

HYDERABAD

OA No. 430/93

Date of judgement: 7-5-93.

Between

Shri A. Sankaraiah : Applicant

And

1. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal.
2. The Chief Travelling Inspector,
South Central Railway, Dharmavaram.
3. The Station Superintendent,
South Central Railway, Dharmavaram.

: Respondents

COUNSEL FOR THE APPLICANT : Shri C. Nagaraja Rao.

COUNSEL FOR THE RESPONDENTS : Shri D. Gopal Rao, S.C.
for ally.

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

(Judgement of the single bench delivered by Justice
Shri V. Neeladri Rao, Vice-Chairman)

Heard Shri C. Nagaraja Rao, learned counsel
for the applicant and Shri D. Gopal Rao, learned counsel
for the respondents.

This OA was filed challenging the order dated
26-4-93 whereby the applicant was transferred as a
HTTE to Purna.

It is stated for the applicant that only
a fortnight earlier i.e. on 13-4-93 he was posted
as HTC at Dharmavaram at his request (as) his wife who
is working as a teacher in Z.P. Girls' High school

(17)

underwent operation for brain tumour at NIMHANS at Bangalore and his children are studying at Dharmavaram in Z.P. High school. The applicant is not conversant with Marati language. Dharmavaram is in Guntakal division while Purna is in Hyderabad division of South Central Railway Zone. The record is produced for the respondents to support the contention that the transfer was on administrative grounds. It is stated that when the applicant was ^{attending to duty as} HTTE in sleeper coaches in Train No. 6529 on 18-3-93, a trap was arranged by the vigilance, and then it was found that when the actual charge was only Rs.20/- for allotting a berth, an amount of Rs.40/- was collected by the applicant and hence it is stated that on the basis of the said incident, disciplinary action will be taken and the vigilance officers suggested the transfer of the applicant to Akola or Purna in Hyderabad division. Basing on the same, C.C.M., South Central Railway issued the impugned order transferring the applicant as HTTE to Purna and by the same order, the post was also transferred from Guntakal division to Hyderabad division and that order was communicated to the applicant through Respondent 1.

In view of the nature of the irregularity/charge referred to, it is open to the vigilance to state that it is not desirable to keep the delinquent employee at the place where ^{he} ~~is~~ is working and then it is for the concerned authority to pass the necessary orders. But if the authority in vigilance department suggests transfer of such an employee to any particular place, it cannot be held that it is not vindictive. It is now well established that transfer on the ground of a misconduct for which disciplinary action is contemplated can be held as vindictive unless it is shown

that in view of the nature of the mis-conduct or misdemeanour, it is not desirable to keep the delinquent employee in the same place.

Shri Gopal Rao, the learned standing counsel for the respondents submitted that in all cases of transfer, the employee has to first join at the place to which he is transferred and then he has to make representation for re-transfer, if the ~~situation~~ warrants. But when on the basis of the record which is produced, it cannot be stated that it is not vindictive~~ness~~ when the applicant is transferred along with the post to another division and posted at Purna, it is liable to be quashed and in such cases it is not just and proper to direct the applicant to move the concerned authority for re-transfer to any other place.

Of course, it is not ^{usually} for the court or the Tribunal to give any direction to the concerned authority to post the applicant within a particular division. But as vindictiveness is clear from the record produced, and as the possibility of resorting to the type of irregularity referred to will be less if one works as HTC instead of HTTE, it is just and proper to direct the concerned authority to post him as HTC at any place within the Guntakal division and it will not affect any other employee for this is a case where the applicant was transferred along with the post to another division as per the impugned order. Even the Senior Divisional Manager, Vigilance by proceedings dated 30/31.3.93 suggested that the applicant should be grounded for 6 months. The learned counsel for the respondents stated that 'grounding' in this context means that the applicant should not be entrusted with the duties of HTTE and he can be entrusted with the duties of HTC.

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In the result, the impugned order dated 26-4-93 is quashed and the concerned authority ^{is} ~~are~~ free to transfer the applicant as HTc to any place in Guntakal division, in view of the irregularity referred to and as it is stated that it is not desirable to keep the applicant in Dharmavaram.

--- is ordered accordingly with no costs.

This order has to be communicated by 17-5-93 to Respondents and to C.C.M., South Central Railway, Secunderabad.

[Signature]

(V. Neeladri Rao)
Vice-Chairman

(Open Court dictation)

[Signature]

Dated 7th May, 1993.

Deputy Registrar(J)

12593

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To

1. The Senior Divisional Personnel Officer,
S.C.Rly. Guntakal.
2. The Chief Travelling Inspector,
S.C.Rly. Dharmavaram.
3. The Station Superintendent, S.C.Rly. Dharmavaram.
4. One copy to Mr.C.Nagaraja Rao, Advocate, 17-1-380/E/2
Central Exdise colony. Hyd.
5. One copy to Mr.D.Gopal Rao, SC for Rlys.CAT.Hyd.
6. Copy to Library.CAT.Hyd.
7. One spare copy.
8. The chief Commercial manager, S.C.Rly. Secunderabad.
pvm.

[Handwritten notes]
4/10/93
pvm

TYPED BY

COMPARED BY

CHECKED BY

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. R. BALASUBRAMANIAN :
MEMBER (ADMN)

AND

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

DATED: 7-5-1993

ORDER/JUDGMENT

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

in

O.A.No. 1130/93.

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

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions

Dismissed as withdrawn.

Dismissed

Dismissed for default.

Ordered/Rejected.

No order as to costs.

pvm

