

(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

O.A.NO. 176 of 1990

Date of Order: 11/4/1990

A.Arogya Dass

..Applicant

Versus

The Divisional Operating Superintendent
S.C.Railways, Guntakal
and 2 others

..Respondents

For Applicant

Mr.Y.Narasimha Reddy, Advocate

For Respondents:

Mr.N.R.Devaraj, SC for Railways

C O R A M:

HON'BLE SHRI B.N.JAYASIMHA: VICE CHAIRMAN

HON'BLE SHRI J.N.MURTHY: MEMBER (JUDICIAL)

(Judgment delivered by Hon'ble Shri B.N.Jayasimha, VC)

1. The applicant herein is an Assistant Station Master, South Central Railway, Cuddapah. He has filed this application against the order passed by the Divisional Operating Superintendent, S.C.Railways, Guntakal in SR.DOS/GL-TC.7/7, dated 7-12.1989, transferring him from Cuddapah to Tuggali beyond Guntakal.

contd..2

(31)

...2..

2. The applicant states that he was promoted as an Assistant Station Master and transferred to Urampadu in the year 1973. Thereafter, he was transferred more than 6 times to various places and finally to Cuddapah in the year 1984. One Sri Mohan Krishna, another Assistant Station Master came to Cuddapah in the year 1983 and some others working since 1980 are not disturbed. Even though he came to Cuddapah in the year 1984, he has been transferred to Tuggali. The applicant also states that his wife is working as Instructuress in Training-cum-Production Centre in the Social Welfare Department at Cuddapah, that his three minor children are studying in 6th, 5th and 4th classes in New Model English Medium High School at Cuddapah and that he has also to look after his aged parents who are bed ridden and suffering from prolonged illness. He contends that there are no English medium schools at Tugalli nor are there any medical facilities at that place. According to the Railway Establishment Rules, the transfer of SC and ST employees should be confined to their native District or places where the administration can provide quarters. There are no staff quarters at Tuggali.

3. The applicant further states that he is a trade union leader at Cuddapah Centre and according to the Railway Establishment Rules, a prior notice must be given to the union before transferring a trade union leader. There was no prior notice of the transfer and hence the order is bad.

4. He also states that at Tuggali, he will have to work under his junior one Sri A.N.Kuttappan whose

contd..3

35

...3...

seniority is 295 whereas his seniority is 265 in the promotion channel. He, therefore, contends that the transfer is victimisation and has been ordered by way of punishment. The applicant also contends that the order of transfer has to be ratified by respondent no.2 i.e. the Senior Divisional Personnel Officer, Guntakal and so long it is not ratified, it is not a transfer at all. No one has been posted in the applicant's place and a fresh transfer order after ratification by respondent no.2 has not been issued. Unless it is done he cannot join at new station. In the meantime his name has been deleted by respondent no.1 and his salary has been withheld from the Month of December, 1989. The trade Union represented for his retention before the respondents and it has been kept in abeyance. The applicant's representation to respondent no.3 viz., the Divisional Railway Manager, South Central Railway, Guntakal, has not been disposed of. Hence, the applicant has filed this application.

5. We ~~have~~ heard this application on 1-3-1990 and ordered notice before admission and posted for admission on 7-3-1990. On 7-3-1990, the learned counsel for the applicant reiterated the points that have been made in the application. Shri Devaraj, learned Standing Counsel for the Railways states on the basis of the instructions he has received from the respondents that SS/Cuddapah had complained to DRM/GTL that on 29-9-1989 when the Governor of AP was to board Rayalaseema Express train at Cuddapah, notwithstanding the prior instructions given to the applicant who was on duty to lower the signals immediately when SS/Cuddapah shows green signal, the applicant did not do so. He was found among the

contd..4

36

mob deserting his duties and the SS had to depute some other Railway Official to call him to attend to duties. Thus, the train was detained at Cuddapah for extra seven minutes and the Governor had to remind the Station Superintendent twice to start the train without further delay. The applicant on an earlier occasions had detained DRM special intentionally at Cuddapah and caused unnecessary inconvenience to the Administration. Hence, the DOS/I/GTL who is the Competent Authority decided that the applicant is not fit to be retained in a station where important passengers and goods trains are passing. This station is on the main Bombay-Madras line and any dereliction of duty will cause considerable dislocation in the movement of passenger and goods trains in the whole sector. Public interest will greatly suffer. Disciplinary action has been initiated against the applicant and in public interest he has been transferred to Tuggali, which is on a side line. As the order of transfer is on administrative expediency the grounds urged by the learned counsel for the applicant like posting an SC in home district, consultation with Union etc., do not arise. However, the Sangh Secretary was informed by office letter dt.19.12.89 about the transfer of the applicant and after receipt of the representation made by the General Secretary in his letter dt.25.12.89 it was felt necessary not to cancel the transfer order. After hearing this case, we had posted the case for orders. The learned counsel for the applicant on the next day requested that he had some further submissions to make. Accordingly the matter was posted on 12.3.1990.

7. On 12.3.1990, the learned counsel for the applicant submitted written arguments of the applicant. He states that the applicant was transferred to a remote station by means of a telephonic message without mentioning any reasons. Even though it is stated that the transfer order would follow

42
bvi

(37)

till today no transfer order has been received. He again reiterates that there is no vacancy of ASM or SM at Tuggali. No details as to whom the applicant has to relieve has been mentioned in the impugned order dated 7.12.1989. He also states that in the long service of 20 years, no adverse remarks are passed against the applicant. The applicant was on duty as ASM on the day when the Governor of Andhra Pradesh boarded 30 Rayalaseema Express at Cuddapah. One M. Pullanne, Divisional Safety Officer, Railways, Guntakal was deputed to monitor the movements of the Governor's boarding the said train. When the Governor came to the Station 5 minutes after the arrival of the said train at Cuddapah Station, she was surrounded by the politicians and it took 10 minutes for her to take leave of them. The Monitoring Officer advised the applicant to give the signal after the Governor boarded the train. The applicant, therefore, was not responsible for 10 minutes delay. He also states that the applicant never deserted his duties and it is only a vague allegation made against him. The transfer in the middle of the Academic year is unwarranted and arbitrary. At the most the applicant being a SC, his transfer ought to have been to ^a ~~the nearest~~ station to ^{nearest to} ~~the~~ Cuddapah as per Railway Establishment Rules and Labour Laws. Even according to the statement of the learned Standing Counsel for Railways there was no prior notice to the Union.

8. We've given careful consideration to these contentions. It is well settled that transfer is an incident of service. The administration is the best judge of the exigencies of service and the interest of administration. Unless it is restricted by rules or instructions, the jurisdiction of the authority competent to transfer is undisputed. Courts would ordinarily be reluctant to

BVI

50

interfere in the orders of transfer, because it is the Government who has to run the administrative machinery. It is only where the power of transfer is exercised for collateral purposes or with oblique motives, it becomes colourable exercise of power and is malafide. The burden of establishing a mala fide transfer like any allegation of mala fide is heavy on the person who alleges malafide. A variety of factors may weigh with the administrative authority while ordering transfer viz., reputation, the period for which he has been working in a particular place, where disciplinary action is initiated, instead of placing under suspension and such other factors which could be said to come under the general term public interest.

9. In this case, it is the case of the respondents that transfer has been made due to administrative exigencies. Disciplinary action has been initiated against the applicant for his alleged dereliction of duties. In the disciplinary enquiry the applicant will have the opportunity to defend himself and prove that he is not guilty of the charges framed against him. Transfer in such circumstances cannot be termed malafide ~~or~~ nor can it be said not to be in public interest. The various grounds urged by the applicant like SCs to be posted in home district would not be relevant in the facts of this case.

10. The Hon'ble Supreme Court in Gujarat Electricity Board case (AIR 1989 SC 1433) observed as follows:

"Transfer of a Govt. servant appointed to a particular cadre of transferable posts from one place to the other is an incident of service. No Govt. servant or employee of public undertaking has legal right for being posted at any

(Contd...)

39

particular place. Transfer from one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is necessary in public interest and efficiency in the public administration. Whenever, a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other".

The applicant was transferred on 7.12.1989 and he was relieved on 8.12.89. He filed this application on 28.2.1990. The applicant has thus not carried out the order and there is no justification for avoiding the transfer order.

11. In Kamalesh Trivedis case, a full bench of this Tribunal (1988) 7 ATC 253) held

"It may be pointed out that no decision has been brought to our notice which declares that transfer constitutes a penalty. None of the Service Rules governing disciplinary proceedings have enumerated transfer as one of the penalties that may be imposed. All that these decisions have observed is that the transfer may have been ordered by way of punishment. Since transfer is not one of the enumerated penalties, the procedure laid down for holding a disciplinary proceeding is not directly attracted. But complains against a public servant as to his conduct efficiency, integrity and suitability for the post he is holding may be made to the competent authority and in the interests of good and responsive administration, appropriate action has to be taken expeditiously. The competent authority may, or may not find any truth in that complaint but having regard to the administrative exigency may be of the view that a more suitable or a more efficient person should be posted, and for making place for such a person effect a transfer. May be

for

(Contd.....)

202

(10)

having regard to the nature of the complaints received, the competent authority may think that in the interest of employee himself, transfer should be ordered. In another case having regard to the position an employee holds and the influence he commands at the place of his posting a proper enquiry into the complaints itself may necessitate a transfer. Both pending investigation and an enquiry into the charges, the disciplinary authority is empowered to suspend an employee. But it is good administration not to resort to suspension of employees merely because complaints are received and must be investigated. Whether a person should be suspended or not is a decision which has to be taken on the facts and circumstances of the particular case by the competent authority, it may not be necessary to suspend the employee if the desired result of facilitating the enquiry could be achieved by transferring the employee concerned from that place or post. Suspension, pending enquiry often results in loss of a part of emoluments and causes great hardship to the employee, yet it was never held to be a penalty. Suspension from service, is viewed by the public servant himself as a stigma, but yet when the courts have held that to be not a penalty, much less could an order of transfer which does not result in loss of emoluments or attach a stigma and which is made without any finding on the merits of the complaint constitute a penalty or be deemed to be by way of penalty. The competent authority has undoubted power to suspend an employee. If the competent authority instead of ordering suspension orders transfer, it cannot be said to be by way of penalty. Pendency of a disciplinary proceeding or receipt of a complaint may itself be, therefore, a valid ground for transfer."

12. It would thus be seen that it is open to the authority concerned to transfer an employee when his work is unsatisfactory, apart from initiating disciplinary proceedings. Sri Deva Raj states that the respondents are proceeding with disciplinary enquiry and are also of the view that the applicant cannot be entrusted work in a station which is in a heavy traffic section. In these circumstances and on a consideration of all the facts of the case, we find that the applicant has not made^{out} any case for interference.

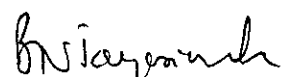
for


(Contd.....)

82

13. There now remains one aspect that needs to be considered. The applicant has been transferred in the middle of the academic year and it has been pointed out by the learned counsel for the applicant that he cannot shift his family immediately. Having regard to this plea, we direct the respondents to allow the applicant to retain the Railway Quarters at Cuddapah till the close of the academic year.

In the result the application is dismissed but with no orders as to costs.


(B.N. JAYASIMHA)
HON'BLE VICE CHAIRMAN


(J. NARASIMHA MURTHY)
HON'BLE MEMBER (JUDICIAL)

Date: 11th April
March, 1990


DEPUTY REGISTRAR (ADMN).

Mvs.

To

1. The Divisional Operating Superintendent,
S.C. Railway, Guntakal.
2. The Senior Divisional Personal Officer,
S.C. Railways, Guntakal.
3. The Divisional Railway Managermx,
S.C. Railways, Guntakal.
4. One Copy to Mr. Y. Narasimha Reddy, Advocate
H.No. 3-6-779/4, Himayatnagar,
Hyderabad-500029.
5. One Copy to Mr. N. R. Devaraj, SC for Rlys. *e.A.T.Hydr*
6. One Spare Copy.

855
CHECKED BY

TYPED BY: KJ.

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBU-
NAL:HYDERABAD BENCH:HYD.

HON'BLE MR.B.N.JAYASIMHA: V.C.

~~HON'BLE MR.D.SURYA RAO:MEMBER:(JUDGE)~~

A N D

HON'BLE MR.J.NARASIMHA MURTHY(M)(J)

~~A N D~~

~~HON'BLE MR.R.BALASUBRAMANIAN:(M)(A)~~

DATED: 11-4-90

ORDER/JUDGMENT:

~~M.A./R.A./C.A./No.~~ in

~~T.A.No.~~

~~W.P.No.~~

~~O.A.No.~~ 176/90.

~~Admitted and Interim directions
issued.~~

~~Allowed.~~

~~Dismissed for default.~~

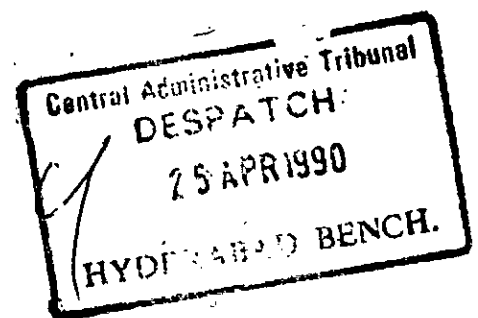
~~Dismissed.~~

~~Disposed of with direction.~~

~~M.A. ordered.~~

~~No order as to costs.~~

~~Sent to Xerox ad:~~



2/194