

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

OA No. 278/96

Date of Decision: 2. 4. 1997

BETWEEN:

M.K. Shaji

.. Applicant

AND

1. Divisional Manager (BG),
South Central Railway,
Secunderabad.
 2. Divisional Mechanical Engineer (P),
SC, South Central Railway,
Secunderabad.
 3. Chief Crew Controller, SC:BG,
South Central Railway,
Secunderabad.
 4. Mr. V.S. Sivanandan,
Divisional Mechanical Engineer (Power)
SC:BG, Sanchalan Bhavan,
Secunderabad.
 5. Mr. D. Footman,
Chief Crew Controller,
Diesel Rest Room SC:BG,
Rly. Station, Secunderabad.
- .. Respondents.

Counsel for the Applicant: Applicant in person

Counsel for the Respondents: Mr. V. Rajeswara Rao

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(PER HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.))

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Applicant was present. Heard the applicant in person. Heard Sri V. Rajeswara Rao, learned counsel for the respondents.

The applicant has filed the OA praying this Tribunal to call for the records relating to his transfer and order bearing No. CP/563/P/11/DSL Asstt./96 Dt.31.4.96¹ (Annexure-I), issued by the Respondent No.2 and the order bearing No.SEL/BJ/TA/SMK/ Diesel Assistant/96 Dt.26.2.96 Annexure-2) issued by the respondent-3, to set aside the same and consequently to direct the respondents to continue the applicant at Secunderabad depot and for such other relief.

The case of the applicant in brief is to the following effect:-

That he is a direct recruitee for the post of Electrical/Diesel Assistant. That he was appointed on 15.7.91 that he was posted at Diesel Rest Room, Secunderabad that he was transferred to Dornakal during August 1992, that at his request he was re-transferred to Secunderabad during April 1995. He was elected as a Secretary of the All India Loco Running Staff Association (in short AILRSA), Secunderabad Branch, that he joined LL.B. course after obtaining necessary permission from the Respondent -2 that he is studying his first year Law course at P.M.R. Law College, Tarnaka, Secunderabad, that he is at Sl.No.5 in ranking at the Railway Recruitment Board. Since persons at Sl.No.1 to 4 in the Railway Recruitment Board did not join he remained at Sl. No.1 in the direct recruits selected by the Railway Recruitment Board that he stood 1st in ZTS training, that he is the

senior most diesel assistant in the direct recruitees in the division that he is a member of the South Central Railway Chess Team that he had participated in All India Inter Railway Chess Championship held in Bombay and Calcutta and won 1st and 3rd prizes respectively, that he was taking serious activities in the association ventilating grievances of the staff as well as organising group activities that he was espousing the indifferent attitude in the railway administration towards unsafe train working conditions and pressurising them through process of education and persuasion of all staff to bring about a change so as to avoid or avert accidents that in the process he was advocating with the respondents about implementation of 10 hours rule that he was also involved in trade union activities and was advising the members and staff not to indulge in any corruptive practices to secure favour from the officials that the impugned orders have been passed transferring him to Bidar that the said transfer order was not served on the applicant that on the basis of the said transfer order, the 3rd respondent issued him a relieving order straight away on 26.2.1996 and that the impugned orders are invalid for the following reasons:

- a) That his transfer was not on Administrative grounds;
- b) That the respondents failed to exercise their power on the basis of some principles and without discrimination, that the juniors to him have been retained at Secunderabad station and are allowed to work as shunters in the higher grade that the applicant being senior most has been transferred to a far off place i.e. to Bidar without allowing him to work as a shunter in the grade of Rs.1200/- - Rs.2040/-
- c) That the respondents have not taken into consideration certain relevant factors while transferring him to Bidar.
- d) That the transfer has been made to victimise him,
- e) That the action of the second respondent in calling the applicant to appear before him on 30.1.96 to offer his explanation for his activities in the

union clearly indicates that the impugned orders were not on administrative grounds, that he has not violated any rule nor committed any act of misconduct. Hence the order of transfer is discriminatory, illegal and malafide:

- f) That many of his juniors are allowed to work as shunter/BET at Secunderabad whereas he has been picked up to transfer to Bidar.
- g) That earlier 6 employees from Secunderabad Division were transferred to Bidar during November 1995 and all the 6 employees did not carryout their transfer order, that they were retained at Secunderabad depot itself and that the transferred officials were juniors to him.
- g) That the respondents ought to have seen that he has not worked as Diesel Assistant and as such he has no competency to work on the diesel trains unless he is again given refresher training course.

The respondents have filed their counter stating that the applicant was transferred to Bidar through ^{the} impugned order purely on administrative grounds, that the applicant had sought permission for appearing for Lawcet test, to study law course ^{that} he did not inform the authorities about his joining LL.B. course that the respondents permit its employee to prosecute further study provided their studies would not come in the way of their duties that the Applicant is in essential category which requires him to attend to his duties at any given time for running the trains and he is required to work 8 hours by shift that therefore the plea that the applicant is a secretary of ^{the} union, that he has joined LL.B. course ^{that} that he is a member of the Chess Team, cannot be considered as just grounds for his retention at Secunderabad only that earlier request of the applicant for retention at Secunderabad was considered when he was transferred to Dornakal, that after receipt of the transfer order the applicant

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Proceeded on sick leave and only resumed duties on 22.2.96, that the applicant was relieved on 22.6.96 and that he has availed joining time and reported for duties at ^{Bidar} Bidar on 8.3.1996, that in the case of Blue Star Ltd. Vs. Blue Star Workers Union the Hon'ble High Court of Mumbai ^{has} held that " while trade union was recognised as a right all over the world, this did not mean that office-bearer could claim an inviolable right to do union work at the cost of the work for which one was engaged. " that the Association of which the applicant is a secretary is un-recognised Association that the applicant was not selected under ^{the} sports quota that even admitting for the moment that the applicant is a member of SCR Chess Team the same will not give him any extra privilege for retention at Secunderabad that, at the most, the applicant can be granted special casual leave to enable him to participate in chess tournament as per the existing rules and that there are no grounds to interfere with this transfer order.

Before considering the merits of the OA we feel it proper to reproduce herein the observations of the Hon'ble Supreme Court in the case of A.K. Ray Vs. State of Orissa and others. In para-10 the Hon'ble Supreme Court observed as follows:

" It is settled law that a transfer which is an incident of service is not to be interfered with by the courts unless it is shown to be clearly arbitrary or vitiated by malafides Or infraction of any professed norm or principle governing the transfer (see N. K. Singh V. Union of India¹). The transfer of D.N. Mishra in this background being clearly in the public interest, there was no permissible ground available to the Tribunal

for quashing it. We are constrained to observe that the Division Bench of the Tribunal which made the impugned order dated 26.8.1993 quashing the transfer of D.N. Mishra on the ground of malice of the appellant as the chairman of the Tribunal did so against the material on record and the facts beyond controversy which borders on judicial impropriety. It may also be noted that such comments were made against the chairman without even a notice to him and as stated in the order itself after treating the application for impleading the Chairman to be deemed rejected. "

Recently the Hon'ble High Court of Andhra Pradesh in a ^{writ} ~~rit~~ appeal held as follows:

" Employees holding transferable posts are liable to be transferred at the discretion of the employer. If an employee is aggrieved by the transfer, his only right is to make representation to the authorities. The wide administrative power of transfer cannot be curtailed by the court in exercising its judicial review jurisdiction. To strike down an administrative act purporting to protect something less than a legal right would be truncating the powers of the authorities. "

In the first instance we have to consider whether the transfer of the applicant to Bidar was on extraneous or not consideration/as stated by him. The fact that the applicant had joined the Law Course at P.M.R. Law College for further studies may not be a ground to set aside the impugned order of his transfer. It is clear that the service must be paramount consideration/to prosecute further studies.

Besides the applicant submitted that he is the Secretary of the A.I.L.R.S.A. The respondents contend that the said association is not a recognised one and that therefore the impugned order cannot be termed malafide only on the score that the applicant is Secretary of the said Association. A

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It is further stated that the applicant is a sportsman and is a member of the chess team. That also in our humble view does not deter the respondents from transferring the applicant to Bidar. He can avail necessary special leave from his employer and participate in the chess tournaments. The respondents dispute that the applicant was not at all recruited under the sports quota. Be that as it may, the sports activities of the applicant is not sufficient to impute any malafide to the transfer of the applicant to Bidar.

The applicant narrated certain circumstances to impute malafides to his transfer to Bidar. We are not persuaded to hold that the respondents were prejudiced or biased by any of the activities of the applicant when they transferred him to Bidar.

Now that the applicant has reported to his duties at Bidar. He has carried out the impugned order of transfer. That factor is also a ground which compels us not to interfere with the impugned order for transfer. At present he is discharging his duties at Bidar.

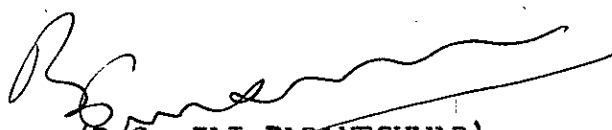
It is stated that he is the senior most employee and that he has not worked as a Diesel Assistant and that unless he is again deputed for refresher training he cannot run the diesel engine. It is for the respondents to consider whether the applicant requires any refresher training to work as a diesel assistant at Bidar. The respondents knowing fully aware of these aspects have transferred him to Bidar. Therefore, that cannot be a ground to set aside the order of transfer.

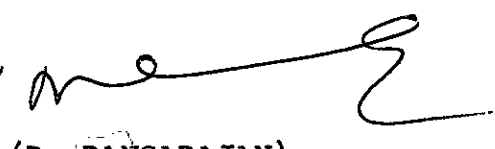
It is further stated that during November 1995 6 employees were transferred to Bidar, that the said employees did not carry out the transfer orders, that they were

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Retained at Secunderabad and that those 6 employees are junior to him. The respondents should have considered this aspect of the matter before taking a decision to transfer the applicant to Bidar. Retaining juniors at Secunderabad Depot and transferring the applicant to Bidar may not be proper. No doubt the respondents have every power and authority to transfer the applicant to Bidar but we feel they should have adopted a norm to post outside the junior most in the section. Further the respondents had cancelled their earlier transfer orders during November, 1995. Hence we feel the respondents may consider the case of the applicant for transferring him to Secunderabad depot or to a nearby place in case the applicant is undergoing any personal inconvenience. We hope the respondents will consider this aspect of the matter sympathetically.

With these observations we feel it proper to dispose of the OA. No order as to costs.


(B.S. JAI PARAMESHWAR)
MEMBER (JUDL.)
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(R. RANGARAJAN)
MEMBER (ADMN.)

Date: 2.4.1997

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D.R. (J) 15-4-97

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Copy to:

1. The Divisional Manager(BG), South Central Railway Secunderabad.
2. Divisional Mechanical Engineer (P), SC, South Central Railway, Secunderabad,
3. Chief Crew Controller, SC: BG, South Central Railway, Secunderabad.
4. One copy to Mr.M.K.Shaji, Party in Person, Electrical Diesel Asst. O/O Chief Crew Controller, Secunderabad.
5. One copy to Mr.V.Rajeswara Rao, Addl.CGSC,CAT,Hyderabad.
6. One copy to D.R(A), CAT,Hyderabad.
7. One duplicate copy.

8. one copy to Sri Jai Peramisetra (M) (2)

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. NGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:
M(J)

DATED: 2/4/97

ORDER/JUDGEMENT

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

in

O.A.No. 278/96

ADMITTED INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS

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II COURT

