

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.1650/2018

**Reserved On:25.04.2018
Pronounced on:01.05.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Smt. Pratibha Sharma
W/o Jai Bhagwan Sharma
R/o A-27/2K, Netaji Gali No.3,
Maujpur, Delhi-110053. ... Applicant

(By Advocate: Shri V.K. Sharma)

Versus

Directorate of Education GNCT Delhi
Through its Director,
Old Secretariat, Delhi-110054. Respondent

ORDER

By Mr. V. Ajay Kumar, Member (J)

The applicant, a TGT (English), retired from service on attaining the age of superannuation with effect from 30.06.2017. However, as per the policy of the respondent-Government of NCT of Delhi, the applicant was re-employed as TGT (English) with effect from 01.07.2017 in Chauhan Bangar, Jafrabad-GGMS-1105112 till attaining the age of 62 years or till the clearance from Government of India for extending the retirement age is received, whichever is earlier on the terms and conditions as contained in CCS (Fixation of Pay of Re-Employed Pensioners) Orders, 1986, as amended from

time to time, vide the Annexure A-2 order dated 04.07.2017. While the applicant was working in the said school, on her re-employment, the respondents vide the impugned transfer order dated 25.07.2017 transferred the applicant to New Jafrabad, GGSSS (1105239) (North East). Aggrieved by the said transfer order, the applicant filed OA No.4028/2017 and this Tribunal, vide its order dated 17.11.2017 disposed of the said OA by directing the respondents to take a decision on the representation dated 09.08.2017 made by the applicant against her transfer and to pass a reasoned and speaking order within 2 months and while taking the decision, the respondents will examine the averments made in the OA as also the transfer policy. In compliance of the said orders, the respondents considered the representation of the applicant, however, rejected the request of the applicant for cancellation of her transfer vide impugned Annexure A-1 order dated 26.02.2018.

2. Heard Shri V.K. Sharma, learned counsel for the applicant.
3. The learned counsel submits that the applicant was re-employed vide Annexure A-2 order dated 04.07.2017 and posted in Chauhan Bangar, Jafrabad-GGMS-1105112 till attaining the age of 62 years and hence the respondents cannot transfer the applicant to any other school till she attains the age of 62 years. Hence, transferring her before she attains the age of 62 years is illegal,

arbitrary and against the terms and conditions of her re-employment.

4. The learned counsel further submits that the applicant was wrongly shown as surplus which was the reason shown for transferring her to a new school.

5. The learned counsel further submits that once the applicant had not applied for online transfer nor sent any application for transfer, the respondents cannot transfer her.

6. The learned counsel also submitted that as per the transfer policy, a teacher who is going to retire within one year will not be shown surplus and second senior-most teacher will be shown surplus.

7. Admittedly, the applicant retired from service on 30.06.2017 on attaining the age of superannuation and she was re-employed again for a limited period and the service conditions applicable to the applicant before her retirement on attaining the age of superannuation and the conditions of service applicable to her on her re-employment for a limited period are completely different and distinct. The service conditions of the applicant on her re-employment as TGT (English) were governed by her appointment order and the terms governing such reappointments.

8. It is to be seen that even a permanent civil servant cannot contend that he/she should be continued for a particular period at a particular place etc. as transfer is an incident of service. The applicant, who is a re-employed teacher cannot have any better rights than a permanent teacher.

9. In *Rajendra Singh etc. Vs. State of U.P. and Others, 2009*

(15) SCC 178, the Hon'ble Apex Court dealing with the issue of a regular Government servant observed 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".

10. The learned counsel for the applicant failed to show any valid ground to interfere with the transfer order in terms of the aforesaid decision of the Hon'ble Apex Court. The Annexure A-2 order dated 04.07.2017 whereunder the applicant was ordered to be re-employed, cannot be read as that she is entitled to be continued in the same school for the whole period of re-employment. Like the permanent teachers, the re-employed teachers are also liable for transfer to any school, in the administrative exigencies and in public interest. Unless it is shown that the same is influenced by mala fides or any other extraneous consideration, the transfer cannot be interfered. The applicant failed to show any such valid ground in challenging the impugned transfer order.

11. In any event, as admitted by the applicant's counsel himself, the distance between both the places is only 2 kms. and that the applicant is in no way put to any personal difficulty or irreparable injury.

12. The learned counsel for the applicant failed to show that unless a re-employed teacher applies for transfer, he/she cannot be transferred from one school to another school. He also failed to show the condition of the transfer policy that a teacher who is going to retire within one year, will not be shown surplus and will not be transferred, is also applicable to re-employed teachers.

13. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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