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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 52 of 1991

Date of Decision : 16-1-1991

~~Ex No. X~~

S.K. Sen

Petitioner.

Shri V.Venkateswara Rao

Advocate for the
petitioner (s)

Versus

Chief Mining Advisor, Ministry
of Railways, Bhanbad,

Respondent.

& 2 others.

Advocate for the
Respondent (s)

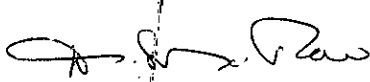
Shri N.R.Devraj, Standing Counsel
for Railways.


CORAM :

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

THE HON'BLE MR. R.BALASUBRAMANIAN, MEMBER (ADMN.).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *NO*
2. To be referred to the Reporter or not ? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *NO*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*
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)


(H.D.S.R.)
HM (J)


(H.R.B.)
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No. 52 of 1991

Dt. of Decision: 16-1-1991

Between:-

S.K.Sen

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Applicant

and

1. Chief Mining Advisor,
Ministry of Railways, Railway
Board, Dhanbad.
2. Deputy Chief Mining Advisor,
Railway Board, Ajni, Nagpur-3.
3. Senior Inspecting Officer,
Railway Board, Ajni,
Nagpur-3.

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Respondents

Appearance:

For the Applicant : Shri V.Venkateswara Rao,
Advocate.

For the Respondents : Shri N.R.Dev Raj, Standing Counsel
1 to 3 : for Railways.

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).

THE HONOURABLE SHRI R.BALASUBRAMANIAN, MEMBER(ADMN.).

(JUDGEMENT OF THE DIVISION BENCH DELIVERED BY HON'BLE)
SHRI D.SURYA RAO, MEMBER(J).

1. The applicant herein is working as Senior Sampling Supervisor in the South Central Railway, Godavarikhani. He has filed this application questioning the order of the 2nd respondent viz., the Deputy Chief Mining Advisor, Railway Board, Ajni, Nagpur, vide his office order No.LCON/153/NGP, dated 3-9-1990. This matter has come up



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today for admission.

2. We have heard Shri V.Venkateswara Rao, learned Counsel for the applicant, and Shri N.R.Devraj, learned Standing Counsel for the Railways, on behalf of the respondents, who has taken notice at the stage of admission on our direction.

3.

3. In the application the following 3 main grounds have been raised:-

(i) The impugned order is not an order of transfer simpliciter since it changes the cadre of the applicant from the Supervisor Cadre to Inspector Cadre. He contends that the change of cadre should be ^{passed by} only by the Railway Board and if the cadre is changed by the Deputy Chief Mining Advisor (respondent No.2), it is by an incompetent authority and consequently the order is without jurisdiction.

(ii) The transfer causes great personal inconvenience to the applicant. He has got a school going daughter and the transfer affects her studies. He also contends that the wife of the applicant is taking specific treatment from the Doctor and any change in the place will spoil her health.

(iii) The order of transfer is malafide, that the respondents 2 and 3 had threatened the applicant and other employees, who had formed into a trade union, that they will be threatened with dire consequences for their Union activities. It is also contended that the applicant, who has fallen sick, ^{has} gone on leave after the transfer

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order had been issued and he got himself admitted in the Railway Hospital. Respondents 2 and 3, however, used their influence and got the Doctor to certify that the applicant is fit, despite the applicant having not recovered from sickness. It is, therefore, contended that this is an added ground for malafide.

4. In so far as contention No.1 is concerned, since the applicant alleges that there is a change in the condition of his service, it is ^{clearly} ~~fairly~~ a case where he ^{and should} can make a representation to the next higher authority. Rule 18, sub clause(iv) of Railway Servants Discipline & Appeal Rules, 1968, provides that a Railway servant may prefer an appeal against any order which denies or varies to his disadvantage any condition of service as regulated by rules. Clearly the applicant has not preferred any appeal against the impugned order of transfer, which, according to him, changes his condition of service. The application is, therefore, barred by section 20 of Administrative Tribunals Act, 1985.

5. The 2nd contention namely in regard to personal inconvenience caused to the applicant, ~~it~~ is clearly a matter within the jurisdiction of the administrative authority and the Tribunal will be reluctant to interfere in such matters. It has been held by the Supreme Court in Gujarat State Electricity Board & another vs. Atmaram Sungomal Poshani (A.I.R. 1989 S.C. 1433) that where an employee has been transferred and is aggrieved, he has to carry out the orders of transfer and thereafter make any representation. This case would clearly fall within the scope of the Supreme Court decision cited above.




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6. The 3rd contention namely malafides attributed to respondents 2 and 3 would not stand in the instant case since the applicant has not sought to make the concerned officers as parties to the application.

7. In the circumstances, we find no merit in the present application. It is accordingly dismissed. No order as to costs.

(Dictated in Open Court)


(D.SURYA RAO)
MEMBER (JUDICIAL)


(R.BALASUBRAMANIAN)
MEMBER (ADMINISTRATION)

Date: 16-1-1991


Sr Deputy Registrar (Judl)

To

1. The Chief Mining Advisor,
Ministry of Railways, Railway Board, Dhanbad.
2. The Deputy Chief Mining Advisor,
Railway Board, Ajni, Nagpur-3.
3. The Senior Inspecting Officer,
nsr Railway Board, Ajni, Nagpur-3.
4. One copy to Mr.v.venkateswara Rao, Advocate
1-1-230/33, Chikkadapally, Hyderabad.
5. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.
6. One spare copy.

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