereon;*
- (vi) *pass such further or other orders which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case in the interest of justice.”*

8. The applicant has also filed an additional affidavit dated 05.07.2013 vide which he has drawn attention of the Tribunal to the fact that in satisfaction of query made by him under RTI Act dated 20.12.2012, information was provided to him indicating that an enquiry had been conducted by three school inspectors of Zonal Office (Rohini Zone) and they found all the three teachers i.e. two

complainants lady teachers and the applicant guilty and had, therefore, recommended their transfer on administrative grounds. This makes the transfer punitive in nature. RTA reply further revealed that no departmental enquiry had yet been conducted by the appropriate authority on the complaint made. The applicant has also submitted in the additional affidavit that when he arrived at the new place of posting on 29.12.2012, he found himself surplus as there were nine sanctioned posts of teachers while 10 were already placed and the he became the 11th. Thus, the respondent no.3 had acted malafidely to post the applicant there in surplus capacity.

9. The applicant in support of his claim has raised the following grounds:-

- (i) Transfer orders issued are highly arbitrary, illegal and without any authority of law;
- (ii) The action of respondent nos. 3 & 4 against the applicant, who has raised his voice against high-ups and their known people, was pre-determined by misusing their powers;
- (iii) The action of the respondents is in violation of the principles of natural justice;

- (iv) The three members of the enquiry panel included the respondent no.4 against whom the applicant had made a complaint to the respondent no.3 on the premise of Anupma who specifically mentioned in the video recording that he was the person who insisted her to make a false allegation of indecent behaviour against the applicant;
- (v) The complainants, against whom the allegations were of serious nature, were let off with transfer orders without any departmental action.

10. In support of his claim, the applicant has relied upon the following decisions:-

- (i) *A.K. Kraipak Vs. Union of India* [AIR 1970 (SC) 150];
- (ii) *Menka Gandhi Vs. Union of India* [1978 (1) SCC 248];
- (iii) *Ashok Kumar Yadav Vs. State of Haryana* [AIR 1987 (SC) 454];
- (iv) *Managing Director, ECIL, Hyderabad Vs. B. Karunakar* [1993 (4) SCC 727].

11. Respondent no.1 has filed a counter affidavit denying the averments of the applicant. It is submitted that immediately on receipt of a written complaint from Anupma and Sunita that the applicant being the computer-in-charge

in the school knowing did not send their attendance online. The respondents formed a Committee of three School Inspectors which on due enquiry found all the three persons i.e. complainants lady teachers and the applicant guilty of the charges and, therefore, the transfer orders were issued. It is also submitted the request of the applicant for a transfer to morning shift school was accepted and he was re-transferred to a school of morning shift in order to pursue his LLB. Moreover, it is the prerogative of the administration to post an employee as per its organizational requirements. No charge sheet is required to be issued for conducting a preliminary enquiry nor is it necessary that enquiry ends up in departmental action. It is submitted that in reply to 36 questions, the allegations made by the applicant against respondents were found baseless.

12. The applicant has filed a rejoinder application reiterating the averments made by him in the Original Application and Additional Affidavit.

13. I have carefully gone through the pleadings of the parties as also the documents so adduced by them. We have also patiently heard the oral submissions of the learned counsel for the parties.

14. The sole issue to be decided is as to whether applicant's transfer is vitiated by *mala fide* on part of the respondents.

15. It finds already mentioned that the applicant has led much emphasis on bias on part of the respondents as also *mala fide*.

16. I start by the statement of general principles. Courts/Tribunals have consistently taken the view that transfer is an incident of service. Unless the post happens to be non-transferable, it is the right of the employer to decide where its employee will serve. In *Shilpi Bose versus State of Bihar* [AIR 1991 (SC) 532], the Hon'ble Supreme Court held as under:-

"4. In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

This has also been impressed upon in case of *Union of India vs. S.L. Abbas*, [(1993) 4 SCC 357] wherein the Hon'ble Supreme Court held as under:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in

violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration.”

In yet another decision in *State of U.P. Vs. Gobardhan Lal* [(2004) 11 SCC 402], the Hon’ble Supreme Court held as under:-

“7. It is too late in the day for any Government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power off violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievances sought to be made. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the Competent Authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. *A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of Competent Authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.*”

17. It has also been held that there may have been guidelines for transfer but deviation from the same does not necessarily serve to vitiate the transfer as has been held in *Narendra Kumar Vs. Union of India & Ors.* [AIR 1989 (SC) 2138], relevant portion whereof reads thus:-

“100...A Court, however, would be reluctant to interfere simply because one or more of the guidelines have not been adhered to even where there are substantial deviations, unless such deviations are, by nature and extent such as to prejudice the interests of the public which it is their avowed object to protect. Per contra, the Court would be inclined to perhaps overlook or ignore such deviations, if the object of the statute or public interest warrant, justify or necessitate such deviations in a particular case. This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.”

18. Since the case of the applicant rests heavily on allegation of *mala fide*, we would like to go into what

constitute a *mala fide* or malice in law. In the case of *Ravi Yashwant Bhoir versus District Collector, Raigad & Others* [2012(4) SCC 407], the Hon'ble Supreme Court defined malafide as under:

"47. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice-in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite.

48. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law. (See: Addl. Distt. Magistrate, Jabalpur v. Shivakant Shukla, AIR 1976 SC 1207; Union of India thr. Govt. of Pondicherry & Anr. v. V. Ramakrishnan & Ors., (2005) 8 SCC 394; and Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors., AIR 2010 SC 3745)."

19. There could be no dispute over what has been stated in above decision of the Hon'ble Supreme Court. However, it also remains a fact that malafide is easier to allege than to prove and the burden of proof lies on the one who alleges it [*E.P. Royappa versus State of T.N. & Others* [1974(4) SCC 3].

20. In *State of Punjab and Another versus Gurdial Singh* [1980 (2) (SCC) 471], the Hon'ble Supreme Court held as under:-

“9. The question then, is what is *mala fides* in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power - sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfaction - is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated. "I repeat..... that all power is a trust- that we are accountable for its exercise that, from the people, and for the people, all springs, and all must exist." Fraud on power voids the order if it is not exercised *bona fide* for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to affect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power of extraneous to the statute, enter the verdict or impels the action *mala fides* on fraud on power vitiates the acquisition or other official act.”

21. The Hon’ble Supreme Court in a more recent judgment in *Rajeev Kumar Aggarwal versus State of UP* [MANU/SC/0869/14] held that unless an order of transfer is shown to be an outcome of *mala fide* exercise of power or stated to be in violation of statutory provisions relating to transfer, courts/tribunals cannot interfere in such matters as if they were appellate authority substituting their own decisions for that of the Management.

22. In view of these requirements of law for alleging and proving *mala fide*, we proceed to examine the sequence of events. Admittedly, in view of computer knowledge of the applicant, the applicant was made in-charge of marking computer based attendance by teachers; complaint of undue harassment was made against him by two lady teachers namely Anupma and Sunita; defence of the applicant is that these teachers wanted their attendance to be marked without complying with requirements for attendance i.e. coming punctually or without their being present in the school. The submission of the applicant that this complaint was motivated on account of strict adherence of the rules; resultantly he was transferred to M.C. Prv. School, Shalimar Gaon-II – an evening shift school vide order dated 23.11.2012 and on his request pertaining to pursue LLB course, he was transferred to NDMC School Shahbad Daulatpur (Boys) beyond the sanctioned posts where under compelling circumstances he joined his duties; the applicant also filed a complaint against the two afore two lady teachers and served a legal notice too asking them to tender their oral/written apology for making false allegations against him.

23. The two sets of documents i.e. the complaint filed by Anupma and Sunita and by the applicant were entrusted to

the school Inspector one Balraj for enquiry. It appears from the report that enquiry conducted by Balraj found that there was a running feud between the two lady teachers and the applicant. It also appears that the Principal of the School had also ill hate of the conduct of the afore two lady teachers and made complaint against them to her superior authorities. It also appears that enquiry team was constituted by the respondents, who found that there was no harmony within the premises of the school and the atmosphere had been vitiated by the feuding parties. It was in view of this that the transfer of the applicant had to be made in peace and the larger interest of students and the school administration.

24. In this regard, it is to be noted that the Hon'ble Delhi High Court in *Municipal Corporation of Delhi V/s. Chattarbhuji Bhushan Sharma* [133 (2006) Delhi Law Times 581] has clearly held that when such conditions arise, administrative action is required to be taken.

25. I have called for the departmental file and gone through the same carefully. I find that there are number of allegations, counter-allegations, complaints, legal notices in the file. It is evident that the school administration had been rocked by factionalism and indiscipline. Under these circumstances, it is evident that the transfer of the applicant

necessitated on administrative consideration. In *Municipal Corporation of Delhi V/s. Chattarbhuji Bhushan Sharma* (supra), the Hon'ble High Court also held as under:-

“6.....He cannot claim posting or right of working, in a particular park. A transfer can be said to be punitive only if by transferring, the workman is placed on destitute, either on salary or on seniority, or he is lowered in grade or a lower work other than the category assigned to him. If transfer is made for keeping peace in the office because two employees are at rift with each other and there has been exchange of abuses between the two employees, or an employee is not behaving properly, such transfer cannot be called punitive transfer. Such transfers become necessary for administrative reasons or for keeping peace in the office and for smooth working of the office. The Tribunal went wrong in holding that the transfer by Assistant Director, Horticulture, was not valid transfer.

7. No Court can interfere with the transfer orders which are made in administrative interest and for administrative reasons unless transfer orders are made in violation of any mandatory rules. No mala fides can be alleged in a transfer if a transfer is made to keep peace at place of work. When transfer is a condition of service, no employee can resist transfer on the ground that no inquiry was held before ordering his transfer or the transfer was vindictive. If a transfer does not affect his status and his terms and conditions of service an employee cannot disobey transfer orders.”

26. In view of the above decisions, it is abundantly clear that the applicant cannot challenge the impugned transfer order which has admittedly been made to curb the running war of attrition between the applicant and the two lady teachers and to maintain peace and smooth functioning of the school. It is also clear that since the transfer is made for administrative reasons under the circumstances stated above, the applicant cannot even challenge the same on ground of *mala fide*. It is also pertinent to mention here

though firstly the applicant was transferred to a school having evening shift where he was not in a position to pursue his LLB Course, yet on his request, he was transferred to another School having morning shift following the principles of natural justice so as to enable him to pursue his LLB course. This indicates that official respondents have been more than indulgent towards the applicant. I, therefore, find that the administrative ground for transfer is fully justified and that there is not even faintest trace of *mala fide* in the acts of the respondents rather it is in best interest of education. To the contrary, I find the conduct of the applicant, a law student, turbulent and fractious indulging in wanton litigation. Hence, no judicial interference is called for. I also impose a token fine of Rs.500/- (Rupees five hundred only) upon the applicant to be paid to the CAT Bar Library so that he may always remember that the purpose of acquiring legal knowledge is to assert the rights of the weak and the wronged and not to cause harassment to others.

27. In totality of facts and circumstances of the case, I find the instant OA misconceived and the same is accordingly dismissed along with costs, as quantified above.

(Dr. B.K. Sinha)
Member (A)