

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1520/93

Date of Order: 15.12.93

BETWEEN:

P.C.Naidu

A N D

1. Union of India, Rep. by Post Master General, APSR, Kurnool - 518 005.
2. Supdt. of Post Offices, Kurnool Divn., Kurnool.
3. Director of Postal Services O/o P.M.G. APSR, Kurnool.
4. Post Master, Kurnool.

.. Applicant.

.. Respondents.

Counsel for the Applicant

Counsel for the Respondents

May 2000

.. Mr. N. R. Devraj

CORAM:

— * * * * * VICE-CHAIRMAN
HON'BLE MR. R. RANGARAJAN : MEMBER (ADMN)

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OA 1520/93

Judgement dated 15-12-93

(As per Shri V. Neeladri Rao, Vice-Chairman)

Heard Shri P. Rattaiah, learned counsel for the applicant and also Shri N.R. Devaraj, learned Sr. Standing counsel for the Respondents.

The applicant is working as H.S.G. II Postal Assistant in Kurnool division. While he was working as L.S.G.-P.A, he was transferred from K. Nagalapuram to Kurnool and he joined at Kurnool on 4-12-85. By then he was one of the office bearers of the union. With effect from 1-10-91, he was promoted as HSG II under BCR scheme and posted at Kurnool. He was transferred as SPM, Atmakur on 8-5-92.

But he had not joined there. By proceedings issued by P.M.G., Kurnool the applicant was retained at Kurnool on 19-5-93.

On 12-8-93 the applicant was transferred from Kurnool to Mantralaya and Posted as SPM at that place. The same was challenged in OA 1047/93. The same was disposed by order dated 30-8-93 with a direction that if the applicant so desires, may

against the order of transfer and the said authority or an authority officiating shall consider his representation. By order dated 16-10-93, the said representation was rejected by PMG, Visakhapatnam
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was challenged in this OA.

in his representation dated 1-9-93 before P.M.G. are as under:

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(1) He was elected as Asst. Regional Secretary No. 1 of All India Postal Employees Union on 23-2-92 and accordingly he is not liable for transfer for a period of one year from the date of the said election.

(2) He was not the junior most of HSG II promoted under BCR scheme, and D.G. (P) letter dated 30-3-92 read with Circular No. 4-4/92 dated 5-8-92 of the Ministry of Communications envisages the transfer is necessary.

(3) ~~the transfer is punitive for he was chosen for transfer when he participated in the strike.~~

The P.M.G., Visakhapatnam adverted to all these contentions. It is stated that the immunity from transfer is applicable in regard to office bearers ~~for~~ only once, and it is ~~claim of~~ not a case of ~~immunity for the first time, and the immunity cannot be granted in each cadre.~~ As the applicant was an office bearer even at the time of his promotion in 1991 he was retained at Kurnool and hence it was observed by the PMG that he is not entitled to claim immunity after he ~~was~~ promoted.

By the time the applicant was transferred to Atmakur by memo. dated 8-5-92, the applicant ~~observed that~~ when the said order of transfer was not cancelled, he cannot claim re-transfer to Kurnool merely ~~of the fact~~

B.M.G.

were also promoted as HSG-II under BCR scheme.

The contention for the applicant that his transfer is punitive is on the basis that while his juniors S/Shri E. Devappa & A. Vasudeva Rao were retained in Kurnool even after their promotion to the post of HSG-II, and though he was senior to them he was transferred by proceedings dated 12-8-93 and it is evident that as he had participated in the strike and his juniors did not participate in the strike, he was transferred and his juniors were not transferred. P.M.G. observed that the reasons for the retention of Shri Devappa & Shri Vasudeva Rao cannot be linked up as the transfer of the applicant and retention of the above two officials ~~have~~ has to be examined on their merits.

the transfer of the applicant by order dated 12-8-93 is ~~in~~ contrary to the instructions vide D.G.(P) letter dated 30-3-92 and the circular dated 5-8-92 of the Ministry of Communications and ~~as~~ ~~the~~ the same is liable to be set aside. But the Supreme Court held in JT 1993 (3) SC 678 (Union of ~~India~~ ~~versus~~ ~~the~~ ~~Ministry~~ ~~of~~ ~~Communications~~ ~~and~~ ~~as~~ ~~the~~ ~~same~~ ~~is~~ ~~liable~~ ~~to~~ ~~be~~ ~~set~~ ~~aside~~) that an order of transfer cannot be set aside by a court or Tribunal unless malafides are established and/that the order of transfer is in violation of the statutory rules. It is further held ~~therein~~ ~~that~~ ~~an~~ ~~order~~ ~~of~~ ~~transfer~~ ~~cannot~~ ~~be~~ ~~set~~ ~~aside~~ ~~on~~ ~~the~~ ~~ground~~ ~~that~~ ~~it~~ ~~is~~ ~~violative~~ ~~of~~ ~~the~~ ~~instructions~~ ~~and~~ ~~circulars~~ ~~etc~~.

In view of the above judgement of the Supreme Court, the question as to whether the transfer of the applicant as per the memo. dated 12-8-93 is not ~~in~~ ~~accordance~~ ~~with~~ ~~D.G.~~ ~~(P)~~ ~~letter~~ ~~dated~~ ~~30-3-92~~

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and the circular dated 5-8-92 of the Ministry of Communications need not be considered for disposal of this OA.

The question as to whether the transfer of the applicant is punitive or not is the next point for consideration. Admittedly, the applicant joined in the strike resorted to in pursuance of the agitation for the transfer of SPOs, Kurnool. On the basis of the said agitation, one ASPO~~s~~ and 2 O.As were suspended and the agitation was called off. As the applicant is one of the office bearers, there is nothing unnatural when he participated in the strike. ~~as one of the office bearers of the union.~~ But when the same SPO~~s~~ is continued and when it is for ~~him~~ to maintain discipline and to ~~control~~ review the situation, he is the authority who ~~is~~ has to decide as to what steps have to be taken to restore normalcy. ~~in the said authority~~ ~~it is~~ ~~that~~ it is necessary to transfer some of the employees to restore normalcy, then the transfer cannot be held as punitive. The restoration of normalcy is in public interest. Hence when an employee is transferred on the ground that he participated in the strike, it cannot be automatically implied that the transfer is punitive. The question as to whether the transfer is punitive or is in public interest can be better perceived by an authority higher than the authority who passed the order of transfer. In this case this bench ordered in OA 1047/93 that the applicant is free to make a representation to PMG as it was represented that the PMG who ordered transfer as per memo. dated 12-8-93 was transferred and another P.M.G. was posted and in the meanwhile PMG, Visakhapatnam was

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holding additional charge of PMG, Kurnool.

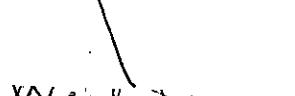
But if the applicant feels that his transfer is punitive, he is free to make a representation to ^{Post} Director General, Post, as he is said to be the next immediate authority above for P.M.G., and if such a representation is going to be sent by Regd. AD by 31-12-93, the D.G.(P) ^{Post} has to consider this. ^{The same} The SPOs, Kurnool is required to dispose of the leave application of the applicant in accordance with rules within 2 weeks from the date of receipt of this order.

The office has to communicate a copy of this order to the concerned (Postal) and also to Respondent 2 herein by 22-12-93.

The Interim order dated 30-9-93 is vacated.

costs.


(R. RANGARAJAN)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

(Open court dictation)


Deputy Registrar (J)

To

1. The Postmaster General, APSR, Union of India,
2. The Superintendent of Post Offices, Kurnool Division, Kurnool.
3. The Director of Postal Services, O/o P.M.G. A.P.S.R. Kurnool.
4. The Post Master, Kurnool H.P.O. Kurnool-1.
5. One copy to Mr. P. Rathaiah, Advocate, CAT. Hyd.
6. One copy to Mr. N. R. Devraj, Sr. CGSC, CAT. Hyd.
7. One copy to Library, CAT. Hyd.
8. One spare copy.

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6/12/93
P.M.G. A.P.S.R.

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD

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

AND

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

AND

THE HON'BLE MR. T.GANDRASEKHAR REDDY
MEMBER(J)

AND

THE HON'BLE MR.R.RANGARAJAN : MEMBER(A)

Dated: 15 - 12 - 1993

ORDER/JUDGMENT:

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

in
O.A.No. 1520/93

T.A.No. (W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn.

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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