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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD.
* * *

D.A. 1622/93

Dt. of Decision : 28.3.94

D. Koteswara Rao

.. Applicant.

Vs

1. The Senior Divisional Personnel Officer, DRM Office, South Central Railways, Vijayawada.
2. The Divisional Railway Manager, South Central Railways, Vijayawada.
3. Carriage and Wagon Superintendent, SC Rlys, Guntur.
4. Sri S.K. Basha, Carriage and Wagon Superintendent, SC Rlys, Guntur.
5. The Assistant Mechanical Engineer, SC Rlys, Vijayawada.

.. Respondents.

Counsel for the Applicant : MR. G.V.N.S. VASU

Counsel for the Respondents : Mr. V. Bhimanna, Sc for Rlys.

CORAM:

THE HON'BLE SHRI A.B. GORTI

MEMBER

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ORDER

I As per Hon'ble Shri A.B. Gorthi, Member (Admn.) I

The applicant was working as a Khalasi Helper in the office of the Carriage and Wagon Superintendent, South Central Railways, Guntur. He was placed under suspension by order dt. 6.8.93 and was thereafter served with a charge memo dt. 1.9.93. The memo of charges alleges that the applicant was found sleeping on the Staff Tool Box on 6.8.93 and when he was to be suspended for his misconduct he assaulted Sri S A Cowie, Carriage and Wagon Superintendent. By a subsequent memo dt. 13.9.93 the applicant's suspension was revoked with immediate effect. Within 2 days, i.e., on 15.9.93, the applicant was transferred by means of the impugned order to Kakinada. He was ordered to be relieved immediately and was directed to report to Kakinada by 17.9.93. Aggrieved by the said order of transfer he has filed this application with a prayer that the transfer order be set aside as being illegal, arbitrary, malafide and unjust.

2. The respondents in their reply affidavit have stated that for the alleged mis-conduct of the applicant he was served with a charge memo on 1.9.93. As his continuance at Guntur was considered to be detrimental to him so that the enquiry could be held without the applicant intimidating the witnesses. It was for that reason

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the suspension order was revoked and he was transferred to Kakinada. The respondents contend that the applicant refused to accept the transfer order and then did not proceed to Kakinada as ordered.

3. We have heard learned counsel for both the parties. Mr. G.V.R.S.Vare Prasad, learned counsel for the applicant had assailed the validity of the transfer order on several grounds. His main contention is that the transfer order is punitive in nature and was issued for no other reason than to punish the applicant even before the enquiry concluded. He disputes the fact that the applicant refused to accept the transfer order. He has also stated that the respondents paid the applicant subsistence allowance only, for the period of suspension and not the full wages. It means that the respondents did not drop the charges against the applicant. An amount of Rs. 2,511/- which was due to the applicant as Productivity Linked Bonus was also not paid, though drawn by the respondents.

4. Mr. V. Bhimanna, learned standing counsel for the respondents reiterated that the applicant was involved in an of serious mis-conduct which resulted in the having charge-sheet been served upon him. Thereafter when his transfer order was issued he refused to accept the same and avoided proceeding to Kakinada and the applicant is, thus, absenting himself from duty without leave or authority.

5. The main question that comes up for consideration here is whether the transfer order is for administrative reasons or is in the nature of punitive action. It is well settled that transfer is an incident of service and an order of transfer by itself does not amount to punitive action. It is, however, open to the Court or Tribunal to look into the circumstances of a particular case to determine whether the transfer order is punitive or is in administrative interest. In the instant case, the undisputed facts disclose that there was a serious allegation against the applicant and he was charged with the same. Major penalty proceedings were instituted on the applicant ^{and} ~~as~~ he was called upon, to submit his explanation. In the meantime, the respondents revoked the suspension order and issued the impugned transfer order. In the affidavit itself it is stated that the continuance of the applicant at Guntur would be detrimental to the departmental enquiry as it was apprehended that he may intimidate witnesses. When the charge is to the effect that he assaulted a senior official and the witnesses cited in Annexure IV to the charge memo are the Carriage and Wagon Superintendent and Chief Train Examiner, both sufficiently Senior level Officers, it cannot be appreciated as to how they could be intimidated by the applicant who is a mere Khalasi Helper.

6. There can be no doubt that a transfer order can be challenged on limited grounds such as malafides on the part of the authority issuing the transfer order or that the

order was punitive in nature or that it was violative of the relevant rules/regulations. This aspect of the matter has been sufficiently clarified by the Hon'ble Supreme Court in S.C.C. 1 Union of India Vs H.N.Kirtania 1989 (L&S) 481 and in Gujarat Electricity Board Vs V. Atmaram Sungomal Poshani AIR 1989 Supreme Court 1433.

7. A careful examination of the material before us and the explanation offered by the respondents in their counter affidavit would sufficiently disclose that the transfer order was motivated by no other reason than that the applicant's presence at Guntur was not desirable during the enquiry. It cannot be justified as sufficient administrative reason for ~~.....~~ ^{..... the} nature of punitive action of punishing the individual even before the enquiry is concluded or even before his explanation to the charge memo ~~.....~~ ^{.....}

8. The respondents came to that conclusion on the apprehension that ~~.....~~ ^{.....} he would intimidate the witnesses. The fact that the applicant behaved in an ~~.....~~ ^{.....} manner for which he was to be dealt with under the Discipline & Appeal Rules, does not automatically imply that he would intimidate senior officials even during the enquiry to the extent of thwarting the disciplinary enquiry. The apprehension of the respondents does not seem warranted under his circumstances. The order of transfer

is thus more as a measure of punishment for having acted insolently towards higher officials.

9. In Kamlesh Trivadi Vs I.C.A.R., (1988) 7 ATC

253, a Full Bench of this Tribunal held as under:-

"No enquiry need be made if no finding of fault, 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 course of service without giving any finding on the allegations, it would not be vitiated. .. a charge-sheet is issued and statement regarding imputation of misconduct is given or a memo is issued on a .. employee or statement with reference thereto is recorded, or even where no chargesheet, 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 .. 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,

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10. In the instant case the respondents obviously concluded that the applicant became highly insubordinate and quarrelsome and decided to transfer him for that reason without observing the principles of natural justice. Following what has been held by the Full Bench in Kamlesh Trivadi case (supra), I must hold that the transfer order which is punitive and violative of the principles of natural justice has to be set aside. The OA is thus allowed and the impugned order of transfer is set aside.

11. No order as to costs.

(A.B. GORTHI)
MEMBER (ADMN.)

Dated : The 28th March 1994
(Dictated in Open Court)

M/s
Deputy Registrar (Judl.)

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Copy to:-

1. The Senior Divisional Personnel Officer, DRM Office, South Central Railways, Vijayawada.
2. The Divisional Railway Manager, South Central Railway, Vijayawada.
3. Carriage and Wagon Superintendent, S.C.Rlys, Guntur. S.C.Rlys, Guntur.
4. The Assistant Mechanical Engineer, S.C.Rlys, Vijayawada.
5. One copy to Sri. G.V.R.S.Vara Prasad, advocate, CAT, Hyd.
6. One copy to Sri. V.Bhimanna, SC for Rlys, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

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D.T 7/4/93

O.A. 1622/93

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COMPARED BY

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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.GORTHI : MEMBER(AD)
AND

THE HON'BLE MR.TCCHANDRASEKHAR REDDY
: MEMBER(JUDL)
AND

THE HON'BLE MR.R.RANGARAJAN : M(ADMN)

Dated: 28/3/1994

ORDER/JUDGMENT

M.A./R.A./C.A./NO.

O.A.NO.

IN
1622/93

T.A.No.

(w.p.)

Admitted and Interim Directions
Issued.

Allowed

Disposed of with directions

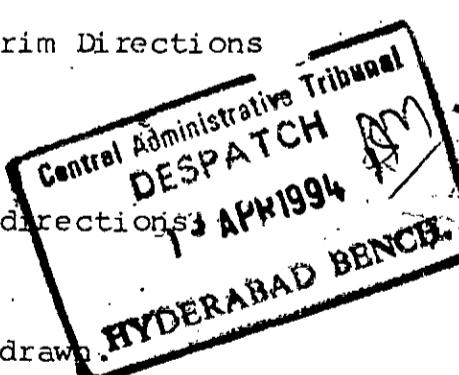
Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

Rejected/Ordered.

No order as to costs.



9 copies

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