

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2472/2003
With
RA 354/2003 & MA 2141/2003

New Delhi, this the 4th day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Dr. Vimla Dahiya,
W/o Balbir Singh,
R/o C-4/7, Model Town,
Delhi – 110 009
(By Advocate : Shri G.D. Gupta, Sr. Counsel with Shri
Ajit Nair)

... Applicant

Versus

1. Director (Education),
Govt. of N.C.T. of Delhi,
Old Secretariat Bldg.,
Delhi – 110 054
2. The Govt. of NCT of Delhi
Through
The Chief Secretary,
Secretariat Bldg.,
I.T.O., N. Delhi
3. Smt. Prakash Arun Bali,
W/o Shri Arun Bali,
R/o 4, Delhi Admn. Officers Flats,
Civil Lines, Delhi – 110 054
(By Advocate : Mrs. Avnish Ahlawat for Respondents 1 & 2
Shri S.K. Gupta for Respondent No.3)

... Respondents

O R D E R

By Sarweshwar Jha, A.M. :

This OA has been filed against the order of the respondents reportedly passed on 11.9.2003 transferring the applicant from the present School under RD Office DD (N), Zone VII to Zone VIII. It has been prayed that the said order posting the applicant from Zone VII to Zone VIII, District North, Delhi be quashed and the respondents be restrained from giving effect to the same.

2. The applicant has been serving as Supervisor, Physical Education under Zone VII, District North, Lucknow Road, Timar Pur, Delhi since her appointment as such in the year 1968. She claims as having rendered meritorious service while holding the said post. She is now 57 years old and has submitted that she has been suffering from chronic ailments like high blood pressure, etc., as detailed in paragraph 4(iii). Accordingly, as claimed by her, she has been medically advised not to exert unduly. She got the information regarding her possible transfer in August, 2003 from zone VII to zone VIII, as mentioned above. Accordingly, she submitted a representation on 11.8.2003 to the Director of Education, Old Secretariat, Delhi requesting cancellation of the said transfer order. The said representation was also endorsed to the Chief Minister of the State, which was forwarded by the Principal Secretary to the Chief Minister to the respondent No.1 on 1.9.2003 for being looked into, as claimed by the applicant. It appears that the respondents reversed the transfer order and the applicant continued against her present post in zone VII. However, another transfer order was issued on or around 25.9.2003 posting the applicant to zone VIII. Aggrieved by the said transfer order, the applicant has filed this OA.

3. Explaining the reasons as to why the applicant is not in a position to serve in zone VIII, the learned counsel for the applicant has submitted, among other things, that all the schools falling under zone VIII are mostly situated in the old walled city of Delhi, which are to be covered/travelled on foot to approach these Schools and which would lead to more exertion and also to aggravation of her chronic ailments. The learned counsel has also referred to a similar order having been cancelled in the past for the said reasons and also for the fact that she has rendered meritorious service to the respondents. Repeating similar order when the reason for its cancellation in the past has not changed, according to the learned counsel, is unjust and should, therefore, be quashed.

4. The respondents have taken me through their reply in which they have submitted that the applicant has suppressed the material fact that the private respondent has already joined against the post held by her on 26.9.2003 and also that she had been relieved of the charge of the present post and further that she has been evading her joining against the new post. The applicant is reported to be holding the post in the present zone for long and particularly since 1994 and that

she has no right, as submitted by the respondents, to continue indefinitely against a particular post. They have also submitted that the applicant carries a transfer liability and, therefore, she has no right to continue against the present post nor has she a right to question the transfer order, which has been issued in public interest. They have further submitted that the said transfer order was re-issued after examining the matter at great length. On the question of her duties as Supervisor of Physical Education, the respondents have explained that her basic duties are to coordinate between the District Office and the Schools in relation to games and cultural activities. The schools being scattered through Delhi, according to them, it is not relevant on her part to point out difficulties or the locations of the Schools in a particular zone. Referring to the submissions of the applicant that she had submitted a representation to the Chief Minister of the State, the respondents have argued that the applicant has been bringing undue political pressure in the matter. In any case, the matter was re-examined and she was re-posted to Zone VIII.

5. The respondents have also disputed/controverted the claim of the applicant that the orders of the Director of Education/competent authority were issued without any authority. They have asserted that the approval of the Director (Education)/competent authority could be conveyed by any officer from Additional Director of Education to the Superintendent.

6. While arguing the case, the learned counsel for the applicant has reiterated the aspect of physical ailments in support of the claim of the applicant that she be retained in Zone VII. It has also been argued that the applicant is left with less than 2 years of service and could have been retained in the present Zone for that reason also. A reference has also been made to the decisions of the Hon'ble Allahabad High Court in the case of **Anuraj Tripathy vs. Bank of Baroda** { 1999 (1) SLR 653 }, in which aspects of medical ground/right to life have been cited. Reliance has also been placed on the decisions on similar aspects of the matter by the Calcutta Bench of the Tribunal as reported in 1988 (7) SLR p.90 and further by the Hon'ble High Court as reported in 1973 (1) SLR761 and also 1984 (6) SC Cases 154, in which, among other things, it has been mentioned that an order can be reviewed only after an opportunity has been given to the applicant for personal hearing.

7. The learned counsel for the respondents during oral submissions has focused on the fact that it is a settled law that transfer matters should not be interfered with by the Courts/Tribunal. It has been reiterated that an employee carrying transfer liability and which is an incidence of service cannot seek cancellation of transfer as a matter of right, particularly when such a transfer has been made in public interest and on account of administrative exigency. In this connection, a reference has been made to the decisions of the Hon'ble Supreme Court as reported in 1994 (Suppl. to SC Cases) p.666, in which, among other things, it has been held that no hearing/opportunity is required to be given in cases of transfer. Reliance has also been placed on the decision of the Hon'ble Supreme Court as reported in 1998 SCC (L&S) 835, in which, among other things, it has been held that transfer/modification thereof is the prerogative of the respondents. The fact that transfer is an incidence of service as has also been held and reported in 1989 SCC (Vol.2) 602 and in 2002 SCC (L&S) 21.

8. The learned counsel for the respondents has also taken me through their reply to MA No.1124/2004 in which, among other things, it has been submitted by them that the present OA as filed by the applicant is an abuse of the due process of Court. A reference has been made to the applicant having preferred a Writ Petition before the Hon'ble High Court of Delhi, which was dismissed on the first day itself vide order dated 7.4.2004 (Annexure R/1). On perusal of the order of the Hon'ble High Court, it is observed that the Hon'ble High Court has held the following:-

"Appellant challenges this in the present petition which seems to be frivolous on the face of it. Even as her counsel complains that Tribunal had permitted intervention of R-3 at her back and that Dy. Director ought not to have signed the reply on behalf of official respondents, we find nothing wrong in the Tribunal order.

At this stage, we are informed that petitioner had obtained stay from Tribunal against her transfer to Zone VIII and was staying at her previous place of posting (Zone VII) on the strength of that order. Mrs. Ahlawat, counsel appearing on behalf of official respondents on advance notice submits that this had caused administrative inconvenience and that petitioner's O.A. was required to be disposed of expeditiously. Petition is dismissed and Tribunal is required to dispose of petitioner's O.A. 2472/2003 on the next date. Dasti."

9. The applicant has filed a rejoinder to the said counter in which argument has been advanced by her that there has been no denial on the part of the respondents that the transfer

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order was never passed with the prior approval of the Director of Education. She has also given certain other arguments against the observations made by the respondents in their counter to the said MA. It appears to be a mere repetition/reiteration of what have been submitted earlier.

10. As directed, the respondents have produced the departmental records at the time of final hearing. On perusal of the same, it has been observed that the department has examined the subject matter relating to the transfer of the applicant as well as the private respondent including others as a part of their administrative exercise. It has also included the facts, like the matter having been discussed between the authorities concerned and decisions taken based on their requirements. The applicant seems to have taken a highly technical view of the matter relating to examination of the subject by the administration date-wise. Normally, it is not the concern of the applicant to go into the various stages of administrative discussion/examination. What is important is that the decision should be based on due examination of the facts and should be judiciously arrived at, without any prejudice or bias brought into the matter. It remains a fact that the respondents have claimed that the applicant has been continuing in the present zone since 1994, which has not been disputed by the applicant. It is also obvious that the applicant has been transferred from Zone VII to Zone VIII under the same authority. To argue that the applicant will have to move on foot within the walled city appears to be quite superficial and does not carry any merit. It has to be appreciated by the applicant that it is not a very small area in which one can move around supervising the physical education and cultural aspects, which are parts of her duties. It has been noted that the private respondent, in the meantime, has reported against the post held by the applicant and she has also been relieved of the charge of the post. Under these circumstances, keeping in view the fact that transfer is an incidence of service and in the present case the transfer being not from one place to a distantly located place, thereby there being no inconvenience as such to the applicant, it is wondered whether the applicant has any serious reason to be aggrieved by the action of the respondents. Opposing the transfer from Zone VII to Zone VIII, which are neighboring Zones under the same authority, gives an impression as if the applicant has approached the matter with a pre-determined mind. The cases which have been referred to by her in support of her case, particularly on medical ground, do





not appear to be quite relevant particularly in view of the fact that the ailments which have been referred to by her are, in her case, quite chronic as per her own admission and which have not been considered as being so serious as she could not be transferred to a neighboring Zone, virtually making no change in her establishment.

11. Under these circumstances, and after hearing the learned counsel for the parties, I am of the considered opinion that this OA has no merit and, therefore, it has to fail. Accordingly, the OA stands dismissed. With this, RA No. 354/2003 for review of the order of the Tribunal dated 18.11.2003 and MA No. 2141/2003 also stand dismissed. No costs.



(Sarweshwar Jha)
Member (A)

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