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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

O.A.NO. 325 of 1990

Date of Order: 26/4/90

D.Kunkateshwar Rao

..Applicant

Versus

The Senior Divisional Mechanical  
Engineer, South Eastern Railway,  
Waltair and another

..Respondents

For Applicant:

Mr.K.Sudhakar Reddy,  
Advocate

For Respondents:

Mr.N.R.Devaraj,  
SC for Railways

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C O R A M:

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

HON'BLE SHRI D.SURYA RAO: MEMBER(JUDICIAL)

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(Judgment delivered by Hon'ble Shri D.Surya Rao, Member (J)

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1. The Applicant herein is a Fitter in the Carriage Foreman's Office, South Eastern Railway, Waltair. He has filed this application claiming salary, leave, bonus, DA Allowance, pass and PTO privileges. It is his case that he was placed under suspension on 27-2-1985, that a Criminal Case was instituted against him alleging theft, that during the pendency of prosecution proceedings the suspension was revoked on 2-7-1985 and that after revocation of the suspension order the applicant was transferred

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from Waltair to Dacheli in Orissa State through the office order no.12/11A/C&W/SS-I/443/85/61, dated 5-7-1985. The applicant thereupon submitted a representation to the concerned authorities to cancel his transfer orders alleging that it amounts to a punishment. The respondents, however, did not however comply with his request. He states that he was acquitted in the criminal case in CC No.81 of 1985 dated 24-3-1988, by the Railway Magistrate, Waltair. Thereafter he submitted a representation to retain him at Waltair and to issue posting orders. The respondents passed orders on 10-5-1989 retaining the applicant at Visakhapatnam. It is alleged that the respondent-authorities issued the transfer order in haste as a measure of punishment and that during the pendency of the criminal case he ought not to have transferred. His representation for revoking the transfer order was not disposed of. <sup>was</sup> He, therefore forced to suffer ~~loss of~~ pay from 27-1-1986 to 10-5-1989 without any fault on his part. Hence, he filed this application.

2. The matter has been come up for admission and we have heard the learned counsel for the applicant Shri K. Sudhakar Reddy and Shri N.R. Devaraj, Standing counsel for Railways who took notice on behalf of the Respondents.

3. It is clear that the applicant was transferred as long back as 5-7-1985 from Waltair to Dacheli in Orissa. He contends that he had made several representations

To

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- 1) The Senior Divisional Mechanical Engineer, South Eastern Railway, Waltair.
- 2) The Divisional Personnel Officer, O/o the Divisional Railway Manager, South Eastern Railway, Waltair.
- 3). One copy to Mr.K.Sudhakar Reddy, Advocate, H.No.2-2-1132/5, New Nallakunta, Hyderabad.
- 4). One copy to Mr.N.R.Devaraj, SC Pdr Rlys, CAT, Hyderabad.
- 5). One spare copy.

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for revocation of the said transfer but no action was taken thereupon. If the applicant was aggrieved by the transfer, he should have questioned the same immediately and not kept quiet and ~~not reported~~ <sup>abstained from A</sup> for duty. Mere making representations and not reporting for duty will not give him a right to treat the entire period of absence from 27-1-1986 to 10-5-1989 as duty or give <sup>him a</sup> cause of action to claim salary and all consequential benefits as though he was on duty. Even on merits, the transfer order cannot be ~~and now A~~ punitive. The applicant was suspended following a criminal case against him and later on the same was revoked. Instead of keeping him under a prolonged suspension, he was transferred to some other place. In Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another (1988) 7 ATC 253, it has been held that the Government has a right to transfer an employee when the disciplinary proceedings are initiated or a criminal case is pending against him instead of keeping him under/long suspension. The contention of the applicant that the transfer is punitive and is illegal is not valid. We, therefore, find no merit in the claim of the applicant for arrears of salary, etc. The application is accordingly dismissed. No costs. (Dictated in open Court)

(B.N.JAYASIMHA)  
VICE CHAIRMAN

*Dr. Surya Rao*  
(D. SURYA RAO)  
MEMBER (JUDL.)

DT.26th April, 1990

SOH\*

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10/15/90  
FBI - Seattle  
Deputy Assistant Director

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CHECKED BY

TYPED BY: *115*

COMPARED BY :

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH:HYD.

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

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

A N.D

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

A N.D

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

DATED: *26.4.90*

ORDER/JUDGMENT:

M.A./R.A./C.A./No. — in —

T.A.No. — W.P.No. —

D.A.No. *3251090*

Admitted and Interim directions issued.

Allowed.

Dismissed for default.

Dismissed.

Disposed of with direction.

M.A. ordered.

No order as to costs.

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