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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

R.P.Nos. 35 & 46 of 1993
in
O.A.No.391 of 1993

Date of decision: 10-8-93

R.P.No.35/93

Between

1. The Collector of Customs and
Central Excise, Hyderabad-29.
2. The Dy.Collector (P&V),
Office of the Collector of
Customs and Central Excise,
Hyderabad-29.

... Review Applicants/
Respondents in OA

A n d

G.Mahmood

... Respondent/
Applicant in OA

R.P.No.46/93

Between

Review applicant/
Respondents in OA

A n d

1. The Collector of Customs and
Central Excise, Hyderabad-29.
2. The Dy.Collector (P&V),
O/o the Collector of Customs
and Central Excise, Hyderabad.

... Respondents/
Respondents in OA

Appearance:

For the applicant in OA
(Respdt.in RP 35/93 &
Applicant in RP 46/93)

: Sri V.Venkateswara Rao, Advocate

For the Respondents in OA
& Respdts. in RP 46/93)

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

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

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RP's 35 & 46/93 in OA 391/93

J U D G E M E N T

(delivered by Hon'ble Sri Justice V. Neeladri Rao,
Vice-Chairman)

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While R.P.No.35/93 was filed by the Respondents in O.A. 391/93, R.P.No.46/93 was filed by the applicant therein. For the sake of convenience, the parties will be referred to as they were ^{arrayed} in the O.A.

2. While the applicant was working as Inspector of Central Excise, Dichpally Sector, Nizamabad district, he was transferred to Ramachandrapuram Range, Hyderabad-I Division by proceedings dated 31-3-93. ~~The applicant was earlier transferred~~ at his request, to Dichpally Sector as per proceedings dated 9-10-91. The order of transfer dated 31-3-93 in regard to the applicant was challenged in O.A. 391/93 by alleging, inter alia, that normally ~~the~~ transfers should not be made unless the employee stays in a particular place in the same cadre for three years and that his transfer was ^{not} on administrative grounds and it was only for extraneous reasons. It was also stated therein that his daughter was appearing for II year Intermediate examination and her practicals, etc. would be over by the end of May and he requested for retention for six more months as per his representation dated 16-4-93 and the same was not considered.

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22/10/93

3. O.A. 391/93 had come up for admission on 28-4-93. At that time it was also contended that the applicant's mother is 100 years old and she is living with him and it would be hazardous to shift his mother in hot summer, and the same was referred to in the representation dt.16-4-93. It was also pleaded that no one was posted in the place of the applicant. On the basis of the said material we disposed of O.A. 391/93 by order dated 28-4-93 by directing the respondents to permit the applicant to hand over charge by 30-6-93.

4. Then the respondents on 5-5-93 praying for modification of the order dated 28-4-93 in OA 391/93 by alleging that Sri P.V.Venkatrao, a direct recruit to the cadre of Inspector of Central Excise, who was posted in the place of the applicant in Dichpally Sector --- Establishment Order No.48/93 dt. 31-3-93 reported for duty on 28-4-93 and he could not take charge as the applicant was not available. As the order dated 28-4-93 in OA 391/93 was passed on the basis of the plea of the applicant that no one was posted in his place and as on that date the learned standing counsel for the Respondents had no instructions in the matter and as --- the officers in regard to the

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same post, we modified the order dated 28-4-93 in OA 391/93 to the effect that the applicant should be deemed to have handed over charge on 28-4-93 itself. The said order in the R.P. was passed on 7-5-93 and it was passed as an interim order when Shri V.Venkateswara Rao, the learned counsel for the applicant submitted that the applicant was not available and he was not having necessary instructions in the matter.

5. The applicant filed O.A. 697/93 on 23-6-93 challenging the order of his transfer to Ramachandrapuram as per proceedings dated 31-3-93. It was alleged therein that the said transfer was contrary to the guidelines contained in Circular dated 1-11-1978. When the said O.A. had come before the II Bench of this Tribunal, it was represented by the respondents that the same was barred by resjudicata as the said transfer was the subject matter in O.A. 391/93. Then the said O.A. was ^{dismissed} ~~not heard~~. R.P.No.46/93 was presented on 8-7-93 by the applicant. It was pleaded in the said R.P. that his transfer even before completion of four years of stay in Dichpally Sector is contrary to the guidelines contained in Circular dated 1-11-78 which provide for a normal transfer in his cadre after a stay of four to six years subject to the condition that the transfer can be made even earlier to the same if the administrative exigencies warrant, and thus, his transfer is illegal and as he came to know of those guidelines

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just before a day of the presentation of OA 697/93, it is a matter for ^{review} ~~revision~~. It was also pleaded in RP 46/93 that the plea that his transfer ^{was} ~~for~~ ^{reason} ~~extraneous consideration~~ and not on administrative grounds was not considered in OA 391/93 and that was also a ground for review.

6. Various decisions were referred to ^{for} ~~2~~ both sides, in support of their respective contentions.

7. Before ^{adjudicating} ~~adjudicating~~ to the respective contentions, it is convenient to refer to the decisions cited which refer to the circumstances under which the ~~gxx~~ court/tribunal can interfere in the order of transfer of an employee. The Supreme Court held in AIR 1989(2) ATC 269 (Union of India and Ors., Vs. H.N.Kirthania) that a Central Government employee holding a transferable post is liable to be transferred from one place to another and he has no legal right to insist for his posting at any place of his choice. It was further held therein that "transfer of a public servant' made on ~~administrative~~ grounds or in public interest should not be interfered with unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafides." In AIR 1991 SC 532 (Mrs. Shilpi Bose and Ors., Vs. State of Bihar and ors.) it was held that "the courts should not interfere with a

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transfer order which is made in public interest and for administrative reasons, unless a transfer order is made in violation of any mandatory, statutory rule or on the ground of malafide, Even if a transfer order is passed in violation of executive instructions or orders, the courts, ordinarily, should not interfere with the order. Instead the affected party should approach the higher authority in the department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authority, there will be complete chaos in the administration which would not be conducive to public interest." In JT 1993(3) SC 678 (UOI & Ors., Vs. S.L.Abbas), the Supreme Court held that though the authority must keep in mind the guidelines issued by the Govt., on the subject, the said guidelines, however, do not confer upon the government employee a legally enforceable right.

8. But the learned counsel for the applicant referred to AIR 1993 SC 1236 (Rajendra Roy Vs. UOI & anr.) to urge that an order of transfer which is in violation of guidelines for transfer is also liable to be set aside. It was observed in the said judgment as under:

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"It is true that the order of transfer often causes lot of difficulties and dislocation in the family set up of the concerned employees but on that score the order of transfer is not liable to be struck down. Unless such order is passed malafide or in violation of the rules of service and guidelines for transfer (emphasis supplied) without any proper justification, the court/tribunal should not interfere with the order of transfer."

It may be noted that AIR 1991 SC 532 is not referred to in AIR 1993 SC 1236. While in AIR 1991 SC 532

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it was stated that in case of violation of guidelines for transfer the courts do not ordinarily interfere and the employee may be directed to make representation before the concerned authority, it is stated in AIR 1993 SC 1236 that if the order of transfer is in violation of the guidelines for transfer the courts/tribunals may interfere.

9. It can thus be stated that ^{if} the order of transfer is malafide or ~~it is in~~ contrary to the statutory rule, the same is liable to be set aside. But ^{if} it is in violation of the guidelines ~~of~~ transfer, the question as to whether the employee will be directed to make a representation to the concerned authority ~~by~~ or whether it is also a matter for interference by the court/tribunal, is a matter in regard to which AIR 1991 SC 532 ^{JT 1993(3) SC 678} and AIR 1992 SC 1236 are referred to.

✓ 10. In 1979(1) SLR 309 (P.Pushpakaran Vs. The Chairman, Coir Board, Cbchin & anr.) it was held by the Kerala High Court that the right to transfer an employee is a power ^{ful} weapon in the hand of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at

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bay an activist or a stormy petrel. When the court is alerted, the court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This court can and should in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

11. In 1973(2) SLR 659 (Prem Parveen Vs. UOI & ors.) the Delhi High Court held that if no details have been placed by an applicant in support of his allegation that his transfer was malafide it had to be held that he had not discharged the initial burden on him to show that the transfer was on account of malafide action of the respondent. After referring to AIR1967 SC 295 (Barium Chemicals Ltd. & anr. Vs. Company Law Board & ors.), it was held by the Delhi High Court in the above judgment that it is incumbent on the government to place full material before the court while a challenge is made to a transfer as being malafide.

✓ 12. Keeping in view the observations in the above judgments it is necessary to advert to the plea of malafide in this case. Shri P.V.Venkatrao, a direct recruit to the cadre of Inspector of Central Excise was posted in the place of the applicant. Alongwith Shri Venkatrao, 11 more were selected as direct recruits and all of them were given postings as per proceedings dated 31-3-93. It appears from the same that the other 11 were posted

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8/10/93

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in the vacancies existing while Shri P.V.Venkatrao who is first in the list of the 12, was posted in the place of the applicant. In para 4 of R.P.No.46/93 it was alleged that the applicant was transferred "with a view to facilitate the posting of a direct recruit in whom the then Collector was interested." The said direct recruit is Shri P.V.Venkatrao. It is not stated as to how the then Collector was interest^{ed} in Shri P.V.Venkatrao. In the counter in RP 35/93, the applicant alleged in para 7 that the then Collector of Central Excise was transferred from his post to New Delhi by telegraphic orders without even allowing him any time by the Board. In that context it was stated that there were some complaints against the then Collector and hence his transfer was *ordered with immediate effect*. But in the rejoinder in the RP 35/93 it was stated *by respondents* that the then Collector was transferred to an elevated post as Director of National Academy of Customs, Excise and Narcotics, Madras and he was so elevated as he had been considered as a specialised officer. Thus ~~when~~ the applicant is coming up with allegations ^{even} without ^{verification} ~~even reference~~ ~~when~~ he had not given any details in support of his assertion that the said Collector was interested in Shri P.V.Venkatrao. when it is ^{thus} bereft of details we have to hold that the applicant had not discharged his initial burden in regard to malafides.

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Hence there is no need to refer to 1993(24) ATC 308 (R.Sadasivan Nair Vs. Director of Education, Union Territory of Lakshadweep & ors.), an order of C.A.T. Ernakulam Bench ^{which is in regard to} ~~that refers to malafides~~ in law. ¹² //

The applicant had reported to the Assistant Collector of Central Excise, Nizamabad by letter dated 15-5-92 complaining against Shri M.A.Saleem, Sepoy about a mischief. Show-cause notice dt.10-7-92 was given by the Assistant Collector, Central Excise, Nizamabad to the said sepoy. Later the said sepoy was transferred to the Headquarters in Hyderabad. The applicant pleaded in the OA 391/93 that when he made an official visit to the office of the Deputy Collector attached to the office of the Collector, Customs and Central Excise, Hyderabad on 22-2-93, Shri M.A.Saleem, the sepoy beat him on his face and he was seriously hurt and he sustained bleeding injury and he took treatment. On the same day he had given written complaint about it to the Collector, Central Excise. He further pleaded that instead of taking action against the said sepoy he was prevailed upon through driver Shri Ramdas to withdraw the said complaint and accordingly he had withdrawn the same. Even though he had withdrawn the said complaint he was transferred illegally, is the further plea of the applicant.

The record was produced by the respondents. It refers to the preliminary enquiry and in view of the said enquiry, the Collector had taken decision to transfer the applicant. 1990(7) SLR 327 (C.C.Ayyapan Vs. Telecom. District Manager, Trichur & ors.) is

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^{Relied}
read upon for the applicant to contend that an employee cannot be transferred by way of punishment without making an enquiry in regard to the complaint, for stigma is attached to the employee in view of the said order. In the said case, an employee was transferred on the basis of a complaint by a lady employee about misbehaviour. It was held therein that even without issual of notice to the concerned employee about the alleged misbehaviour he was transferred and hence the transfer is by way of punishment and as it was done without any enquiry the same is vitiated.

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^{13.} It ~~is on notice~~ that OA 391/93 was disposed at the admission stage. As such there was ~~was~~ no occasion ~~to file~~ for the respondents to file a counter. It was pleaded in the said O.A. that he had withdrawn the complaint against Shri M.A. Saleem, sepoy at the instance of the then Collector. ^(The Collector) He was already transferred. Then a question arises

to file a counter in regard to the said allegation of the applicant for disposal of the review petitions. If it is a matter that arises for consideration at the first instance and if any hardship is caused to the applicant due to the transfer, we would have certainly directed the said Collector to file a counter in regard to the same.

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11/11/93

14. One of the hardships which was referred to by the applicant in his representation dated 16-4-93 is that his mother who is aged about 100 years is living with him and it was submitted at the time of consideration of the O.A. for admission that it would be hazardous to shift her during the hot summer. It was alleged for the respondents that the owner of the house in which the applicant is residing at Nizamabad had given an affidavit to the effect that he had never seen the mother of the applicant there. Even in the ~~second~~ representation dated 16-4-93 the applicant merely requested for retention for six more months. In the O.A. it was pleaded that his daughter was appearing for the II year Intermediate examination and her practicals would be over by the end of May 1993. The said examinations are over. It was neither pleaded nor stated about any ^{other} hardship to the applicant due to the transfer. It is not stated that either the educational or medical facilities at Nizamabad are far better than ^{at} Ramachandrapuram in Hyderabad-I Division. Hence ^{when} there is no pressing hardship to the applicant due to the transfer, and when he has not stated any special interest for retention in Dichpally Sector, and when he has stated in the O.A. without verification that no one was posted in his place, even when the proceedings by which Shri P.V.Venkatrao was posted

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20/10/93

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in his place are also of the same date ^{ie} 31-3-93, we feel it not appropriate for reviewing the order especially when one Bench of the Supreme Court had held that violation of guidelines for transfer is not normally a ground for interference and when malafides against the then Collector were not established and when the applicant had again gone to the extent of making a false allegation to the effect that the then Collector was transferred to Delhi while in fact he was transferred to Madras. Hence the R.P. 46/93 ^{is} ~~has to be~~ dismissed.

¹⁶ 14. In view of the interim order~~s~~ that was passed in R.P. 35/93, no further order is necessary and the same can be treated as final order in R.P. 35/93 and it is ordered accordingly. No costs.

P. T. Thiruvengadam
(P.T. Thiruvengadam)
Member (Admn.)

V. Neeladri Rao
(V. Neeladri Rao)
Vice-Chairman

Dated: the 10th day of August, 1993.

mhb/

Signature
Deputy Registrar (J)

To

1. The Collector of Customs and Central Excise, Hyderabad-29.
2. The Deputy Collector (P&V)
O/o The Collector of Customs and Central Excise, Hyderabad.
3. One copy to Mr. V. Venkateswar Rao, Advocate, CAT. Hyd.
4. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
5. One copy to Library CAT. Hyd.
6. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTHY : MEMBER (A)

AND

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

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 10 - 8 - 1993

ORDER/JUDGMENT:

M.A./R.A/C.A.No. 354 46/93
"in

O.A.No.

391/93

T.A.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed

Interim order in RP 35/93
may be treated as final

Disposed of with directions

Dismissed

RP 46/93

Order

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered

No order as to costs

pvm

