

(82)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 249/91

Date of Decision : 31st Dec/91

TXNNo.

V. Kameswara Rao

Petitioner.

K.G. Kannabiran & others

Advocate for the
petitioner (s)

Versus

The General Manager, South Central Railways, Respondent(s)
Rail Nilayam, Secunderabad and 3 others

N.V. Ramana

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. C.J. ROY, Member (Judl)

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships 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)

HCJR
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::
AT HYDERABAD.

O.A.No.249/91.

Date of Judgment: 31/Dec/91.

BETWEEN:

V. Kameswara Rao

.. .. Applicant

Vs.

1. The General Manager,
South Central Railways,
Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer,
Head Quarters Office,
Personnel Branch,
South Central Railways,
Rail Nilayam, Secunderabad.
3. The Dy.Chief Mechanical Engineer,
Wagon Workshop, South Central Railway,
Guntupally -521 241.
4. Workshop Personnel Officer,
Wagon Workshop, S.C.Railway,
Guntupally - 521 241, Krishna District

.. .. Respondents

Counsel for the Applicant: Sri S.Bharat Kumar, Proxy counsel
for Sri K.G.Kannabiran.

Counsel for the Respondents:Sri N.V.Ramana

CORAM:

Hon'ble Shri C.J. ROY, Member (J)

(Judgment of the Single Bench delivered by
the Hon'ble Shri C.J.Roy, Member (J)).

This application is filed under section 19 of the
Administrative Tribunals Act, 1985 questioning the impugned
order of transfer bearing No.P/EST/535 Vol.IV dt. 1-1-91 .
passed by the Respondent No.2 transferring the applicant
to Hubli from Guntupally and all subsequent orders issued
by the respondents as illegal and void by calling for
records concerned and pass any other orders.

mm

.. 2.

: 2 :

2. The applicant was appointed as a Clerk on 11-8-77 and his services subsequently were regularised. He was given promotions to the post of Senior Clerk and Head Clerk and now he is working as Head Clerk. He also claims that he was performing duties to the satisfaction of his superiors and there were no remarks against him.
3. On 25-2-87, he alleges, the 4th respondent issued a Memorandum to the applicant (page-1 in material papers) alleging that the applicant was actively participating/ associating in political activities which were prejudicial to the administration and which is prohibited under Rule-5 of the Railway Service (Conduct) Rules, 1966 read with Department of Personnel and Administrative Reforms (Ministry of Home Affairs) Office Memorandum No.3(10)/S 66-ESH(B) dated 30-11-1966, 15014/3(S)/80-Estt dated 28-10-1980, and 21-1-1981, No.150/406(S)/80/Estt(B) dated 31-12-1980 and 20-1-1982 circulated to Railways under Board's letter No. E(D&A) 81 GS.I.11 dated 11-9-1981, E(D&A) 81 GS 1-12 dated 19-8-1981 and 6-2-1982 and advised ~~the~~ him to refrain from associating himself any further with said objectionable activities.
4. The applicant submitted ~~an~~ his explanation on 6-3-1987 (page-2 in material papers) to the Memorandum cited supra. He denied all allegations and claimed that his explanation had not received any response from the respondents and thought the matter was dropped.
5. He further alleges, three years afterwards on 6-12-1990 by letter No.GR./P.Con.182/1 ~~dated 6-12-1990~~ (page-4 of material papers) Respondent No.3 alleged that the

... 3.

M

Final
Copy

applicant was a member of UCC RI ML and had attended certain political meetings, which letter being in continuation of the earlier Memorandum by Respondent No.4 stating that the activities of the applicant were prejudicial to the administration. Respondent No.3 also asked the applicant to show cause immediately that why action should not be taken against him. The applicant submitted a letter dated 12-12-1990 clarifying that he was not a member of the said UCCRI (ML) nor associated with any political party but a member of Railway Trade Union and that he did nothing which would prejudicial to the better administration of the organisation. He states that his letter be read as a part and parcel of *This Original application*.

6. On 1-1-1991, he was transferred by Respondent No.2 by the impugned order cited supra. Respondent No.3 also directed ~~to relieve him~~ the concerned officials to relieve him immediately. Accordingly by office order bearing No.GR-P.535/3/Vol.VI dated 4-1-1991, the applicant was relieved on 4-1-1991 (Afternoon) (page-6 of material papers) and directed the applicant to join at the Personnel Branch, Hubli Division, without availing joining time. The applicant claims this order was malafide and illegal. This order of transfer, relieving orders are malafide and illegal though the transfer order states Administrative Grounds. It was not, according to him, on "Administrative Grounds", that the order of transfer is a measure of punishment on the alleged participation and association of the applicant with the political parties and political activities. The applicant reported to duty at Personnel Department,

: 4 :

Hubli. The Senior Divisional Personnel Officer, Hubli by his letter bearing No.H/P.676/1/1/vol.2 dt. 7-1-91 (page-7 in material papers) transferred the applicant to the Assistant Engineer Office, Pune. As an obedient employee, the applicant reported for duty at Assistant Engineer's office, Pune on 8-1-1991 and then submitted a representation to Respondent No.2 requesting him to transfer ^{him} back to Wagon Workshop, Guntupally, Krishna District, A.P. where he was originally working as Headclerk. He further states that the transfer order is violative of Article 14, 16, 19 and 21 of the Constitution of India, besides his wife is suffering from Diabeties and his children's studies are in the middle of the academic year, and his transfer caused him serious troubles and hardship. He alleges that the transfer is not on administrative measure, and it is a vindictive transfer by way of punishment without giving any opportunity to defend the charges alleged against him. Hence this original Application.

7. The Reply Affidavit was filed on behalf of the Respondents with verification on 28-8-1991. But the applicant received the copy of the Reply on 24-12-1991 when the case was posted and he was granted time till 27-12-1991 for arguments. The case was heard on 27-12-1991. The respondents also filed Indian Railway Establishment Code, Volume-I drawing my attention to "Clause-226 - Transfers" along with the personal file of the applicant. The respondents also countered the allegations made in the application ^{they state that} ^{that} he was appointed as Junior Clerk in the scale of Rs.260-400(RS) on 11-8-1977 and was posted at Sr.DPO's Office, Vijayawada, on 19-11-1980 he was transferred

: 4 :

Hubli. The Senior Divisional Personnel Officer, Hubli by his letter bearing No.H/P.676/1/1/vol.2 dt. 7-1-91 (page-7 in material papers) transferred the applicant to the Assistant Engineer Office, Pune. As an obedient employee, the applicant reported for duty at Assistant Engineer's office, Pune on 8-1-1991 and then submitted a representation to Respondent No.2 requesting him to transfer back to Wagon Workshop, Guntupally, Krishna District, A.P. where he was originally working as Headclerk. He further states that the transfer order is violative of Article 14, 16, 19 and 21 of the Constitution of India, besides his wife is suffering from Diabeties and his children's studies are in the middle of the academic year, and his transfer caused him serious troubles and hardship. He alleges that the transfer is not on administrative measure, and it is a vindictive transfer by way of punishment without giving any opportunity to defend the charges alleged against him. Hence this original Application.

7. The Reply Affidavit was filed on behalf of the Respondents with verification on 28-8-1991. But the applicant received the copy of the Reply on 24-12-1991 when the case was posted and he was granted time till 27-12-1991 for arguments. The case was heard on 27-12-1991. The respondents also filed Indian Railway Establishment Code, Volume-I drawing my attention to "Clause-226 - Transfers" along with the personal file of the applicant. The respondents also countered the allegations made in the application ^{they state that} _x that he was appointed as Junior Clerk in the scale of Rs.260-400(RS) on 11-8-1977 and was posted at Sr.DPO's Office, Vijayawada, on 19-11-1980 he was transferred

to Wagon Workshop, Guntupally. He was also promoted as Senior Clerk from 29-11-1980 and as Head Clerk from 1-1-1984. They denied~~x~~ that there are no remarks whatsoever against the applicant and that he was performing the duties to the satisfaction of his superiors. They alleged that his services were not satisfactory and necessary evidence exist for which the confidential records prove the same. As stated supra, personal file along with another file consisting of certain information which they claimed be not made public in open court, though it is not claimed by an ^{attidans} ~~attidans~~ by a ~~other~~ person.

8. They further state that Rule-5 of the Railway Services (Conduct) Rules, 1966 read with Department of Personnel and Training Instructions circulated from time to time regarding involvement in activities of certain organisations that participation of Railway Servants in the activities of such organisations is to be prohibited. The applicant was advised on 25-2-1987, as per them, stating that it has come to their notice that ~~his~~ he is actively participating/associating in the political activities which are prohibited under Rule-5 of Railway Service (Conduct) Rules, 1966 read with Department of Personnel and Administration Reforms (Ministry of Home Affairs Office Memorandum Nos.3/10(s) 66 Estt (B) dated 30-11-1966 No.15014/3(s) 180 Estt (B) dt. 31-12-1980 and 20-1-1982 circulated to Railways under Board's letter No. E(D&A) 81 GSI-II dated 11-9-1981, E(D&A) 81 GSI - 12 dated 19-8-1981 and 6-2-1982, which material is placed by the side of the application in the material papers. They admit

✓

....6.

that the applicant had given representations and explained that he is mixing with various persons and personalities and become a reader and observer of various periodicals; matters related to social sciences. This was stated by the applicant in his material papers at page-2. They have further stated that he has not denied his involvement in such organisations that are prohibited by Governmental orders. They claim, inspite of the Show Cause Notice, verbal and written warnings by the Controlling Officers, the applicant continued his activities which are prejudicial to the smooth functioning of Railway System. The police authorities have also identified the activities of the applicant. The Administration claims privilege in producing the correspondence in Open Court. They, further alleged that the applicant has not desisted himself from associating with the organisations which are considered to be prejudicial to the administration and his continued presence in the workshop where about 4,000 workers are concentrated ⁱⁿ it was felt that that the peaceful working system will be threatened at the workshop and the Railway Colony. They further alleged that the applicant was openly inciting the workers against the administration and the Recognised Trade Unions". As such, the impugned order was issued by the Respondents on administrative grounds and he was posted to Pune. They claim that there is no malafides and the transfer was only on administrative grounds, in the interest of administration and smooth running of the system and in public interest. They denied the allegations of malafides and vindictiveness as transfer from one place to another is not a punishment and it is in public interest and desired this application be dismissed.

: 7 :

9. The applicant filed nine material papers, page-1 is advisory letter dt. 25.2.1987 by the respondents, page-2 is applicant's representation dt. 6.3.1987, page-3 is show-cause notice dt. 6-2-1990, page-4 is reply of the applicant dt. 12-12-90, page-5 is the Transfer order dt. 1-1-91, page-6 is office order No.7/91 dt.4-1-91; page-7 is office order No.Per/2/91 dt. 7-1-91 ~~now~~ relieving the applicant, page-8 is representation dt. 10-1-91 by the applicant to Respondent No.3, and page-9 is also request for retention of quarters by the applicant to Respondent No.3.

10. The respondents filed Indian Railway Establishment Code (volume-1), and personal file of the applicant and certain confidential correspondence. They have also relied upon Judgment reported in AIR 1991 SC 532 in a case ^{Mr.} Shilpi Bose and ~~the~~ others Vs. State of Bihar.

11. I have heard the ~~the~~ learned Counsel for the applicant Sri Bharat Kumar Proxy counsel for Sri K.G.Kannabiran and the ~~the~~ learned and Sri N.V.Ramana, learned Advocate for Respondents Railways and perused the records carefully.

12. It is not in dispute that the applicant was at Vijayawada SPO office since 11-8-1987 and was transferred to Guntupally on 19-11-1980 and even afterwards he continued to stay till his transfer on 1-1-1991. The applicant cannot deny transfer is exigency of service. Since, he very obediently followed the transfer order and reported at Hubli, the Divisional Headquarters and from there he is posted to Pune. So, his reporting at Hubli is not a transfer ^{as Hubli is Divisional Headquarters} to Hubli. From Hubli division he is allotted to Pune Division. It is also true that he made a representation to the department



(W)

with reference to children education and that his wife was a diabetic patient and requires assistance and treatment at Guntupally in his representation dated 10-1-1991 (page-8 of material papers) addressed to Respondent No.2. The Tribunal cannot take compassionate grounds into consideration and order re-transfer thereby interfering in the functions of Executives. His representation dated 10-1-1991 has not been so far disposed-of.

13. In the confidential communication in material paper page-3, the respondents specifically alleged on 6-2-1990 three meetings which the applicant attended -

- "1. Meeting on the 18th death anniversary of Cheru Mazoomdar at Railway Institute, Vijayawada on 28.7.1990.
2. Meeting of Krishna Dist. Civil Liberties Committee, at Velidandla Hanumantharaya Grandhalayam, Vijayawada on 25-8-90
3. Meeting of Revolutionary Writers Assn. at Madhu Kalamanthapam, Vijayawada on 26-8-90. "

and also cited Rule-5 of the Railway Service (Conduct Rules, 1966 - which reads, is reproduced here.

"You are hereby advised that your activities are prejudicial to the Administration and prohibited under Rule-5 of the Railway Services (Conduct) Rules, 1966 read with Department of Personnel and Administrative Reforms (Ministry of Home Affairs) Office Memorandum Nos.3/10(s) 66 Estt(B) dt. 30-11-66, 15014/3(s) dated 28-10-80, and 21-1-91, No.15014/6(s)/80-Estt(B) dt. 31-12-80 and 20-1-82 circulated to Railways under Board's letters No.E(D&A)81 GS1-11 dated 11-9-81, E(D&A)81 GS 1-12 dated 19-8-81 and 6-2-82".

For this applicant page-4 of material papers replied -

"I once again proclaim that I have passed Diploma in Journalism of Bharatiya Vidya Bhavan and M.A. (Sociology). With a zeal to learn and improve my knowledge, I tried to mix and discuss

with various persons and personalities and became a reader ~~and observer~~ ^{(member, Jai Jagat} of various periodicals and matters released to social sciences. However, I have not attended ~~the~~ the above as ~~members~~ ^(meeting) mentioned in the letter."

But, he asserted -

"I feel my above behaviour has been within the purview of Fundamental Rights".

14. It seems to me that there is no specific denial of non-attending to the above three meetings by the applicant.

15. It is admittedly a fact that Respondent No.3 advised him to refrain from associating with objectionable activities even on 25-2-1987 as this was filed by the applicant himself. In this letter and in between the Transfer dt. 1-1-1991 there is almost a gap of three years 10 months and 7 days. That shows, by the time this warning was given, the respondents must have been in possession of information. I have perused the personal file. But again, he was alerted on 6-2-1990 that he was attending these three meetings as cited supra. After this letter, after about 10 months and odd, the transfer order was issued. Under the circumstances, I do not think it is reasonable to conclude that it is a transfer on punishment. If ~~they~~ really they wanted to punish him, they would have transferred him in 1987 itself. It seems to me that they have given him ample opportunity to ~~look in~~ ^{change} over his activities and conform himself to ~~Respondent No.3~~ Rule-5 of the Railway Service (Conduct) Rules, 1966 Read with Department of Personnel & Administrative Reforms cited supra which was mentioned in material paper page-1 dt. 25.2.1987.

16. While the applicant baldly denies about his activities being prejudicial but claims his behaviour was within purview of the Fundamental Rules and is a very literate person with M.A.(Sociology), having a diploma in Journalism (as per his material papers page.4). He has not specifically denied about the attending of the three meetings. He has repeatedly omitted to deny that he attended to these three meetings. While taking the letters dt. 25-2-87 and 6-2-90, it can be easily seen that the applicant was under watch prior to 1987 also. It is not in the province of the applicant to question the public interest. The respondents in their reply affidavit specifically stated

"The applicant was openly inciting the workers against the administration and the Recognised Trade Unions"

This aspect is not denied in the arguments, neither any rejoinder is filed by the applicant. Thrust of the argument of the learned counsel for the applicant is only the punishment is by way of transfer and they should have conducted an enquiry before the transfer with the stigma. Clause-226 of Indian Railway Establishment Code, Vol.1 specifically says -

"Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group-C and Group-D railway servants, the power of the President under this rule in respect of transfer within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

: 11 :

These observations of Indian Railway Establishment Code Volume-1, Chapter-2, and Sub-Rule-1 and 3 of Rule-5 of Railway Service Conduct Rules clinchingly stare in this case in favour of Respondents.

"Rule-5: Taking part in politics and elections:

- (1) NO railway servant shall be a member of, or be otherwise associated with, any political party or any organisation, which takes part in politics, nor shall he take part in, subscribe in aid of, or assist in any other manner, any political movement or activity.
- (3) If any question arises whether a party is a political party or whether any organisation take part in politics or whether any movement of activity falls within the scope of sub-rule(2), the decision of the Government thereon shall be final."

16. In ~~XAIR, 1991 SC 532~~ in M/s. Shilpi Bose and others Vs. State Bank of Bihar and others the Hon'ble Supreme Court held in para-4 that -

"the court should not interfere with the transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory, statutory rule or on the ground of malafides. The Government servant holding transferable post has no vested right to remain posted at one place or the other. He is liable to be transferred to one place from another. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if transfer order is passed in violation of executive instructions/orders the court, ordinarily, should not interfere with the orders, instead affected party should approach the higher authorities in the department. If the courts continue to interfere with the day-to-day transfer orders, there will be complete chaos in the administration which would not be conducive in the public interest."



3. The Dy. Chief Mechanical Engineer, Wagon Workshop, South Central Railway, Guntupally-521 241.
4. Workshop Personnel Officer, Wagon Workshop, S.C.Railway, Guntupally -521 241, Krishna District.
5. One copy to Shri. K.G.Kannabiran, Ho No 10-3-29/2, Plot No.128, East Marredpally, Secunderabad-500 026.
6. One copy to Shri. N.V.Ramana SC for Railways, C.A.T. Hyd-bad.
7. One copy Hon'ble Mr.C.J.Roy, Member(J) CAT.Hyd.
8. One spare copy.

Rsm/-

44

In Kirtanya's case, 1989 (S.C.) (L & S) 481 - Union of India Vs. Kirtanya, the Hon'ble Supreme Court held that the applicant cannot choose a place of posting.

17. These valuable observations of their Lordships are clear and are binding on all the Courts situated throughout India. Keeping in view with the above observations of their Lordships and after going through the file and correspondence, I am of the opinion that this transfer is not, in view of my observations made supra, is not a punishment nor malafide. Malafides require strong proof, specific incidents against particular persons by way of a separate affidavit which would be a valuable guide, but is not so in this case. I hold this transfer is made in the administrative interest. The applicant is enlightened, educated person and is advised to pursue the representation made by him on 10-1-1991 and it is for the department to consider and dispose of the case on the merits taking into consideration of his family problems in view of the fact that he has respected the order of transfer and joined at Pune.

18. With these observations, the application is dismissed. Under the circumstances, there is no order as to costs.

Dated: 31/12/1991.

usroy
(C.J.Roy)
Member (J)

8/12/92
Dy. Registrar (Judl.)

Copy to:-

1. The General Manager, South Central Railways, Rail Nilayam, Secunderabad.
2. The Chief Personnel Officer, Head Quarters Office, Personnel Branch, S.C.Railways, Rail Nilayam, Secunderabad.

Recd O.A. 219/91
13 Rm
11/1/91

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANTAN, M.A.

AND

THE HON'BLE MR. C. J. ROY.

$M(J)$ ↗

DATED: 31/12/1991

~~ORDER / JUDGMENT:~~