
(2003) 08 DEL CK 0025

In the Delhi High Court

Case No : CW No.5252 of 2003 and CM 9220/ of 2003

Dr. (Ms.) Deepshikha Jiwan Pandit

APPELLANT

Vs

NCERT and Others

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Constitution of India, 1950 — Article 338

Citation : (2004) 73 DRJ 442 : (2003) 2 ILR Delhi 131 : (2004) 3 SLJ 74

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : A.K. Singla and Promila Kaul, for the Appellant; Saurabh Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

D.K. Jain, J.—The petitioner, a Lecturer in the Department of Elementary Education in the National Council for Educational Research and Training (for short "NCERT"), seeks to challenge an order dated 8 August 2002, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the Tribunal") in OA No.1560/2003. By the impugned order, the Tribunal has declined to interfere with the order of her transfer from New Delhi to Bhubaneswar (Orissa).

2. Material facts, briefly stated, are as follows:

The petitioner, appointed on 20 January 2000, as a Lecturer in early childhood education in the NCERT and posted in New Delhi was transferred and relieved on 13 March 2003, to be posted in the Regional Institute of Education, Bhubaneswar with immediate effect. She also withdrew transfer T.A. Advance. It appears that on 5 August 2002, the petitioner had made a representation to the National Commission for Scheduled Castes and Scheduled Tribes, hereinafter referred to as the Commission, alleging harassment by Dr. K.K Vashishtha, Head of her Department. On petitioner's informing the Commission about her transfer,

the Commission, vide letter dated 21 March 2003, desired the NCERT not to relieve her and keep the transfer order in abeyance. Simultaneously, the petitioner filed an original application (OA 1289/2003) before the Tribunal challenging the order of transfer. Noticing that petitioner's complaint with the Commission was still under consideration, the Tribunal, vide its order dated 21 May 2003, disposed of the application with a direction to the respondents to treat the said application as her representation against transfer and dispose it of by a detailed and speaking order within two weeks from the date of the receipt of the said order. It was also directed that till the representation was decided, order of transfer shall not be given effect to. On petitioner's complaint, vide letter dated 1 May 2003, the Commission rendered the following advice to the NCERT:

"Taking all the facts into consideration, the Commission is of the view that the petitioner has been harassed with a view to get her terminated from the job by providing incorrect information to the concerned authorities. If at all the management wants to stick to their decision of transferring her from Delhi she may be posted to Mysore so that there will be no threat to her life and she will have the satisfaction of working at place nearer to Bangalore where her husband is said to be working. Accordingly, the NCERT management is advised to make necessary arrangements in the Regional Office at Mysore so that she can continue her job over there without any fear".

3. Pursuant to the Tribunal's order, NCERT passed a speaking order on 4 June 2003, rejecting petitioner's representation. Dealing with her allegation that she had been humiliated and insulted by Prof. K.K. Vashishtha, Head of the Department, it was observed that on examination of the complaint, after taking her evidence, the special fact finding committee, constituted by the NCERT, which included a Joint Commissioner as representative of the S.C. Community, found the complaint to be devoid of substance. The Committee noted that "all her complaints of casteist bias and practice of untouchability against Prof. Vashishtha emanated from a feeling of injured pride at being assessed "poor" in performance, rather than there being any substance in it". As regards the transfer, it was stated that the decision to transfer her was also taken on the recommendation of the DPC, which had considered the special Committee's findings, with a view to offering better opportunities and a more conducive work environment for her career development with reference to her specialisation in early childhood education. The order also goes on to record that under normal circumstances, on the basis of the findings of the special Committee, a probationer's non-performance would have been reason enough to terminate her services but a lenient view was being taken to give her one more opportunity of proving herself. Her request for posting at Mysore was rejected on the ground that it will not only be unfavorable to her career development, it would also not be consistent with the NCERT's policy, which is aimed at putting a person at a place, where his or her known skills could be best utilised to the best advantage of the Council as a whole. Insofar as her complaint to the Commission was concerned, the order records that it was strange that at no time she made any

representation against her transfer to the Council and had directly represented to the Commission, High Court and the Tribunal. The petitioner was directed to join her new place of posting within ten days of the receipt of the said order.

Aggrieved by the said order, the petitioner preferred a fresh original application to the Tribunal. Its dismissal has given rise to the present writ petition.

4. Although in the writ petition, the order of the Tribunal is challenged on various grounds but before us learned counsel for the petitioner has assailed the said order mainly on two grounds, namely, (i) that the NCERT as also the Tribunal has failed to take into consideration the recommendation of the Commission and by ignoring the said recommendation, the NCERT has demonstrated their biased mind and mala fides in somehow transferring the petitioner from New Delhi and (ii) that the Tribunal has committed a serious error in upholding the order of transfer by accepting an oral plea, namely, that there was no suitable vacancy at Mysore, which did not form the basis of the order dated 4 June 2003, rejecting prayer for transfer to the said place.

5. We are unable to persuade ourselves to agree with learned counsel for the petitioner.

Who should be transferred where, is a matter for the appropriate authority to decide. The power of transfer of a government employee falls exclusively within the domain of the Executive and unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, it should not be interfered with by the Courts. (See: Union of India and Others Vs. S.L. Abbas, . In the instant case, having regard to the report of the special Committee, appointed to look into petitioner's complaint against her Head of the Department, noticed in order dated 4 June 2003, we are unable to read any mala fides in the transfer order. As for the plea of violation of guidelines that husband and wife must be posted at the same place, these guidelines only say that as far as possible husband and wife, who are both employees, should be posted at the same station even if their employers be different, but these guidelines do not confer upon the government servant a legally enforceable right. While considering such a request, an employer is free to take into consideration the exigencies of administration, keeping in view the said guidelines. We may, however, hasten to add that if without sacrificing the administrative needs, an employee can be accommodated at the place of posting of the spouse, such a course should be adopted to minimise the hardships of both of them. Best results are possible only when the mind is free from domestic strains. As noted above, in the present case, petitioner's transfer was recommended by the DPC by taking into consideration various factors, noted above. We find that the guidelines, heavily relied upon by the petitioner, have not been violated. The next question that arises for consideration in the matter is whether the NCERT and the Tribunal have ignored the recommendation of the Commission and the order of transfer stands vitiated on that score ?

6. Having examined the matter in the light of the aforementioned advice of the Commission, we are of the view that answer to the question has to be in the negative. From a reading of Clauses (5) & (8) and in particular sub-clause (b) of Clause (5) of Article 338 of the Constitution, introduced by the Constitution (Sixty fifth Amendment) Act, 1990, it appears that though the Commission has the power to enquire into a specific complaint and make its report thereon but its reports are recommendatory in nature. We leave it at that because learned counsel for the petitioner has not seriously contended that the "advice" of the Commission was mandatory and binding on the authorities below. We find from the orders of the lower authorities that they were fully conscious of the advice of the Commission. Therefore, we do not agree with learned counsel for the petitioner that what was advised by the Commission has been ignored by the Tribunal or the NCERT.

Coming to the last point that the respondents could not support the order of transfer on the ground that a suitable post was not available for the petitioner at Mysore, because no such reason was indicated in order dated 4 June 2003, we feel that the submission is stated to be rejected. The question is whether in the absence of any suitable post at Mysore, the Tribunal could direct the respondents to post her there even if it had found some merit in the contention of the petitioner that as per the guidelines she deserved to be posted there. Answer to the question is obviously no.

7. For the foregoing reasons, no fault can be found with the impugned order, warranting our interference in judicial review.

8. The writ petition is misconceived and is dismissed accordingly.

However, before parting with the case, we are impelled to observe that since the stand of the respondents before the Tribunal was that the petitioner cannot be posted at Mysore because of non-availability of a vacancy there, the authorities concerned may consider the case of the petitioner for transfer from Bhubaneswar as and when a vacancy occurs at Mysore or nearby place, keeping in view the object behind the policy/guidelines for posting the husband and wife at one station.