

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO.1069 of 1992

DATE OF JUDGMENT: 30th April, 1993

BETWEEN:

Mr. R.Vedullu ..

Applicant

AND

1. The Divisional Railway Manager (Personnel),
South Central Railway,
Vijayawada.
2. The Senior Divisional Mechanical Engineer,
C&W, S.C.Railway,
Vijayawada.
3. The Additional Divisional Railway Manager,
S.C.Railway,
Vijayawada.
4. The General Manager,
S.C.Railway,
Secunderabad. ..

Respondents

APPEARANCE:

COUNSEL FOR THE APPLICANT: Mr. G.V.Subba Rao, Advocate

COUNSEL FOR THE RESPONDENTS: Mr. C.Venkata Malla Reddy,
SC for Railways.

CORAM:

Hon'ble Shri Justice V.Neeladri Rao, Vice Chairman

Hon'ble Shri P.T.Thiruvengadam, Member (Admn.)

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by limitation as the modified order of transfer was issued on 19.2.1990 and thus the presentation of this OA was more than one year after the said modified order. It is further stated for the respondents that about 32 Railway employees at Narasapur had given complaint against the misdeeds of the applicant and on being satisfied that there is some truth in the said allegations and in the interest of the administration, the transfer was effected and hence the same cannot be held as punitive.

6. At the outset it has to be stated that the applicant had not attributed any ~~motto~~ to the then ~~Chief~~ ^{Divisional} Personnel Officer, Vijayawada who issued the order of transfer on 10.1.1990. Thus, no malafides were attributed to him.

7. In the counter dated 7.1.1993 filed by the Divisional Personnel Officer, S.C.Railway, Vijayawada it was alleged as under in Para 6(a):-

"(6) In reply to para VI(3), it is submitted that (a) A joint complaint and pamphlets were received against the applicant alleging certain irregularities. It was investigated by Asstt. Mechanical Engineer/C&W/Vijayawada and found correct and genuine. The applicant was transferred on the basis of the report."

But in the additional counter filed by the same DPO, it was stated that para 6(a) in the counter dated 7.1.1993 has to be read as under:-

"(a). It is submitted that a joint complaint and pamphlets were received against the applicant alleging certain irregularities. It was in the

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those allegations and they were found to be correct. The transfer order on the basis of the said finding is vitiated as no opportunity was given to the applicant to put forth his case as against the said allegations. The Full Bench Judgment of the Central Administrative Tribunal reported in Full Bench Judgments 1989 page 80 clearly establishes that the transfer on the basis of finding without giving an opportunity to the concerned to establish that the allegations are false, is punitive. The said anonymous petition was sent by Mr. B. Thimothy, office bearer of the unrecognised National Forum of Railway Congressmen. The applicant is victim of that false complaint given by him and also the complaints given at his instance. The applicant filed CC 183/92 on the file of the Magistrate's Court at Narasapur as against the said Mr. Thimothy for defaming his reputation. The vindictive nature can be also seen from the subsequent conduct of the concerned authorities in initiating the disciplinary inquiry on the ground of the alleged absence even though all along the applicant was sending the medical certificates as he was undergoing treatment ^{not fit for duty} and because of his ailment he could / be returned to his duties.

4. It was further urged for the applicant that even the allegations referred to in the alleged complaint are not in regard to the duties of the applicant as the employee of the South Central Railway and hence the respondents have no authority to make ~~an~~ inquiry into those allegations, and the transfer cannot be effected on the basis of such allegations.

5. This OA was presented on 7.12.1992. One of the pleas raised for the respondents is that this OA is barred

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transfer in the Government servants or a right in the public servant. In fact, transfer policy enunciated by the Government or other authorities often allows a large amount of discretion in the officer in whom the authority to transfer is vested. However, as any transfer has to be made in public interest and in the exigencies of administration, if a complaint is made, that it is not ordered bona fide or is actuated by mala fides or is made arbitrarily or in colourable exercise of power, such a complaint is open to scrutiny. The fact that the transfer is ordered in derogation of the transfer policy would impose an obligation on the Tribunal to find out if it was necessitated in the exigencies of administration. If it is found that ^{it} is against the general policy of transfer, it may lend some *prima facie* basis to the allegation that it is an arbitrary order. But merely because the order is not in conformity with the transfer policy, it cannot be quashed for the competent authority is generally vested with the discretion to order transfer in the exigencies of service and in public interest. Hence the obligation to show that it is made mala fide or in colourable exercise of power still lies upon the applicant. While the burden of proof lies on the applicant, the onus may shift from time to time and ultimately it is for the Tribunal to determine whether the allegation of the applicant that the order of transfer is arbitrary, mala fide or made in colourable exercise of power is established and, therefore, deserves to be quashed.

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usual course investigated by Assistant Mechanical Engineer/C&W/Vijayawada and found correct and genuine in the report dated 26.4.90. The applicant however was transferred to Vijayawada on 10.1.1990 itself. Therefore the applicant was not transferred on the basis of the report, but on administrative exigencies."

Along with the additional counter, xerox copy of the report dated 26.4.90 by AME/C&W was enclosed. It was enclosed in support of the allegations in the additional counter that the said report was only in regard to the joint complaint by 32 persons received on 29.1.1990 and thus the inquiry by him was also subsequent to 29.1.1990 and it was after issual of the transfer order dated 10.1.1990.

8. Before advertizing to the material on record and the relevant contentions, it will be convenient to refer to the principle laid down by the Full Bench of the Central Administrative Tribunal reported in Full Bench Judgments (CAT) (1986-89) Vol.I at page 80 "Shri Kamlesh Trivedi Vs. Indian Council of Agricultural Research and another". It was observed at pages 93 and 94 that-

"17. It would thus be seen that any transfer made in violation of transfer policy by itself would not be a ground for quashing the order of transfer for, as observed by the Supreme Court in Varadha Rao's case, instructions embodying the transfer policy are more in the nature of guidelines to the officers who are vested with the power to order transfers in the exigencies of administration than vesting any immunity from

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the affirmative and the second question thus:

"No inquiry need be made if no finding of guilt, misconduct or stigma is attached. Transfer may be on administrative grounds and one of the grounds could very well be the allegations themselves. If the transfer is ordered in the exigency of service without giving any finding on the allegations, it would not be vitiated. If a charge sheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a complaint and the representation of the employee or statement with reference thereto is recorded, or even where no charge sheet, or statement regarding imputation of misconduct or a memo has been issued but the concerned official's statement with regard to the allegations has been recorded, that would more than satisfy the principles of natural justice. But we must add that question of observing the principles of natural justice in a case of transfer does not arise where it is not based upon a finding on the allegations of misconduct or the like made against the employee. But if a finding of misconduct is arrived at without observing the principles of natural justice and that is the "operative reason" for transfer, it is liable to be quashed."

It is manifest from the above principle that the transfer may be for administrative grounds and one of the grounds could very well be on allegations ^{in complaint} ~~themselves~~. Ofcourse, Para 6(a) in the counter dated 7.1.1993 suggests that the investigation by AME might have been made even before 10.1.1990, the date on which the transfer order was issued.

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If that is established, the order can certainly be quashed. That does not mean that before making an order of transfer, an enquiry should be conducted in accordance with the principles of natural justice into the allegations, if any, made against the officer sought to be transferred.

18. In view of the above discussion, we hold that any order of transfer must (1) be in public interest and in the exigency of service on administrative grounds. (2) It must not be in colourable or mala fide exercise of power. (3) It should not be arbitrary.

(4) It must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy. But how far a transfer policy is mandatory, we express no opinion in this case. That must depend on the wording intendment of the instructions embodying the transfer policy. (5) The transfer itself must be ordered by a competent authority in bona fide exercise of the power. (6) It should not be a "fixed" transfer or for settling scores.

(7) However, merely because transfer is ordered on complaints or after an inquiry into the guilt of the employee, it cannot be said to be by way of punishment. (8) The principle that 'justice should not only be done but appear to be done' is not contravened if transfer is made without any further inquiry after a penalty is imposed in a proper disciplinary proceedings. (9) It does not amount to a double jeopardy.

19. Having regard to the above discussion, we answer the first question referred to us in

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Verdict
contended for the applicant or whether it is due to the sickness of the applicant as stated for him and it is left open for consideration as and when it arises.

10. The proceedings requiring the applicant to vacate the Railway quarter at Narasapur was issued as the applicant was under orders of transfer. As the order of transfer cannot be held as illegal, there are no circumstances to warrant interference with regard to the proceedings whereby the applicant was asked to vacate the Railway quarter at Narasapur. In the result, the OA is dismissed. No costs.

11. The learned counsel for the applicant prayed that the applicant may be given one month time for vacating the Railway quarter at Narasapur. In the circumstances, time is granted till 31.5.1993 for vacating the quarter occupied by the applicant. This order of dismissal does not debar the respondents from considering representation of the applicant requesting for transfer to any place other than Vijayawada.

Number OA 1069/92
c. of Judgement 30-4-93
ready on 20-5-93
Section Officer (J) *[Signature]*

CERTIFIED TO BE TRUE COPY
Date 10/5/93
Court Officer
Central Administrative Tribunal
Hyderabad Bench
Hyderabad.

TO

1. The Divisional Railway Manager (Personnel) S.C.Rly. Vijayawada.
2. The Senior Divisional Mechanical Engineer, C&W S.C.Rly, Vijayawada.
3. The Additional Divisional Railway Manager, S.C.Rly, Vijayawada.
4. The General Manager, S.C.Rly, Secunderabad.
5. One copy to Mr.G.V.SubbaRao, Advocate, CAT.Hyd.
6. One copy to Mr.C.VenkataMalla Reddy, SC for Rlys. CAT.Hyd.
7. One copy to Library CAT.Hyd.
8. One spare copy.

pvm

10 May 1993