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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL APPLICATION NO. 795 of 1992

DATE OF JUDGMENT: 27th OCTOBER, 1992

BETWEEN:

Mr. V.Jayaraman

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Applicant

AND

1. Union of India represented by
The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Workshop Engineer,
S.C.Railway,
Secunderabad.
3. The Chief Personnel Officer,
S.C.Railway,
Secunderabad.
4. The Deputy Chief Mechanical Engineer,
Carriage Repair Shops,
S.C.Railway,
Tirupathi.

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Respondents

COUNSEL FOR THE APPLICANT: Mr. G.Ramachandra Rao

COUNSEL FOR THE RESPONDENTS: Mr. N.V.Ramana, SC for Railways

CORAM:

Hon'ble Shri R.Balasubramanian, Member (Admn.)

Hon'ble Shri C.J.Roy, Member (Judl.)

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JUDGMENT OF THE DIVISION BENCH DELIVERED BY THE HON'BLE
SHRI C.J.ROY, MEMBER(JUDL.)

The applicant herein questions in this application under Section 19 of the Administrative Tribunals Act, 1985, the proceedings No.P.536/Mech/CMT/LS(Office Order No.53/92), dated 4.9.1992 issued by the 3rd respondent herein transferring the applicant from Tirupathi to Gooty.

2. The facts that are necessary to determine the case are briefly as follows:-

The applicant while working as Laboratory Superintendent, Diesel Shed, South Central Railway, Guntakal, had given his option for absorption as Laboratory Superintendent in the Carriage Repair Shops, Tirupathi in pursuance of the notification dated 8.1.1987. He was found suitable for absorption and he was transferred as such on 17.8.1988. The applicant states that as per the terms and conditions, the staff transferred to Carriage Repair Shops, Tirupathi, on option will not be permitted to seek retransfer to their parent unit and the optees will be eligible for further advancement only in the CRS, Tirupathi and the seniority will be determined by the length of service for which they opted and the optees are not entitled to any benefits in the parent cadre once they joined in the CRS, Tirupathi.

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3. The applicant states that he had given his option for absorption in the CRS, Tirupathi with an intention to come down to Tirupathi and settle there for the purpose of education of his children and other facilities and also to pursue his higher education.

4. In the cadre restructuring, certain posts have been upgraded and the applicant was offered the upgraded post at Diesel Shed, Gooty since that post was not available in the CRS, Tirupathi.

5. The applicant states that he was victimised by finding fault with him by some officers and issuing charge-memos and imposing punishment though the applicant is not guilty. He was also suspended on 8.1.1991/2.2.1991 pending enquiry into the charge for major penalty. An enquiry was held into the charges and the Enquiry Officer has submitted his report on 25.6.1992 categorically holding that the applicant was not guilty of the charges.

6. Meanwhile, the 3rd respondent had issued the impugned orders dated 4.9.1992 transferring the applicant as Laboratory Superintendent, Gooty, on administrative grounds. The 4th respondent relieved the applicant on 5.9.1992. The applicant states that the transfer order was given as a measure of victimisation and it is punitive in nature. He made a representation on 8.9.92 to the 2nd respondent which was not replied. Hence, this application.

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7. The respondents opposed the application in their counter stating that the application is not maintainable for the reason that the applicant has not exhausted the remedies available to him. The contention of the applicant that he made ~~xxx~~ a representation on 8.9.1992 against the orders of transfer is not correct.
8. It is stated that the staff transferred to CRS, Tirupathi on option will not be permitted to seek retransfer to their parent unit under any circumstances. The post which the applicant is holding is a Headquarters controlled post and the same has been clearly stated in the reply dated 3/4.5.1991 to the representation submitted by the applicant on 8.3.1991 apprehending transfer on revocation of suspension order.
9. Since the applicant refused promotion against the upgraded post of Spectro Superintendent, he was debarred for promotion for a period of one year from 5.9.89 to 4.9.1990. The allegations of the applicant that he has been victimised by the officers of CRS, Tirupathi since he refused to certify the substandard materials purchased from the suppliers is baseless and misconceived. The transfer is purely on administrative ground the applicant is trying to mislead the Tribunal by referring⁺ un-connected and irrelevant things to the present case only to establish malafides. The present transfer order has nothing to do with the disciplinary proceedings against the applicant. Hence, the respondents state that the application is liable to be dismissed.

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10. We have heard the learned counsel for the applicant Mr. G.Ramachandra Rao and the learned Standing Counsel for the Respondents, Mr. N.V.Ramana.

11. The applicant also filed a reply affidavit to the counter reiterating the same points as averred in the application.

12. The short point involved is, whether the transfer of the applicant from Tirupati to Gooty is the result of the disciplinary proceedings initiated against him.

13. The respondents in their counter stated that the applicant was served with a major penalty charge-sheet and the said proceedings are pending consideration of the disciplinary authority. The present transfer order has nothing to do with the disciplinary proceedings initiated against the applicant, but it is only on administrative grounds.

14. The transfer is made within the zone of South Central Railway and it cannot be questioned. The question of absorption in the CRS, Tirupathi does not arise ^{in the} ~~when~~ ~~case of Zonal cadre.~~ ~~the transfer is made within the zone of South Central Railway.~~ Tirupathi and Gooty come within the zone of South Central Railway. Pendency of the disciplinary proceedings cannot be said to be vindictiveness, arbitrary or malafide.

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15. As we are holding that the transfer is not vindictive or malafide, the decisions cited by the learned counsel for the applicant viz., SLR 1984(4) SC 9 and SLR 1989 (6) Kerala High Court, page 245, are not applicable to the present case.

16. The post which the applicant is holding is a Head-quarters controlled post and the notification cited by the applicant has no application to the present case. This was clearly stated by the respondents in the reply dated 3/4-5-1991 (Annexure 8 to the O.A.) to the representation submitted by him on 8.3.1991 apprehending transfer on revocation of suspension order. The said notification is applicable to the staff of Diesel Loco Shed, Kazipet, Guntakal and Gooty.

17. The fact of revoking the suspension order itself proves that the administration has no malafides or victimised intention as alleged by the applicant.

18. In view of the above we see no inconsistency in the order of transfer issued by the respondents. The transfer is not made in violation of any mandatory, statutory rule or on the ground of malafides, victimization and punitive. The applicant has not made out any case of malafides or arbitrariness or vindictiveness on the part of the respondents. The transfer is a simple transfer within the zone controlled by the South Central Railway.

19. Besides, the Hon'ble Supreme Court of India in AIR 1989 SC 1433 (Gujarat State Electricity Board Vs. Atmaram), held that

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

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

17. 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 be interfered 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

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not be conducive in the public interest."

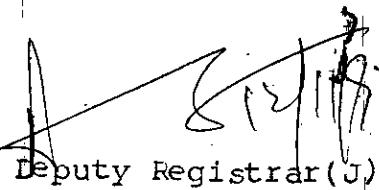
18. Following the various principles laid down in the Judgments by the Hon'ble Supreme Court cited supra, we have no hesitation to hold that the transfer of the applicant is in order and is not malafide. The applicant has not made out any case for interference in the matter.

19. The application is accordingly dismissed with no order as to costs.

R.Balasubramanian

(R.BALASUBRAMANIAN)
Member (Admn.)

urday
(C.J.ROY)
Member (Jud1.)

Dated: 27th October, 1992.  Deputy Registrar (J)

To

1. The General Manager, Union of India, S.C.Rly, Secunderabad.
2. The Chief Workshop Engineer, S.C.Rly, Secunderabad.
3. The Chief Personnel Officer, S.C.Rly, Secunderabad.
4. The Deputy Chief Mechanical Engineer, Carriage Repair Shops, S.C.Rly, Tirupathi.
5. One copy to Mr.G.Ramachandra Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.
7. One spare copy.

vsn
pvm.

Prabhu Rao

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TYPED BY

8 COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH : HYDERABAD

THE HON'BLE MR

AND

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: 27-10-1992

~~ORDER/JUDGMENT:~~

R.A. /C.A. /M.A.No

in

O.A.No. 795/92

T.A.No.

(wp.No)

Admitted and interim directions
issued.

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A.Ordered/Rejected

No orders as to costs

Central Administrative Tribunal
DESPATCH

12 NOV 1992

HYDERABAD BENCH.

pvm