

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

O.A.No. 810/91.

Date of Judgment: 20th Jan 1992.

BETWEEN:

A. Mahender Applicant
And

1. The Director-General, Ordnance Factories & Chairman, Ordnance Factory Board, 10-A, Auckland Road, Calcutta-700001 rep. Union of India.
2. Shri K. Sampath, General Manager, Ordnance Factory Project, Yeddu-mailaram-502 205, Medak Dist.
3. Shri S. Ravi, Dy. General Manager, Engg. II, Ordnance Factory Project, Yeddu-mailaram-502 205, Medak Dist.

.. .. Respondents

Counsel for the Applicant : Shri C. Suryanarayana, Advocate.

Counsel for the Respondents : Shri Naram Bhaskar Rao, Addl. Standing Counsel for Central Government.

CORAM:

HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (A)

HON'BLE SHRI C.J. ROY, MEMBER (J)

X Judgment as per Hon'ble Shri C.J. Roy, Member (Judicial) . X

This is an application filed under section 19 of the Administrative Tribunals Act, 1985 against the transfer order which is impugned, Factory Order Part II No. 1727 dated 19th August, 1991 passed by the 2nd respondent under the authority of 1st Respondents order dt. 31-7-1991 and to quash the same.

The facts of the case are:-

2. The applicant is working as Stenographer with effect from 8-3-1986 and is attached to the 3rd respondent at Ordnance Factory Project, Yeddu-mailaram. There was a small incident narrated stating R-3 wanted a book, and the applicant replied that it is in the almirah and the keys of almirah are with R-3 himself. It appears that Respondent No.3 remarked the applicant that he was giving impudent answer. Further, the applicant alleges that some other incident took place, like missing of key of the telephone, and that he has to work overtime being attached as personal staff in order to adjust himself with Respondent No.3. It appears that the applicant has given a letter in the last week of May, 1991 requesting for transfer to any other section. Respondent no.3 forwarded the same to the General Manager (R-2) along with a note on which the applicant is not aware of, but states that it may contain adverse remarks. About a month later Respondent No.2 asked him in his chambers as to why he was asking for transfer. The applicant admits having told Respondent No.2 that he was working in the same post for the last five years and hence wanted a change to be able to acquaint himself with work of other sections. He narrated some conversation between himself and Respondent No.2 which is not germane to the issue. After two months, the applicant was transferred to Itarsi in Madhya Pradesh by orders dated 31-7-1991 bearing No.823/TRA/A/NI cited in the body of the impugned order. He alleges number of seniors have been retained there, but out of malafides due to the above incidences he was transferred and that the transfer order is besides being malafide. He also allege that the transfer is neither valid nor justified besides being arbitrary and against the transfer policy. Hence this application.



.....3.

3. The respondents have filed counter denying all the allegations and that the allegations mentioned are not relevant to the transfer order. There was no link between the transfer and the alleged incidents. The allegation that he was demanding certain amounts in connection with recruitments as stated in para-4.5 of the application also they have denied. They denied the allegations of malafides, arbitrariness. They state that transfer order is issued in public interest and in exercise of the powers and in accordance with the policy and also that the order of transfer issued by the competent authority.

4. We heard Shri C.Suryanarayana, learned counsel for the applicant and Shri Naram Bhaskar Rao, learned counsel for respondents and perused the records carefully.

5. The short point is whether the transfer is malafide, arbitrary and is not in the public interest. According to applicant, the small incidents of missing key, book and that he was called and asked about taking of money, were all more than 3 to 4 months prior to order of transfer. There is no strong proof by way of an affidavit alleging the above malafides. Incidents narrated by the applicant do not inspire a belief that the order is malafide or against public interest. Besides, the applicant has not joined the place of transfer, but he was on leave probably on medical grounds. The allegations of the applicant stated in para-4.4 of application that there must have been adverse remarks in the note sent by Respondent No.3 to Respondent No.2 are not based on any proof because if there are any adverse remarks they would have been communicated to him.



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6. In AIR 1989 SC 1433 Gujarat State Electricity Board Vs. Atma Ram, the Hon'ble Supreme Court of India held that -

"the applicant should have joined the service and then made a representation."

The applicant herein, instead, without joining the place of transfer he has gone on leave, though medical, as per the arguments of the learned counsel for the applicant.

7. In Kirtania's case, 1989 SC (L&S) 481 - Union of India Vs. Kirtania, the Hon'ble Supreme Court held that "the applicant cannot choose a place of posting, and that transfer is an incident of service".

8. In AIR 1991 SC 532 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."

.....5.

11/10/2023

in the Judgment

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9. Following various principles laid down by the Hon'ble Supreme Court cited supra, we have no hesitation to hold that the transfer of applicant is in order. The applicant failed to honour the order of transfer. However, the applicant is given liberty to make a representation and respondents may dispose-of the same sympathetically. The respondents are further directed to treat the period with effect from the transfer till his joining the service, as leave permissible as per rules. With these observations, the application is dismissed without costs.

R. Balasubramanian
(R. BALASUBRAMANIAN)
MEMBER (A)

C. J. Roy
(C. J. ROY)
MEMBER (J)

Dated: 20th January 92 By. Registrar (J)

8/1/92

grh.

Copy to:-

1. The Director-General, Ordnance Factories & Chairman, Ordnance Factory Board, Union of India, 10-A, Auckland Road, Calcutta-01.
2. Shri K. Sampath, General Manager, Ordnance Factory Project, Yedumailaram-502 205, Medak Dist.
3. Shri S. Ravi, Dy. General Manager, Engg. II, Ordnance Factory Project, Yedumailaram-502 205, Medak Dist.
4. One copy to Shri. C. Suryanaryana advocate, CAT, Hyd.
5. One copy to Sri. N. Bhaskar Rao, Addl. CGSC. CAT, Hyd-bad.
6. One spare copy.
7. one copy to J.L (J)

Rsm/-

See last page

~~Per 100~~

O.A. 810/91

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C.

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

AND

THE HON'BLE MR.T.CHANDRASEKHAR REDDY:
M(JUDL)

AND

THE HON'BLE MR.C.J.ROY : MEMBER(JUDL)

DATED: 20/1/ -1992

ORDER/JUDGMENT:

R.A/C.A/ M.A.N.

in

O.A.No.

810/91

T.A.No.

(A.P.No.)

Admitted and interim directions
issued.

Allowed

Disposed of with directions.

Dismissed

28-1-92

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/ Rejected

Order as to costs.

p.v.m.

Q. 24
7/1
No. 2
28/1/92
APSL