

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH: HYDERABAD

O.A. NO.

O.A. 477/87

T.A. NO.

DATE OF DECISION 15-9-89.

Mr.V.Satya Vara Prasad

Petitioner

Mr.G.V.Subba Rao

Advocate for the
Petitioner (s)

Versus

Sr.Divn.Personnel Officer, SCR
and others

Respondent

Mr.N.R.Devaraj, SC for Rlys.

Advocate for the
Respondent (s)

CGRAM

The Hon' ble Mr. D.Surya Rao, Member(J)

The Hon' ble ~~Mr.~~ Ms. Usha Savara, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not?
3. whether their Lordship wish to see the fair copy of the Judgment?
4. whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1,2,4, (To be submitted to Hon'ble Vice-Chairman where he is not on the Bench)

(DSR)

(US)

O.A.No.477 of 1987

(JUDGMENT OF THE TRIBUNAL DELIVERED BY
HON'BLE SHRI D.SURYA RAO, MEMBER (J)).

The applicant herein is questioning the order bearing Lr.No.PE 76/Mech/CE/W/Pt.II dated 8-6-84 issued by the General Manager, South Central Railway, Secunderabad treating his transfer as NTXR, IRCA, Waltair to S.C.Rly., Secunderabad Division, as a request transfer and thereby denying him the benefit of seniority, transfer T.A., etc. He also seeks to question a letter, GM(P) SC Letter No.(P)L 694/VI/Sangh dated 20-3-86 and CPO/SC Letter No.P(L)694/VI/Sangh/Review/V dated 19-6-1986.

2. The facts giving rise to this case, briefly, are as follows:

The applicant claims that he was selected by the Railway Service Commission, Madras for the posts of Apprentice Mechanics/Apprentice Trainee Examiners and allotted to the South Central Railway on 5-2-1977. The selection was only for appointment to Southern Railway/S.C.Railway/Integral Coach Factory. After the selection, he was allotted to S.C.Rly. and commenced training at Lalaguda Workshop^{Secunderabad} for two years, by an order dated 2-7-1977. On completion of the training he was posted as Trainee Examiner (TXR) ^{at Waltair} in the scale

P3
27/9/87

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of Rs.425-700 by an order No.CP/535/C&W/3 dated 11/17-7-79. This transfer was to the Indian Railway Conference Association (IRCA). The applicant states that such a posting to IRCA was illegal and he ought to have been posted only in the S.C.Railway. He contends that the IRCA is an autonomous body^{and} not under the control of the Indian Railway or the Railway Board, and also that his application was never made for appointment under IRCA. He contends that his transfer or posting to IRCA was without his consent and was, therefore, without jurisdiction. No option was ever called for, nor ^{did} he gave his consent to work in IRCA. Having been allotted to SC Rly. and commenced training there, he has ^clien on the S.C.Rly. Even if his transfer to IRCA was valid ~~as~~ such a transfer was only ~~a~~ temporary. He further states that ~~the applicant~~ ^{he} made representation in 1983 and 1984 questioning his transfer to IRCA and seeking re-transfer back to his parent unit viz. SC Rly. He was informed ~~then~~ that there were five vacancies of TXR in the Neutral Control Organisation and that he could be brought to SC Rly. only if employees are willing to go to this organisation on deputation. The applicant contends that he subsequently came to know about the illegal transfer ^{to IRCA} and it ~~gave rise~~ ^{consequently he submitted} to his representations in 1983 to the General Manager, S.C.Rly., Secunderabad and to the Chairman, Railway Board, New Delhi

19

P4
22/9/8

for re-transfer to SC Rly. He ^{claimed therein} ~~claims~~ that he was entitled for re-transfer back to S.C. Railway. The General Manager, SC Rly. however, rejected his request for re-transfer to SCR with seniority and agreed to his transfer only on condition that he accepts bottom seniority. The applicant was forced to accept the transfer as a request transfer. Consequently, he was transferred to SC Rly. by the impugned order dated 8-6-84 and pursuant to this, he reported in SC Rly. on 23-9-84. Immediately after joining in SC Rly. he made a representation on 12-10-84 to which no reply was given. Then he made a representation to the Railway Employees Sangh. The matter was taken up by the Sangh and formed one of the items of P.N.M. meeting held on 20-3-86. ^{Afw} At this meeting, the General Manager addressed a letter to the General Secretary of the Sangh stating that there was an entry available in the service register of the applicant that he had expressed his willingness to work in IRCA in the year 1977. The applicant denies having ever expressed such willingness. He states that this entry in the service register is a fictitious entry. The applicant therefore contends that his original posting to IRCA was illegal and arbitrary and that consequent ^{on} to his transfer back to SC Rly. ^{in 1984} he is entitled to original seniority in SC Rly. from the date of his initial appointment viz. 25-6-1977.

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3. On behalf of the Respondents, a counter has been filed stating that the application is barred by limitation as the applicant seeks to quash the letter dated 8-6-84 and this should have been challenged then ^(This contention was negatived at the time of admission) itself. It is further contended that the applicant seeks to challenge his appointment to the IRCA in 1977 and such a relief is barred under the provisions of the Administrative Tribunals Act, 1985. In ^{facts narrated in the application} regard to the merits, it is admitted that the applicant was selected by the Railway Service Commission and deputed for training to Lalaguda Workshop. It is ^{however} the applicant was stated that while under training, a letter was received from the 2nd Respondent by the 1st Respondent to make available four apprentice TXRs for earmarking to IRCA, viz. the 4th Respondent-organisation. After obtaining the willingness of the trainees, including the applicant, the Headquarters Office was informed by letter dated 6-9-77 about their having given willingness. Consequently, posting orders were issued by the 1st Respondent on 11/17-79 posting three candidates to the IRCA. The applicant was one among them. It is stated that once a candidate gives his willingness to work as Neutral Train Examiner (NTXR) at various points which are under the control of the IRCA, he becomes an employee under the administrative control of the IRCA and not under the control of the Railways. Since the posting of the

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applicant to IRCA was based on the willingness given by the applicant, it is a legal and valid order.

It is stated that subsequently when vacancies arose in the Neutral Control Organisations like IRCA ^{no} and ~~an~~ employee was willing to go on transfer, a request was made for the employees to opt on deputation.

Calling upon the employees to go on deputation does not imply that all postings to IRCA are on deputation.

It is contended that ~~since~~ the applicant was under the control of the IRCA ~~and~~ when he asked for posting to SC Railway while retaining seniority, ^{hence} the same was rightly rejected by the General Manager vide his letter No.P/136/Mech/CMW/M.II dated 31-3-84 and 7-4-84. Subsequently, the applicant accepted to come to SC Railway on request transfer and agreed to take bottom seniority. Consequently, by the order dated 8-6-84 sanction was accorded to his transfer subject to the terms and conditions contained in letter dated 8-6-84. This transfer cannot be described as illegal and violative of Articles 14 and 16 of the Constitution. It is stated that the applicant, after joining the S.C.Rly., ^{again} started agitating his claim that he should not have been transferred to IRCA in 1977. ~~and hence~~ His repeated representations, ~~if any~~ after he joined the SC Rly. were not replied as the same ^{please had not} ~~has not~~ been earlier agreed to.

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P288
12/1/89

While admitting that the matter was taken up by the Sangh on 19-3-86, it is contended in the counter that the matter was closed as the Sangh's Secretary was satisfied that the action taken by the Railways that the initial posting of the applicant to IRCA in 1977 was on the basis of his own willingness. It is, therefore, contended that the applicant has not made out any case for allowing of the Application.

4. Heard Shri G.V.Subba Rao, the learned counsel for the applicant and Shri N.R.Devaraj, learned Standing Counsel for the Railway, for the Department.

5. The short point for consideration is whether the applicant had given his willingness in the year 1977 to be posted as NTXR in IRCA. The Respondents' case is that the applicant has given his consent or willingness^{ng} for such^a transfer and it was in consequence thereof^{that} posting was issued to him by the order dated 11/17-7-79, on completion of training, posting him to IRCA Waltair. The Respondents, however, are unable to produce such^{the original} record, as it is contended that after a long lapse of time namely 10 years, it is not possible to trace such^a record. The learned standing counsel for the Department, however, contends that the conduct of the applicant, namely, his acceptance of a posting in 1977 without demur clearly indicates that he was a willing party to this transfer. He has also produced a copy

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of the letter No.SC/P/129/NIXR dated 6-9-77 issued from the Office of the Divisional Superintendent (Personnel), Secunderabad to the Chief Personnel Officer stating that the applicant and three others were willing to work in IRCA. It is contended by Shri Devaraj that this letter cannot be treated as concocted as it is issued long ago in 1977 long prior to the controversy in question had arisen. There is no doubt that by his own conduct and acquiescence, the applicant has agreed to his posting to IRCA. It ^{was} ~~is~~ for the first time in 1983, that is, 4 years after his posting that he made a representation namely on 8-2-83 stating that he ought not to have been posted to IRCA. No doubt, he has mentioned here that he has not given his consent for his posting. This was further followed by further representation on 16-2-83 to the General Manager, once again claiming that he should not have been transferred to IRCA. However, as already stated, these contentions were raised for the first time in 1983 long after his transfer and hence his conduct ~~itself~~ and his acquiescence with the original order of transfer, would go to show that his transfer was on his own request. ^{This} ~~It~~ is confirmed or corroborated by letter dated 6-9-77 referred to supra. The subsequent conduct of the applicant also confirmed ^{to IRCA} ~~that he had asked for transfer~~ ^{agreed for the} ~~to S.E.Rly.~~ He was

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informed by letter No.P.136/Mech/C&W/M.II dated 31-3-84/
7-4-84 by the General Manager, SC Rly. through the
General Secretary, IRCA that his request for transfer
to South Central Railway with seniority cannot be
agreed to and his case can only be considered as a
request transfer provided he accepts bottom seniority
and such other liabilities. The applicant replied
on 12-5-84 ~~while~~ noting the contents of this letter
and he accordingly gave his consent for bottom seniority
below all permanent and temporary train examiners.

If the applicant was aggrieved on the ground that he
had not given his consent and he ~~need not be~~ ^{that the order directing him to}
~~coerced taking into~~ ^{take} bottom seniority, ^{a illegal} he ought to
have questioned this order then itself. His acceptance
^{complied with his earlier conduct in going to IRCA without demur,}
of the same clearly shows that he was a willing party
to his posting to IRCA and that subsequently, due to
an after thought, he came ^{forward} ~~forth~~ with ^a the contention
that his posting to IRCA has been ordered without
obtaining his consent. The fact that in 1986 at the
P.N.M. meeting the railways have reiterated their
contention that his transfer in 1977 to IRCA was on
the basis of his own willingness, further establishes
the consistency of the stand of the railways.
We are, therefore, of the opinion that the contention
of the applicant that his transfer to IRCA in the

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⑥ one copy to Mr. G. V. Subbarao, Advocate,
✓ 1-1-230/33, "Jyothi Bhawan", Chikkadpally,
Hyderabad - 500020.

⑦ one copy to Mr. N. R. Dhanraj, SC for Pky, CAT, Hyderabad.

⑧ one spare copy.

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year 1977 was without obtaining his willingness or consent is wholly untenable and without substance.

If that be the case, he cannot assail the order dated 8-6-84 treating his transfer to S.C.Railways from IRCA as a request transfer. He cannot consequently claim seniority from the date of his initial appointment i.e. 25-6-77 in S.C.Railway. The Application is accordingly dismissed and in the circumstances, there will be no order as to costs.

D. Surya Rao
(D.SURYA RAO)
member(J)

Ms. Usha Savara
(Ms.USHA SAVARA)
Member(A)

Dated: 15th September 1989.

mhb/

S. Venkatesh
DEPUTY REGISTRAR (J).
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✓
TO ① The General Manager, South Central Railway, Rail Milayam, Secunderabad.

② ✓ The Senior Divisional Personnel Officer,
Secunderabad (B.G) Division,
South Central Railway, Secunderabad.

③ ✓ The Chief Personnel Officer,
South Central Railway, Rail Milayam,
Secunderabad.

④ ✓ The General Secretary, Indian Railway Conference
Association (I.R.C.A), New Delhi.

⑤ ✓ The Sr. Divisional Mechanical Engineer (CEW), B.G. Division,
Secunderabad.