

APC

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL::HYDERABAD BENCH::

O.A.No.272/93.

Date: 6-8-93.

Between:

M.A.Hakeem

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Applicant

And

1. The General Manager (O),
Office of the Chief General
Manager, Telecommunications,
Department of Telecommunications,
Hyderabad.
2. The Director (T.T.),
Department of Telecommunications,
A.P.Telecom Circle, Hyderabad.
3. The Chief Superintendent,
Central Telegraph office, Hyd.
4. Senior Superintendent (T.T.)
Hyderabad City Division,
Department of Telecommunications .. Respondents

HEARD:

For the applicant : Sri V.Venkateshwara Rao, Advocate

For the respondents : Sri N.V.Ramana, Addl. CGSC

CORAM:

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

THE HON'BLE MR.P.T. THIRUVENGADAM, MEMBER (ADMN.)

X JUDGMENT OF THE DIVISION BENCH AS PER HON'BLE SRI P.T.
THIRUVENGADAM, MEMBER (ADMN.) X

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The applicant herein was appointed as Telegraph Assistant on 10.5.1975 at Central Telegraph Office, Hyderabad under Hyderabad Telegraph Traffic Division. He was transferred to Telegraph Office, Charminar, on 25.2.92 also which is/under the same division at his request. The applicant was again transferred to Central Telegraph Office, Hyderabad in Nov., 1992 before completion of one year. Subsequently the applicant was

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again transferred to Warangal Division on 28.1.1993. Against the said transfer, the applicant submitted his representation on 15.2.1993 to the respondents. The representation filed by the applicant is not yet disposed of by the respondent and hence he filed present O.A.

2. The applicant alleges that the impugned order of transfer is not issued by the competent authority and the same ^{is} neither issued in public interest nor for the administrative exigencies. It is also contended that his seniority position would be affected adversely since the seniority is maintained unit wise. It is submitted by the applicant that 4th respondent issued a letter proposing to recover a sum of Rs.3,867-50 ps. from the applicant herein and nine others, while alleging contributory negligence for the pilferage of revenue to the tune of Rs.38,675/- against all the officials including the applicant herein. The applicant submitted a reply to the said letter on 5.1.1993 categorically denying the allegations made against him. Whilex so, 4th respondent issued a letter ordering recovery of Rs.3,867-50 ps. from each individual including the applicant. Aggrieved by the said order of recovery the applicant submitted a representation dt. 15.2.1993 to 2nd respondent wherein he had pleaded that the proposed recovery amounts to imposition of punishment without affording reasonable opportunity to defend the charge levelled against him. On the said representation the recovery ordered was stayed temporarily. It is alleged that the orders of transfer are also issued by the 2nd respondent on the same day as

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a measure of punishment. It was further pleaded by the learned counsel for the applicant that the impugned order of transfer is mala fide and discriminatory since the applicant alone out of total 10 persons from whom the recovery for the alleged leakage of revenue had been ordered is transferred. He had already been shifted from Charminar where the alleged incident took place, to Hyderabad in the month of November, 1992. To further shift him to Warangal Division would be specifically harsh & on him.

3. The learned counsel for the applicant relied on [1982 (1) SLR 572] wherein Kerala High Court held that the State cannot take a sympathetic attitude to one which might result in creating difficulties for other persons. The learned counsel for the applicant argued that even the sympathetic discrimination is deprecated. ^{More so,} ~~and~~ discrimination which is inimical to a single individual has to be discouraged.

4. The learned counsel for the applicant also relied on a decision [SLR 1982 (3) 266] wherein Patna High Court held that ^a ~~the~~ ^{which} transfer was likely to result in seniority being prejudiced ~~and such transfer~~ is bad.

5. The learned counsel for respondents contended that the order of transfer was issued by the competent authority. As per the provisions of Rule-63 of P&T Manual, Vol. IV Director, Telegraph Traffic, A.P. Telecom, Hyderabad is the competent authority to transfer the officials of non-Gazetted rank from one Traffic Division to another within A.P. Circle and that he is also delegated with the powers to transfer the non-gazetted staff in Traffic Wing ~~to anywhere~~ to anywhere in A.P.

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6. As regards loss of seniority on transfer to Warangal, the respondents in their additional counter, mentioned that under the one time bound promotion scheme (O.T.B.P.S.) the applicant automatically gets promotion to the next stage and hence his transfer to Warangal would not come in his way for promotion.

7. In reply affidavit, the main argument that has been brought out is that the transfer was ordered in the interest of administration under Rule-37 of P & T Manual, Vol.IV which empowers the competent authority to transfer the officials in the department to any part in India.

8. The respondents further contend that the applicant was transferred on the ground that his stay at Hyderabad may affect the investigation/enquiry into alleged pilferage of Government Revenue caused in Charminar division, wherein the applicant and 9 others were alleged to have been involved. To substantiate their contentions the respondents have not shown any material either in the main counter or in the additional counter except stating that there is no possibility to accommodate the applicant in twin cities as the existing TOA (TG) are in surplus and also that some other employees numbering five (5) who were not involved in the leakage of Government recovery, were transferred to other divisions.

9. It has not been disputed by the respondents that the applicant is the only person who has been transferred out of the 10 employees against whom the order of recovery of Rs.3,867-50 ps. each had been passed on 27.1.1993.

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The remaining 9 persons have been allowed to continue in their places of work. No record has been produced to show that the applicant's involvement in the case leading to the order of recovery is more than the other nine (9) persons involvement. Hence, the transfer of the applicant from Hyderabad to Warangal dt. 28.1.1993 has to be held as arbitrary and discriminatory. The learned counsel for the respondents referred to a decision [AIR 1991 SC 532] wherein it has been held that a Government servant holding a transferable post has no vested right to remain at one place. But, in the same judgment it has also been observed that the Courts should interfere with transfers which are not made in violation of any mandatory/statutory rule or on the grounds of malafide. In the case under discussion, singling out the applicant herein from among 10 employees against whom same action of recovery etc. has been taken, cannot be held to be bonafide. Accordingly, the transfer order No.E.92/KW/20 dt. 28.1.1993 issued by 3rd respondent in so far as the applicant herein is set aside. The O.A. is allowed accordingly. No costs.

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

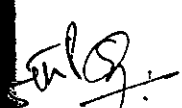

(V.Neeladri Rao)
Vice Chairman

Date 6th August 1993

grh.

After this Judgment was delivered, Mr. V.Venkateswara Rao, learned counsel for the applicant represented that the applicant is on leave and that the leave expires today and hence he has to report on Monday. Hence, the applicant has to report before the C.T.O., Hyderabad on Monday ie., on 9.8.1993 at the time the office opens. When he so reports, he has to be permitted to attend duty in the office of the

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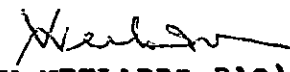
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C.T.O., Hyderabad as the order dated 28.1.1993 transferring the applicant from C.T.O., Hyderabad to Warangal Division is set-aside. ~~CC has to be furnished today.~~


(Dictated in the open Court).

P.T. Thiruvengadam

(P.T. THIRUVENGADAM)
Member (Admn.)


(V. NEELADRI RAO)
Vice-Chairman

Dated: 6th August, 1993.

 5/8/93

vsn

To

1. The General Manager(O),
O/o the Chief General Manager,
Telecommunications, Dept. of Telecommunications,
Hyderabad.
2. The Director (T.T.)
Department of Telecommunications,
A.P. Telecom Circel, Hyderabad.
3. The Chief Superintendent
Central Telgraph Office, Hyderabad.
4. The Senior Superintendent (T.T)
Hyderabad City Division, Department of Telecommunications,
5. One copy to Mr. v. venkateswar Rao, Advocate, CAT. Hyd.
6. One copy to Mr. N. V. Ramana, Addl. CGSC. CAT. Hyd.
7. One copy to Library, CAT. Hyd.
8. One spare copy.

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6 copies
sent
7.8.93

c.c. today
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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 (JUDGE)

AND

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

ORDER/JUDGMENT:

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

in

O.A.No.

T.A.No.

272/93
(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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