

(v)
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1862/2003

New Delhi, this the 3rd day of November, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

1. Om Prakash Chauhan
S/o Sh. Bahori Lal
PET, GBSS School
Tughlakabad Extension
New Delhi - 19.

R/o RZ 2711/30, Tughlakabad Extn.
New Delhi.

2. Raj Kumar
S/o Sh. Dalip Singh
PET, GBSS School
Tughlakabad Extension
New Delhi - 19

R/o F-32A, Khanpur Extn.
New Delhi - 62.

...Respondents

(By Advocate Sh. K.N.R. Pillai)

V E R S U S

1. Govt. of NCT of Delhi through
The Director of Education
Old Secretariat, Delhi - 110 054.

2. Sh. Khan Chand
Principal
GBSS School
Tughlakabad Extension
New Delhi - 110 019.

...Respondents

(By Advocate Sh. Mohit Madan, proxy for
Mrs. Avnish Ahlawat and Ms. Nidhi Bisaria, for
respondent No. 2)

O R D E R

The applicants have impugned the order of the respondents dated 1-7-2003 transferring them from GBSS, Tughlakabad Extension to Office of DD (NE) and Office of DD (NWB) and have prayed that the said order as well as the consequential relieving orders be set aside and quashed.

2. The applicants have been appointed/posted as Physical Education Teachers (PETs) in the said School since 31-1-97 and 4-3-1997 respectively. They have claimed that they have served the Institution with diligence and achieved distinction in sports activities. They have alleged that the transfers have been ordered in deviation of the guidelines on the subject

which stipulate that they be posted in Schools near their residences and should continue there till such time that they have asked for a transfer. According to them, transfers are normally ordered in April at the beginning of the academic session and efforts are made to post them to Schools which are near their residences and that intra-district transfers are normally ordered on the request of the Teachers. Their grievance is that the transfers would cause tremendous inconvenience to them, as they have young children who have to be fetched from School. They have imputed malafide to the Principal who, according to them, has allegedly got them transferred to teach them a lesson. They have also alleged political involvement of the Principal and have said that they have refused to extend their help to the Principal in his political activities. Narrating the sequence of events leading to the reliefs prayed for, they have alleged that they were relieved of their charge in the present School vide the orders dated 4-7-2003 without allowing them to seek consideration of their representations submitted in the matter. A representation has also been submitted by the Parent Teacher Association of the School, as claimed by the applicants, seeking cancellation of their transfer orders. It has been alleged that they were threatened with suspension if they insisted on cancellation of their transfers and consideration of representations in that regard.

3. The applicants have referred to the decisions of the Hon'ble Supreme Court whereby it has been held that "the scope for judicial review is very limited, being confined only to the grounds of malafide and violation of any specific provision or guideline regulating such transfers amounting to arbitrariness" and have submitted that their transfers are violative of the guidelines on the subject and have not been ordered at the beginning of the academic year. Accordingly, in their opinion, their case can be entertained by the Hon'ble Court. In this connection, they have also referred to certain other cases as decided by the Tribunal, details of which are given in paragraph 5 (b).

4. The respondents in their reply have, however, submitted that respondent No.2 has been made an unnecessary party and that he has no role to play in the transfer and relieving of the applicants. They have also disputed the allegations of malafide made by the applicants. According to them, this has been done to cause prejudice in the mind of the Tribunal. They have further submitted that the applicants have concealed the relevant facts and have not come before the Tribunal with clean hands.

5. They have asserted that the transfer order has been issued by the official respondents in public interest. According to them, the transfer

guidelines are only the guidelines and not the rules and as such they have the discretion to pass transfer orders in regard to the applicants. They have admitted that the transfer procedure is initiated from April but final orders are usually issued in the month of July, as in May and June School is closed for summer vacation. Defending the decision to transfer the applicants, they have submitted that they have been transferred only from one School to another under Govt. of NCT of Delhi within Delhi itself and not outside Delhi. Explaining the aspect of dis-interest on the part of the respondent No.2 in the matter of transfer in regard to the applicants, the respondents have submitted that respondent No.2 himself has not been interested in continuing with the School, i.e., at Tughlakabad Extension and had accordingly on 18-3-2000 submitted a representation for his transfer from the said School on medical grounds followed by other requests/representations. They have also explained the photographs which have been enclosed with the OA by the applicants alleging his political involvement, in paragraph 4.4 of their reply I do not see any reason why the explanation as given by the respondents in regard to the photographs should not be believed. It has been seen that the Teachers/Principals are given due respect by the people and the same cannot necessarily be termed as political involvement. In fact, the respondents have alleged that the said photographs confirm that the applicants themselves were party in getting these photographs and perhaps have proximity to the political parties. As regards relieving of the applicants, it has been explained by the respondents that the applicants were not present in the School and hence the said orders were sent to them by special messenger. They have, therefore, submitted that their allegation whatsoever in regard to their having been relieved in a haste are not correct.

6. While the applicants have filed rejoinder to the counter as filed by the respondents and have reiterated most of the things earlier submitted by them in their OA, they have not denied some of the explanations given by the respondents particularly in regard to the photographs showing participation of the Principal (Respondent No.2) in a political meeting.

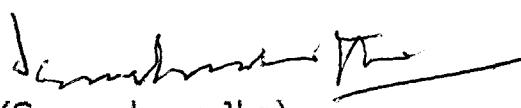
7. On closer examination of the facts as submitted by both the applicants as well as the respondents, it thus appears that it is a simple case of transfer ordered by the respondents in regard to the applicants who had been posted in the present School since 1997. The transfers have been made within Delhi itself. It is always possible that transfers would cause some inconvenience/dis-location, but transfers being an incidence of service cannot be wished away. The applicants have been used to picking up their

children from the respective Schools and this aspect of their living has certainly been disturbed. They have not referred to any other inconvenience resulting from their transfer. The respondents have clarified that the transfers have been made purely in public interest and that respondent No.2 had no hand in the transfer. The allegations regarding malafide on the part of respondent No.2 have also been disputed by the respondents by giving certain facts like the respondent No.2 himself being dis-interested in continuing in the said School. It is also an established law that transfers can be made in public interest and also on account of administrative exigencies. Courts are not normally expected to interfere with transfers, which are the prerogative of the respondents who are of course expected to follow the norms/procedure on the subject. It is also a well-established fact that employees do not have a right to be posted to a place for all time, as transfer is inherent in the system and can certainly be ordered in public interest and to promote efficiency in public administration.

8. In this connection, a reference to the decisions of the Hon'ble Supreme Court in **UOI & Ors. v. Janardhan Debnath & Anr.** in Civil Appeals N.1010-11/2004 as passed on 13-2-2004 (2004 (4) SCC 245) has been appropriately made in which it has been held that transfer to another post in the same cadre not barred and that transfer of an employee has to be determined by the employer upon the administrative necessities and that whether transfer in a particular case has been in the interest of public service is a question of fact.

9. I find no reason in interfering with the order of the respondents in regard to the transfers of the applicants.

10. Under these circumstances, finding no merit in the case, the same fails and stands dismissed.


(Sarweshwar Jha)
Member (A)

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