

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: BANGALORE**

ORIGINAL APPLICATION NO.170/00715/2019

DATED THIS THE 03rd DAY OF MARCH, 2020

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

K.G.Nagaraja
S/o Late Gangaiah
Aged 52 years
Senior Section Engineer (S&T)
Store Revenue Maintenance
South Western Railway
Bangalore Cant.
Bangalore Division-560046.

....Applicant

(By Advocate Sri K.Shivakumar)

Vs.

1. Union of India
Rep. by General Manager
South Western Railway
Hubli-580020.

2. Senior Divisional Personnel Officer
South Western Railway
Bangalore-560023.

....Respondents

(By Advocate Sri N.Amaresh, Sr.PC for CG)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN)

The facts of the case are that the applicant who was initially appointed as Technician Grade II on 13.1.1994 in Signal & Telecommunication department was posted in Mysore Division where he earned his due promotions as per his turn and after being promoted as Senior Section Engineer in 2008, he was retained in Mysore Division. He was transferred from Mysore division to Bangalore division in 2013 on administrative grounds and posted to work at

Yelahanka. After working for about three months at Yelahanka, he was transferred to Bangarapet on 26.7.2013 on his request(Annexure-A1). On completion of four years tenure at Bangarapet, he was transferred to Kuppam vide order dtd.30.11.2017(Annexure-A2) but the said order was modified on 14.3.2018(Annexure-A3) by posting him to Store Revenue Maintenance office at Bangalore Cantonment. The applicant joined the transferred place at SRM office, Bangalore Cant., in March 2018 keeping his family at Bangarapet. The applicant submits that the Group C posts of Signal & Telecommunication department which were controlled by headquarters office all along were centralized and made as division controlled posts from 31.12.2018. He submits that though he had not completed the tenure at the present place of posting, he has been again transferred to Kunigal Station in Chikkabanawar-Hassan Section by order dtd.12.6.2019(Annexure-A5). As he was undergoing treatment for the enlargement of Thyroid in Railway Hospital, Bangalore for about 18 months and he underwent surgery for the Thyroectomy on 12.4.2019(Annexure-A4), the transfer to Kunigal is very much against his interest and will affect his medical treatment due to non availability of proper hospital for his present health condition. And he has been transferred within 15 months of joining the present station without any reason that too to an inconvenient station even though the vacancy is available at Kuppam, whereas some employees have been allowed to continue at the same place for years together which clearly shows that the transfer is ordered with prejudice of mind and with the ulterior motive of favouring someone to post at SRM office at Bangalore Cant. after he is relieved to Kunigal. The applicant is having health related issues and transferring him to a place where no medical facilities are available will deteriorate his health further and will

affect his family life and his further career progression. Even when there is no complaint against him and he has not completed the tenure at the present place of posting and if for any reason the respondents want to transfer him from the present place of working, he can be transferred to Kuppam where a vacancy exists and this will help him to be with his family and also to take medical care with the Railway Hospital, Bangalore. Therefore, the applicant filed the present OA seeking to quash the transfer order dtd.12.6.2019(Annexure-A5) issued by the 2nd respondent as illegal and unconstitutional and retain him in the present place of working till he completes his tenure or order the respondents to transfer him to Kuppam where the vacancy of SSE exists.

2. The respondents, on the other hand, have submitted in their reply statement that after receiving the transfer order, the applicant has not submitted any representation bringing out to the notice of the administration regarding his inability to carry out transfer order to Kunigal and directly approached the Tribunal and obtained stay against the operation of the transfer order without giving opportunity to the respondents. Hence, the OA is premature, not maintainable in the eyes of law and is liable to be dismissed without any further proceedings.
3. The respondents submit that the applicant as senior most Section Engineer Stores is supposed to be available always in the stores during office hours to issue materials to staff, receive material from stores purchase/trade etc., but he is neither available in stores most of time nor attends any phone calls in spite of providing official CUG SIM to him. On many occasions, he has failed to attend the officer's calls to receive important instructions which had created lot of inconvenience in field towards non supply of stores materials as and when

required for day to day maintenance of safety equipment. He does not adhere to instructions of his superiors. It is a regular habit that he will remain absent from work spot and whenever other staff available at store are contacted to find out his whereabouts, he would have already left the office early and would have reached his residence. He is also not in the habit of calling back officers or explaining the reason for leaving the work spot without informing any officers or his supervisors. The stores and material management i.e. procurement action/receipt and issue to field station is very important and essential management function. Inefficiency in material management will jeopardize the day to day maintenance of signalling assets at field and would lead to unsafe operation of train running. The applicant has continued to be indisciplined, ineffective and non-responsive during important and urgent occasion of material requirement. In one of such incident on 11.7.2019, there was a major failure at KGI station and for restoration of this failure, cable and other accessories were urgently required to be supplied to the spot. Due to this failure, there was major disruption to train traffic in SBC-MYA section of this day. DSTE gave the message to arrange for the materials at 15:00 hrs., but on enquiry it was understood that the applicant was not available and deserted the store at that time. As per the instructions of the Sr.DSTE/SBC, ADSTE/II moved to the stores and arranged for the requirement of essential materials. He neither informed his superior i.e. DSTE/SBC nor Sr.DSTE/SBC regarding his absence on 11.7.2019. Even after receipt of information regarding this failure, he did not turn up at store during such exigency. In light of the above facts, the administration has transferred him to Kunigal vide transfer order dtd.12.6.2019. But the applicant has refused to carry out his transfer order and also did not acknowledge the said transfer order/relieving order(Annexure-R1).

His contention that transfer to Kunigal is very much against his interest and will affect his medical treatment due to non availability of proper hospital for his present health condition is far from truth and misleading. The applicant underwent Thyroidectomy operation at Railway Hospital, Bengaluru and was declared fit for duty by the Doctor after his complete recovery and only after declared fit for duty, the applicant reported back to the duty. His allegations that he has been transferred within 15 months of joining the present station without any reason even though vacancy is available at Kuppam with the ulterior motive of favouring someone after his relieving to Kunigal is highly objectionable. Though his tenure was not completed at existing place of posting, the necessity arose to transfer him due to his non-performance of work in stores. He was transferred in the interest of Government/Public to improve efficiency in office working as the then incumbent of SSE/Sig/KGIL had tendered voluntary retirement with 3 month's notice, but not with any other intention. Transfer is an exigency of service. A government employee has no choice in the matter of posting. Transfers are to be done only in administrative exigencies and in public interest.

4. The respondents further submit that Kunigal is a developed place in Karnataka having good infrastructure. In case of emergencies, the applicant can always take treatment from a private hospital and the same can be claimed as reimbursement through Railway hospital as per extant rules of the Government. They submit that if an organisation has to run efficiently, sufficient flexibility is required to be given to the authority in the matter of transfer of its employees, otherwise the administrative machinery may collapse. Necessary adjustments and accommodation for keeping administrative machinery in smooth gear is

required at times. The Courts have been consistent in their observations that the transfer policies are only guidelines without statutory force. In certain situation, the policy may not be followed and therefore, certain flexibility is given to the appropriate authority, having regard to the exigency of administration. The respondents relied upon the decisions of the Hon'ble Apex Court in the case of *UOI vs. S.L.Abbas* and *State Bank of India vs. Anjan Sanyal & ors* in support of their contentions and submit that the OA is liable to be dismissed in limine.

5. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that since the transfer order has been stayed by this Tribunal, the applicant refused to receive the relieving order and for that refusal, he has been issued with a suspension order immediately i.e. on the very same date (11.7.2019). When the applicant was suspended for his refusal to accept the relieving letter, how the date 11.7.2019 could be treated as absent as has been stated in the reply that the applicant was absent on 11.7.2019 which needs clarification from the respondents. The respondents have to produce the substantial evidence for their statement that the transfer was ordered in the interest of Government/public. If the intention of the respondents is not to favour anyone then why Sri Srinivasan is allowed to continue even today in his place which is to be answered by the respondents. Though the transfer order is stayed by this Tribunal, the respondents went ahead of relieving him and on his refusal to receive it, he has been posted to work in the office of Sr.Divl.Signal & Telecommunication Engineer under threat and he has been forced to work in the divisional office as a Leave Reserve and being directed to move from one end to other to harass him and to humiliate him. The letters dtd.12.12.2019(Annexure-A6) and 27.12.2019(Annexure-A7) clearly establish the intention of the

respondents. To desist the applicant from filing contempt petition in disobedience of the interim order of this Tribunal, the respondents have issued a charge sheet dtd.22.11.2019(Annexure-A8) with vague charges which is challenged in other OA. When the Tribunal directed the respondents to file a short affidavit explaining as to whether Kunigal has appropriate medical facilities, the respondents have not filed any affidavit though about seven months passed which shows the scant regards to the orders of this Tribunal. Hence, the OA needs to be allowed.

6. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The issue is in a very small compass. The applicant was transferred from Bangalore Cantonment to Kunigal before completion of his tenure at Bangalore Cantonment. The applicant claims that Kunigal does not have proper medical facilities and there is another vacancy at Kuppam for which he can be considered since his family is stationed at Bangarapet which is closer to Kuppam. The respondents, on the other hand, would contend that the work output of the applicant is far from satisfactory and that he is indifferent, indisciplined, ineffective and non-responsive during important and urgent occasions of material requirements. They have also cited one incident where his subordinate had to be ordered to provide the necessary stores equipments since the applicant was not in station without any information. The applicant would contend that he was suspended on the same day and therefore, he could not have been present as alleged by the respondents. Regarding the health facilities, the respondents would contend that the place is a developed one in Karnataka having good infrastructure and in case of emergency, the applicant can always take treatment from a private hospital. They also state that he does not have any deteriorated health condition now and he

joined back to duty only after complete recovery and only after being declared fit for duty. From the above, it is clear that the applicant has not been responsible in discharging of his duties and this Court cannot sit in judgment over an administrative decision of transferring him to another place especially since the person in the said place has sought for voluntary retirement and the respondents had to fill up that vacancy. We cannot get into the nitty gritty of the administration in terms of the deployment of staff as and when required and in places where they are required. Therefore, we find no merit in the OA and the OA is dismissed. However, as stated by the applicant, the vacancy still exists at Kuppam and if deemed appropriate, the respondents may consider posting him there in view of his family circumstances and request. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

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Annexures referred by the applicant in OA.No.170/00715/2019

Annexure-A1: Office order dtd.26.7.2013

Annexure-A2: Office order dtd.30.11.2017

Annexure-A3: Office order dtd.14.3.2018

Annexure-A4: Medical book issued by Rly. Hospital

Annexure-A5: Office order dtd.12.6.2019

Annexures with reply statement:

Annexure-R1: DSTE/SBC Letter dtd.11.7.2019

Annexures with rejoinder:

Annexure-A6: Letter dtd.12.12.2019

Annexure-A7: Letter dtd.27.12.2019

Annexure-A8: Charge memorandum dtd.22.11.2019
