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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.172/2003

New Delhi this the 3rd day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vishen Giri S/o Sh.Khem Giri,
R/o Senior Secondary School,
J.J.Camp, Naraina, New Delhi-110012.
Presently employed as Chowkidar in
the same School.Applicant

(By Advocate : Sh.Ashutosh Bhattacharjee)

-Versus-

1. The Principal, Boys Senior Secondary School
J.J.Camp, Naraina, New Delhi-110012.
2. The Deputy Director of Education,
Basant Vihar, New Delhi-110057.
C-4, Vasant Vihar.Respondents

(By Advocate: Shri George Paracken)

O.R.D.E.R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns transfer order dated 4.1.2003 as well as corrigendum dated 7.1.2003 and has sought quashment of the same with request to retain him in the old school.

2. By an order dated 21.1.2003 status quo as of today was maintained. Applicant has also made a grievance for non-payment of OTA and the salary for the period January and February, 2003.

3. Applicant was working as a chowkidar in Government Boys Senior Secondary School, Naraina since 1972. The school runs into two shifts, i.e., morning and evening, which requires presence of applicant throughout the day and night for which he has been allowed

accommodation in the school premises. By an order dated 19.7.2002 applicant was asked to proceed on transfer to Nariana. The present school in which applicant has been working has no other chowkidar except one vacant post. Applicant approached the respondents and has sought audience of Deputy Director (Education). However, on 4.1.2003 applicant was ordered to be posted at Sarvodaya Kanya Vidyalaya, Mahipalpur temporarily for a period of one month on a live vacancy in that school.

4. In partial modification of the order dated 4.1.2003 vide corrigendum dated 7.1.2003 applicant was transferred to Mahipalpur. Applicant preferred representation against the transfer order as well as non-payment of OTA.

5. Learned counsel for applicant Sh. A. Bhattacharjee contended that without any policy guidelines respondents have entrusted the work of security to private consultancy and has dispensed with the services from the school and posted him to Mahipalpur. Whereas this policy decision cannot be taken by Accounts Officer and applicant's counsel requests for production of record to substantiate his plea. Moreover, it is stated that as applicant has been working for the last 37 years in the same school and is due to retire within 3-4 years his displacement is by way of malafide act on the part of respondents which is not in accordance with the policy guidelines. In this conspectus it is stated that the order is punitive and is liable to be set aside.

6. On the other hand, respondents' counsel Sh. George Paracken denied the contentions and stated that due to out sourcing of work taken as a policy decision by the Government of NCT not only the school in which applicant has been working but on experimental basis 15 schools have been picked up where the security has been entrusted to private consultancy. The aforesaid decision is neither malafide nor contrary to rules and has no effect over services of applicant who is retained and only transferred in public interest and exigencies of service in nearby school. It is contended that other chowkidars are also transferred accordingly. Shri Paracken pleads that no one has an indefeasible right of permanent posting or posting of his own choice.

7. It is stated that in so far as OTA is concerned, if applicant is found entitled to allowances, the same will be paid to him and his salary for the month of January and February would be considered if he had worked.

8. It is denied that there are two posts of Chowkidar at Nariana. As two schools, i.e., boys and girls, work in the same building both have one chowkidar each and as security has been assigned to private agency his services are no more required at Nariana which does not suffer from any infirmity.

9. I have carefully considered the rival contentions of the parties and perused the material on record. In a matter of transfer as settled by the Apex

Court in the following decisions unless malafide is established and violation of statutory rules is apparent, in a judicial review transfer cannot be interfered with:

- i) N.K. Singh v. Union of India, 1994 (28) ATC 246 (SC).
- ii) Union of India v. H.N. Kirtania, JT 1989 (3) SC 131.
- iii) Union of India v. S.L. Abbas, 1993 (2) SLR 585 (SC).

10. From the pleadings I am of the considered view that the policy decision taken by Govt. of NCT of Delhi on experimental basis in 15 schools to assign the security job to private agencies and the staff being one of the chowkidars at Naraina has been replaced by the security agencies and has been transferred to some other school. This is in pursuance of the policy taken by the Government and is in administrative exigencies. Aforesaid transfer has not at all affected the service prospects of applicant as he is still working and is shifted to some other school nearby. The contention that policy decision taken by the Accounts Officer cannot be countenanced as orders have been issued on implementation by the Accounts Officer but the policy decision arrived at, at the level of Director in Govt. of NCT. Applicant has neither imputed any malafide nor has established violation of any rules to warrant any interference with the transfer order.

11. Moreover, applicant was posted in the school from where he has been transferred for the last 37 years and as such he has no indefeasible right to be posted at a particular place or get a posting of his own choice. His transfer is in administrative exigencies and cannot be found fault with.

12. However, as the OTA and salary for the months of January and February, 2003 are being considered by respondents, I hope that the same would be considered by the respondents in accordance with rules and instructions and the fact that if applicant had worked he would be entitled for the same.

13. Accordingly, for the foregoing reasons, though I do not interfere with the order of transfer but the OA is disposed of in the above terms. No costs.

S. Raju

(Shanker Raju)
Member (J)

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