

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH HYDERABAD  
O.A. NO. 992 of 1995.

Between

T.V.D. Reddy

...

Dated: 9.5.1996.

Applicant

And

1. The Sub Divisional Officer Phones, Kakinada.
2. The Sub Divisional Officer, Telecom, Mandapeta.
3. The Divisional Engineer, Telecom(Mtce.), Kakinada.
4. The General Manager Telecom (reptg Union of India), Rajahmundry

...

Respondents

Counsel for the Applicant : Sri. C. Suryanarayana

Counsel for the Respondents : Sri. V. Rajeshwar Rao, Addl. CGSC.

CORAM:

Hon'ble Mr. R. Rangarajan, Administrative Member

Contd: ... 2/-

113

O.A.No.992/95

Dt. of decision:

9/8/96

JUDGEMENT

I Per Hon'ble Shri R.Rangarajan, Member (A) I

Heard Sri C. Suryanarayana, learned counsel for the applicant and Sri V.Rajeshwar Rao, the learned standing counsel for the respondents.

2. The applicant in this O.A. was engaged as Casual labour in the year 1976 in the Co-axial Cable Project at Rajahmundry. He was selected provisionally for the post of regular mazdoor (R.M. for short) (Internal & External) for vacancies of 1981 vide letter No.E-17/Rectt/1981/60, dt.29-3-82 (Annexure-1). The applicant's name figures at Sr.No.25 in the above select list. It is stated in that select list order, issued by the Divisional Engineer, Telecommunications, Kakinada (R-3 herein), that "the posting orders will be issued separately on verification of the documents indicated in that letter." In pursuance of the direction in this select list, the applicant who was selected as a regular Mazdoor under S.D.O.Phones, Kakinada-Sub-Division, presented the necessary documents before the S.D.O.P., Kakinada. After checking the records, the SDOP, Kakinada (R-1 herein), appointed the applicant in a quasi-permanent capacity as regular Mazdoor w.e.f.

D

(Ld)

5-7-85 and later he was reported to have been confirmed in that capacity. The above said Memo.E-30/84-86/25, dt.26-5-85 (Annexure A-2) was signed by the incumbent R-1 at that time. Hence the applicant submits that he was appointed by a Group-B officer whose jurisdiction comprises only the Sub-division Phones area of Kakinada under his control and not beyond.

3. The applicant submits that due to some false allegation against him, he was transferred and posted under Alamuru (Canal) under S.D.O.T., MPT with headquarters at Angara in terms of transfer order No.E.ii/Trfs & Postings/92-93/153, dt.19-7-94 (Annexure A-4).

4. The applicant submits that he met with a scooter accident which immobilized him and hence he was taking treatment in C.D.R.Hospital at Kakinada and he cannot get treatment for such ailment at Angara. It is further stated that he was posted as Lineman at Angara in Group-C and as he was sick, he cannot climb up the posts which duty is to be performed by Linemen. He also submits that he has been transferred with malafide intentions.

5. The main contention of the applicant in challenging his transfer order is that this transfer is a punitive one and hence it is malafide. Further R-3 has no jurisdiction to transfer him to other districts in terms of Rule 37 of the P&T Manual Vol.IV. He can only be transferred within the jurisdiction of the S.D.O.Phones, Kakinada and that too only by the appointing authority viz. SDOP.

(W)

Kakinada, who is his appointing authority as per Annexure A-2 order. R-3 cannot transfer him outside the jurisdiction of the Phone Sub-Division of Kakinada. He further contends that he had blemishless record while working as RM in Kakinada and he is not responsible for any allegation made by some unknown person.

6. He submitted a representation to R-4 by his representations dt.1-8-94 (Annexure A-7), dt.25-10-94 (Annexure A-9) and also to R-3 dt.4-12-94 (Annexure A-11). However, inspite of the representations, it is stated that he had been relieved on 27-12-94 on transfer to Alamuru vide Office Order No.QK-55/2, dt.17-11-94 (Annexure A-10).

7. Aggrieved by the above, he has filed this O.A. for setting aside the transfer order No.E.11/Trfs&Postings/ 92-93/153, dt.19-7-94, dt.19-7-94 issued by R-3 in sofar as it concerns him, declaring it as malafide, malacious and grossly violating the principles of natural justice and for a consequential direction to the respondents to retain him in the same post under SDQ, Phones, Kakinada besides costs.

8. The respondents in their reply statement submit that Rule 37 of P&T Manual Vol.IV gives power to the Divisional Engineer to transfer a Group-D servant, from one district to another. In the instant case, the applicant who is a Group-D official is not transferred out of the district, but only within the district to a neighbouring sub-division.

(68)

adjacent to SDO Phones, Kakinada in the interest of service. The reply further alleges that irregular connections were given by the applicant to non-STD telephone holders from the phones provided with STD facility thereby resulting in public complaints. His services will be utilised strictly as only Mazdoor at Angara and there is nothing wrong in relieving him and directing him to report to the new station after the expiry of the medical leave. They also admit that his medical leave will be suitably settled after his joining duty at the new station depending on the leave to his credit.

9. The respondents, though state that the transfer is not ordered as a punishment, but only an incidence of service, the reply indirectly implies that the transfer was done because of the fact that he tampered with lines for making STD calls irregularly.

10. The applicant had filed a rejoinder dt.5-2-96. He has given the various Rule position to state that R-3 is not the competent person to transfer him even from one sub-division to another sub-division and the transfer order can be issued only by the appointing authority viz. the SDOP, Kakinada herein (R-1) and none else. He further submits that the above views are in accordance with the Rule 37 read with Rule 11, 12 & 15 of P&T Manual Vol. IV.

(L.G)

11. The main question that arises for consideration in this O.A. is whether R-3 viz. the D.E. is competent to issue the transfer order from one sub-division to another even if both the sub-divisions are under his control? Whether a Group-D employee can be transferred in the same capacity only in the Sub-division to which he is attached and that too only by the appointing authority.

12. The relevant rules applicable for transfer incorporated in the P&T Manual Volume IV are examined.

13. Rule 38 is transfer at one's own request. This rule provides for transfer of permanent officials to other sub-division without injury to the right of others. This rule also provides for mutual transfer. The rule also indicates the method of assigning of seniority to the transferred officials on request transfer as well as mutual transfer. This rule has no application in this present case as the case is neither a mutual transfer <sup>nor</sup> nor a request transfer.

14. Rule 37 gives the power for transferring of Group-D officials from one district to another. The submission of the learned Standing Counsel is that the present transfer is within the competence of the D.E. (R-3 herein) and hence it cannot be challenged as violative of Rule 37 of the P&T Manual Vol.IV. Rule 37-A stipulates that the transfers should be generally made in April of each year to avoid disruption of education to the school going children except in emergent cases or cases of promotion.

23

15. It is preferable to reproduce Rule 37 and 37-A for clarity. The above rules reads as follows:

"37. All officials of the Department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not, however, be ordered except when advisable in the interests of the public service. Postmen, village postmen and Class IV servants should not, except for very special reasons, be transferred from one district to another. All transfers must be subject to the conditions laid down in Fundamental Rules 15 and 22.

37-A. Transfers should generally be made in April of each year so that the education of school going children of the staff is not dislocated. In emergent cases or cases of promotion this restrictions will naturally not operate."

16. As can be seen from this Rule, Postmen, Village Postmen and Class IV servants should not except for very special reasons be transferred from one district to another. This rule does not give any indication regarding the category of Class IV servants who can be transferred from one district to another under special reasons and also the competent authority to issue such transfer orders.

17. Para 3 of Schedule No.12 of P&T Manual Vol.IV gives the Divisional Engineer administrative powers for transfers. The above said schedule gives full powers to Divisional Engineers, Telegraphs for transfer in respect

to the establishment under him except Gazetted Officers provided the transfer order is not from one scale of pay to another. Rule-11 of the P&T Manual states that "the office establishment will be held to include all non-Gazetted servants engaged on clerical duties as well as Class IV servants employed in offices except sweepers."

In Rule-12 of the Manual, it is laid that "the petty establishments include class-IV servants who are not attached to offices but employed on general duties to offices ~~but not employed on general duties~~ and whose salaries are not provided for in any estimate for a work." From the above reading of Rule 11 and 12 incorporated in the Manual, it may be reasonably possible to come to the conclusion that a Divisional Engineer is competent to transfer a group-D servant of the categories indicated in Rule 11 and 12 from one district to another under special circumstances as per the powers delegated to him under Para-3 of Schedule-12 of P&T Manual Vol.IV. But the above rule is silent in regard to transfer of a group-D official ~~to like~~ the R.M. working in a Sub-division under the control of SDO of the P&T. Rule 15 of the P&T Manual Vol.IV fills this gap. The said rule 15 reads as below:

"15. In every case in which a person, whether in superior or class IV service, is newly appointed to a permanent or officiating post or is promoted or transferred, a written order will be given

(52)

to him over the signature of the officer authorised to make the appointment or order the promotion or transfer and a copy of such order will be sent without delay to the official by whom the pay of the person appointed, promoted or transferred will be drawn. In the case of transfers of officials of the Post Office from the jurisdiction of one head post office to that of another, a copy will also be sent to the postmaster by whom the pay of the person transferred was last drawn."

18. As per Rule 15, the transfer of the Class IV official will be given over the signature of the officer authorised to make the appointment or order the promotion or transfer. From the above, it can be reasonably presumed that the transfer order of Group-D employees under the direct control of SDO can be made only by the authorised officer and that the authorised officer is the appointing officer, who issued the appointment order of the employee.

19. As indicated earlier, the select list selecting the applicant herein and some others for R.M. was issued by the Divisional Engineer, Telecommunications, Kakinada (R-3) in terms of letter No.E-17/Rectt/1981/60, dt.29-3-82 (Annexure A-1). R-3 did not issue the applicant's posting order. R-3 only issued the select list approving the DPC recommendation of casual mazdoor for recruitment as RMs for the vacancies of the year 1981 wherein the applicant is also one of the casual labour in the select list at Sl.No.25. The appointment order appointing the applicant

D

an

(56)

as RM was issued by Sub-Divisional Officer, Phones, Kakinada (R-1 herein) by Memo No.E-30/84-86/25, dt. 26-11-85 (Annexure A-2). Hence it has to be held that SDO, Phones (R-1) is the appointing authority for the applicant as RM and that R-1 only is authorised under his signature to transfer the applicant from one place to another in his Sub-Division as envisaged in Rule 15 of the P&T Manual Vol.IV. As a Sub-Divisional Officer he has no powers to transfer an employee appointed by him in his Sub-Division beyond his jurisdiction. Hence, the applicant herein, if he has to be transferred, can be transferred only in the Sub-Division in which he was appointed.

20. When the concept of secondary switching areas was implemented as per the recommendation of C.O.T. vide Lr.No.1-16/82-TE-I, dt.8-4-85, it was decided that the existing subordinate staff may continue to have the same transfer liability as before namely within the present Sub-Division/Division except in cases of promotion when they will be liable for transfer within the newly formed S.S.area (Dept. of Telecommunication Lr.No.249/56/85-STN, dt.28-2-86). From the above letter it can be inferred that even when the extended S.S.area came into being, the staff in the sub-division would be transferred only within the earlier Sub-divisional jurisdiction but not to the extended S.S. area jurisdiction.

A

The above instruction is in consonance in regard to to be the applicant herein transfer of a Group-D employee/as indicated above.

The reported judgement Robert D'Souza v. Executive Engineer, Southern Railway, 1987 SCC L&S 124 is not appropriate for this case. Hence, this reported judgement is not considered.

21. A reply dt.27-4-96 to the rejoinder of the applicant has been filed by the respondent counsel. This reply to the rejoinder does not give any rebuttal/explanation to the various rules/arguments put forward by the applicant in his reply, based on the various rules as incorporated in the P&T Manual. The reply to the rejoinder only states that Rule 37 gives powers to the Divl. Engineer for transfer of a Group-D employee from one Sub-Division to another as he is in charge of the district. It does not indicate the scope of Rule 11, 12 & 15 and also Para 3 of Schedule 12 of the Manual. Hence, this reply to the rejoinder is of no assistance to adjudicate this case. The other citations of the Apex Court in regard to the powers of the Tribunal in transfer cases mentioned in the reply to the rejoinder has no relevance to this issue on hand. As there is a violation of the <sup>Manual</sup> Rule in regard to competency of the officer issuing the transfer order and place of transfer is also beyond the permitted jurisdiction, the transfer order is liable to be set aside so far it concerns the applicant.

The question of transfer of a Group-D official to other sub-division/districts etc. and the competent authority to order such transfer need not be considered in this O.A. as the same is not called for. Hence it is left open for future when such an issue arises.

22. The respondents in their reply vaguely allege that the applicant is behaving mischievously by illegally connecting STD calls to non-STD subscribers and such mischiefs call for deterrent action by way of transfer. But nowhere it is mentioned in the reply the exact nature of the mischief committed by the applicant. The reply also does not indicate any such instance and the factual enquiry conducted thereon. No doubt staff indulging in giving STD connections to non-STD phone holders need deterrent punishment. But such acts should be substantiated. The reply merely glosses over the above facts. On the basis of unsubstantiated suspicion, the department cannot transfer an employee even without asking for his remarks on the allegation. But the department can easily post him to an insensitive post within the permissible jurisdiction where he cannot indulge in such malpractices.

23. As no substantiated malpractice indulged by the applicant has been brought on record, and the transfer is also not on account of promotion, there appears to be no emergent case warranting his transfer in disregard of rule 37-A during scholastic session.

24. As observed earlier the transfer order cannot be sustained for reasons stated above. However, the setting aside of the transfer order shall not

(456)

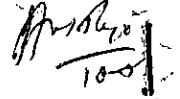
prohibit the competent appointing authority to transfer him to the permissible place under his jurisdiction if circumstances so warrant and the competent authority is also so advised.

25. In the result, the impugned transfer order No.E.11/Trfs&Postings/92-93/153, dt.19-7-94 so far it concerns the applicant (Annexure A-4) is set aside subject to the observation made in para 24 supra. The applicant should be posted back in the appropriate category under S.D.O.Phones, Kakinada when he reports for duty with this order. The period of his absence from the date of his relief till he reports to R-1 with this order should be treated as leave due to him inclusive of leave without pay in accordance with rules. No costs.

  
(R. Rangarajan )  
Member (A)

Dated

9/5/96

  
D.N.C.

kmw

**Copy:-**

1. The Sub Divisional Officer, Phones, Kakinada.
2. The Sub Divisional Officer, Telecom, Mandapeta.
3. The Divisional Engineer, Telecom(Mtcs.), Kakinada.
4. The General Manager Telecom(reptg Union of India), Rajahmundry.
5. One copy to Sri. C.Suryanarayana, advocate, CAT, Hyd.
6. One copy to Sri. V.Rajeshwar Rao, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One spare copy.

**Rem/-**

Urgent  
10/5/96

13/8/96

DA 992/96

TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.RANGARAJAN : M.E.A)

DATED: 9/5/96

ORDER/JUDGEMENT

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

D.A.NO.

IN  
992/96

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDERS AS TO COSTS

\*\*\*  
No Spare copy

