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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

O.A. 1205/96

Date of decision: 7/7/97

Between

P. Kannayya ... Applicant

And

1. General Manager,
S.E. Railway,
Calcutta.

2. Divisional Railway Manager,
S.E. Railway,
Visakhapatnam.

3. Sr. Divisional Mechanical
Engineer,
S.E. Railway,
Visakhapatnam.

4. K. Chakravarthy,
Chargeman 'A'
Sr. Divisional Mechanical
Engineer(D)'s Office,
S.E.Railway, Visakhapatnam.

5. P.H.Rao,
Assistant Sub Inspector,
RPF Marshalling Yard,
SE Railway, Visakhapatnam.

6. Ch. Gandhi,
Pharmacist,
S.E.Railway Hospital,
Visakhapatnam. ... Respondents

Shri Y.Subrahmanyam ... Cognsel for applicant

Shri V.Bhimanna ... Counsel for respondents

CORAM

HON'BLE SHRI H. RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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JUDGEMENT

The applicant is aggrieved by the order of DRM (P), Waltair, dated 2.2.96, transferring him from Diesel Loco Shed, Visakhapatnam, to Baripada in the same scale and post. It would appear that on 13.1.96 there was certain unrest in the Diesel Loco Shed at Visakhapatnam. The applicant states that although he was not a participant in the agitation, certain complaints seem to have been made against him by interested parties which resulted in the impugned transfer. The applicant was relieved on the same date. Thereafter he filed OA 169/96 in this Tribunal on 6.3.96. While disposing of the OA this Tribunal permitted the applicant to submit a detailed representation to General Manager, South Eastern Railway, and the latter, viz., G.M. was asked to dispose it of within 21 or 30 days from the date of receipt of such representation. Accordingly a representation was submitted by the applicant on 21.3.96 which was duly considered and disposed of by the G.M. on 1.7.96 by turning down the request of the applicant.

2. This OA was filed on 6.9.96 with the grievance that the decision of the General Manager is the result of non-application of mind, that the impugned transfer is a short-cut adopted merely to avoid initiation of proper disciplinary action, that the action smacks of a punitive measure only to by-pass proper proceedings under Disciplinary and Appeal Rules, that the impugned transfer results in disruption of education of his school- and college-going children, and that he shall face serious difficulties at Baripada where adequate medical facilities are not available to treat the various ailments which he and his spouse are said to suffer from. The impugned action, the applicant asserts, is nothing more than a colorable exercise of executive authority and that the same would also result in his not being considered for the post of intermediate apprentice.

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in his present unit, i.e., Visakhapatnam Division. A further ground taken by the applicant is that no inquiry was held prior to the issue of the impugned transfer order. The applicant also cites a number of cases covering various aspects of transfers of government servants.

3. Based on the above pleadings the applicant prays for the quashing of the impugned transfer order, and to direct the respondents to accept him back to duty at Visakhapatnam and to treat the period of his absence from duty from the date of issuance of the impugned order as a period spent on duty.

4. The respondents in their counter-affidavit submit as under:-

(i) This Tribunal, while disposing of OA 167/96 earlier filed by the applicant (among others) had held that there was no irregularity involved in the impugned transfer.

(ii) In compliance with the directions issued by the Tribunal in the OA supra, the General Manager had duly examined and disposed of the representation submitted by the applicant.

(iii) The case is barred by res judicata.

(iv) The transfer of the applicant was ordered strictly in terms of extant rules.

(v) A fact-finding enquiry by a committee of officers was duly held prior to the issue of the impugned transfer order.

(vi) The transfer of the applicant was ordered with a view to maintaining efficiency and wholly in administrative interest.

(vii) The chances of promotion of the applicant to Fitter Grade.II will not be adversely affected or jeopardised, as feared by him, since he will carry all his service advantage including seniority, to the new unit of his posting.

(viii) The impugned transfer is not an inter-Zone transfer but one which is within the Zone as Kharagpur is a Division under the South Eastern Railway.

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(ix) It is not correct that the applicant had been made to sign the relieving order in the presence of Respondents 4 and 5, as alleged in the O.A.

(x) It is also not true that the impugned transfer was ordered at the behest of any Union leader, as alleged by the applicant.

(xi) The respondents are not aware of any dispute between the applicant and certain union office-bearers as recited in the O.A.

(xii) Kharagpur, being a divisional headquarters of South Eastern Railways, has adequate facilities to cater to any medical requirements of the applicant and his family.

(xiii) The children of the applicant are sufficiently grown-up and studying in higher classes.

5. In a rejoinder filed by the applicant he refutes the plea that the case is barred by res judicata inasmuch as he had been duly granted the liberty by the Tribunal to re-agitate his grievance in case he was aggrieved by the decision of the General Manager. As regards his chances for promotion to Fitter Grade.II, the applicant says that even though he may carry his seniority with him to the new unit, ^{the same could turn out to be no more than an illusory advantage and} he may not be actually benefitted by it as there may be several officials who could be senior to him in Kharagpur ^{therefore,} Division, and he may not ^{really} come into reckoning for such promotion. The applicant insists that his transfer is indeed an inter-Zonal transfer inasmuch as the creation of a new Zone, East Coast Zone, with its headquarters at Bhubaneswar, has since been sanctioned by the Railway Minister, and that the same was likely to be created shortly. He states that the so-called enquiry by a committee of officers was conducted behind his back, and he was neither communicated the results of such an enquiry nor was he apprised of the reasons leading

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to his transfer. As regards the existence of medical facilities at Kharagpur the applicant states that he will not be positioned at the Divisional HQ town after transfer, but would be working in a branch-line at Baripada. Moreover, the level and standard of medical facilities at Kharagpur would in any case be inferior to those available at Visakhapatnam where he was posted until his relief. Regarding education of his children, he states that their studies will definitely suffer since Kharagpur does not have Telugu-medium schools.

6. From the facts of the case as revealed by the record and urged during the hearing of the case, it is seen that the impugned transfer was issued by the Assistant Personnel Officer, Waltair Division, on behalf of the Divisional Railway Manager after it was initiated and approved by the Chief Mechanical Engineer who is the Head of the Department. This aspect has been adequately dealt with in the judgement dated 6.3.96 in OA 167/96. It is not therefore necessary to add any comment on this aspect of the case. The argument of the applicant that the impugned transfer is inter-Zonal in nature is not acceptable simply because the East Coast Railway Zone, which the applicant speaks of, was not in existence at the time of the issue of the impugned transfer orders. Regarding medical and educational facilities, I accept the position that these facilities would be available at the new place of posting also. In any case ways can be routinely found within the existing infra-structural frame-work to overcome any special needs or problems if and when such necessity arises in this regard.

7. The main issue in this case is whether or not the impugned transfer order was issued by a competent authority for adequate reasons. As regards the competence of the authority who issued the impugned order the position has already been indicated elsewhere in this judgement. Regarding the reasons

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for the impugned transfer, the order clearly states that the same is in administrative interest. This is reiterated by the respondents in their counter-affidavit too. I find the stated position in this regard acceptable as there is no special reason why this should be called in question.

8. An important point to be noted is that the applicant does not specifically attribute malafides to the authorities who had issued the impugned order except by way of vague allegations of ~~suspected~~ influence or pressure brought on the respondents by some union activists. There is at the same time nothing to show in the OA that the respondents were actually motivated by any malafides.

9. The applicant has cited as many as 26 judgements in support of his case. This particular effort gives the appearance of a hastily-assembled collation of head-notes from reported cases than any in-depth examination of the applicability [REDACTED] or the reasons leading to those judgements to the present case. The cases cited by the applicant have the following individual features:-

- Transfer order not sustainable since it was not made on administrative consideration.
- No enquiry was held to translate a suspicion into positive conclusion before the transfer was ordered.
- Transfer was ordered without calling for volunteers.
- Specific allegations of malafide were made.
- Transfer order issued in violation of policy guidelines.
- Certain evil consequences were likely to follow from the order of transfer which was bad in law, like, for example, liability to pay enhanced penal rent.
- Transfer orders issued before completion of tenure.
- Transfer orders issued almost immediately after promotion with a view to accommodating favourites and also retaining those who had stayed the longest in a station.

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- Transfer orders held to be malafide.
- Transfer ordered because of certain complaints made by the concerned official against his superiors concerning their immoral behaviour.
- Transfer ordered to accommodate one official at his request.
- Transfer ordered even where the transferee's spouse was positioned at the same station.
- Transfer ordered on extraneous considerations with an oblique motive in deviation of settled guidelines and transfer policy.
- Transfer ordered to ~~other~~ place even where no post was available at the new station to accommodate the applicant.
- Transfer not ordered on any principle, rule or ~~other~~ known norm.
- Transfer ordered in a case where it was possible to draw a reasonable inference of malafides based on the pleadings and antecedent facts and circumstance. A person was transferred as many as six times within 2 years.
- Transfer ordered on consideration of alleged misconduct which was already the subject matter of a disciplinary proceeding.
- Transfer ordered was arbitrary and against rules.
- Second transfer ordered within 7 months.
- Transfer ordered against the policy decision and legislative circulars.

10. The above brief compendium would reveal that almost none of the reasons cited in any of the judgements would be directly applicable to the present case. The citations given in the OA look more like a collection of judgements dealing with the general subject of transfer of government servants with little connection, similarity or relevance to the present case.

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11. The present impugned transfer was ordered in administrative interests. The same was done after an inquiry. There was neither any need nor scope to call for volunteers. There is no specific allegation of malafides against anyone. The impugned transfer is not seen to be in violation of any policy or guideline. The applicant has not been called upon to pay any higher rent in respect of any accommodation. It is not the applicant's case that he was shifted from his present post before the completion of tenure, nor was he transferred to accommodate someone else. The transfer is not the result of any complaint made by him against any of his superiors, nor has he been posted to any position where a vacancy does not exist. The impugned transfer is ordered on a definite principle, i.e., administrative efficiency, as stated by the respondents. It is also not the case of the applicant that he has been transferred and re-transferred at rapid intervals, nor indeed are any disciplinary proceedings under contemplation against him.

The applicant cannot thus draw any support from any of the judgements cited since the facts of those cases are not relevant to his own case.

12. It would appear more or less evident that the impugned transfer—one among many ordered at the same time—had its origin in some problems in the workshop. It would seem that the authorities felt called upon to initiate certain changes in the wake of some incidents and that the impugned transfer of the applicant is a part of such change. That itself would not, however, render the action of the authorities arbitrary or illegal. No malafides, as already stated, have either been alleged, much less established. Under the circumstances, I find it difficult to accept the grounds projected by the applicant in support of his pleas. I do not find sufficient grounds to

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interfere with the transfer since it is not open to the courts to do so unless an impugned order is vitiated by malafides or made in violation of statutory rules. Such is not the case in the present instance. It is always open to the applicant to represent his difficulties at later stage and seek remedies for such problems as he may be faced with through normal departmental channels. It is equally open to the respondents to consider such representations.

13. In the light of what has been stated I hold that the OA is liable to be dismissed as lacking in merit. The same is accordingly dismissed and disposed of.


(H. Rajendra Prasad)
Member (Administrative)

07 Jul 97


Deputy Registrar

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O.A.1205/96.

To

1. The General Manager, SE Rlys,
Calcutta.
2. The Divisional Railway Manager,
SE Rly, Visakhapatnam.
3. The Sr.Divisional Mechanical Engineer,
SE Rly, Visakhapatnam.
4. The copy to Mr. Y.Subrahmanyam, Advocate, CAT.Hyd.
5. One copy to Mr.V.Bhimanna, Addl.CGSC.CAT.Hyd.
6. One copy to Mr.HHRP.M(A) CAT.Hyd.
7. One copy to D.R.(A) CAT.Hyd.
8. One spare copy

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TYPED BY

CHECKED BY

COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.JUSTICE
VICE-CHAIRMAN

and

THE HON'BLE MR.H.RAJENDRA PRASAD:M(A)

Dated: 7-7-1997

~~ORDER~~ JUDGMENT

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

in
C.A.No. 1205/96

T.A.No.

(w.p.)

Admitted and Interim directions
Issued.

Allowed

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected.

No order as to costs.

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