

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4226/2016

Order Reserved on:05.01.2017
Order pronounced on 06.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

Smt. Suman Gupta – Age 51 years - Group C
13A, MIG, DDA Flat
Rampura, Delhi – 110 035. Applicant

(By Advocate: Sh. Janak Raj Rana)

Versus

1. Commissioner, MCD
Civic Centre Building (Education Deptt)
Minto Road
New Delhi.
2. Director Primary Education
Civic Centre Building (Education Deptt)
Minto Road, New Delhi.
3. Sh. Ashok Sharma
Dy. Director, Education Deptt
5th Floor, 16 Rajpur Road
Delhi – 110 054. Respondents

ORDER

By V. Ajay Kumar, Member (J):

Heard the learned counsel for the applicant.

2. The applicant, Principal (Primary) of MCP School, Jai Mata Market, New Delhi, filed the OA questioning the impugned Annexure A1-Office Order dated 08.09.2016 of the Deputy Director of Education, NDMC, in transferring her to MCP School, Mukundpur-I, New Delhi.

3. It is submitted by the applicant that the sole cause for transferring her, all of a sudden, is due to the mala fide intention of the Chairman, Smt. Mamta Nagpal, but not due any administrative convenience, as mentioned in the impugned transfer order.

4. To establish the said fact, the learned counsel drawn our attention to certain Annexures, enclosed to the OA, which indicate that the aforesaid Chairman, Smt. Mamta Nagpal, along with Supervisor, Physical Education, has conducted a surveillance visit to Jai Mata Market School on 10.08.2016 where the applicant was working and on noticing certain issues, such as un-cleanliness of toilets, etc., and in connection with the same, the Deputy Director (Education) called for the explanation of the applicant, and the applicant submitted her explanation thereto.

5. It is submitted by the applicant that though she explained the situation satisfactorily, but in view of the direction of the Chairman, Smt. Mamta Nagpal, the Deputy Director, issued the impugned order and Smt. Mamta Nagpal, only to accommodate one of her person at MCP School, Jai Mata Market, and with mala fide intention, got the applicant transferred from that place. It is to be seen that though the

applicant alleged certain mala fides, against the Chairman, Smt. Mamta Nagpal, but not made her as party respondent to the OA. As per the settled principles of law, mala fide cannot be alleged/attributed and proved without making the person against whom the mala fides are levelled. Hence, the ground of malafides is liable to be rejected.

6. Further, the applicant has not stated in her OA that since how long she is working in Jai Mata Market. Transfer of an employee is an incident of service. The law on the issue of transfers of public servants is well settled.

7. In **Rajendra Singh & Others v. State of UP & Others**, (2009) 15 SCC 178, the Hon'ble Apex Court held as under:

"6. A Government Servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. 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 contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires [see **State of U.P. v. Gobardhan Lal**; (2004) 11 SCC 402].

7. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In the case of **Shilpi Bose (Mrs.) & Ors. v. State of Bihar & Ors.** AIR 1991 SC 532, this Court held :

"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. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

8. In **N.K. Singh v. Union of India & Ors.** (1994) 6 SCC 1998, this Court reiterated that the scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision."

9. In view of the aforesaid decision, a transfer order can be interfered only on the grounds of incompetency, violation of statutory rules or on mala fides. Applicant failed to prove any such ground.

10. It is also to be seen that the impugned transfer order was issued in the administrative convenience and hence, not casting any stigma on the applicant. Even otherwise, the transfer is within the city and to a School which is situated within few kilometers from the present one.

11. In the circumstances and for the aforesaid reasons, we do not find any merit in the OA and accordingly, the same is dismissed. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)