

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.850 of 1999.

DATE OF ORDER: 09-8-1999.

Between :

K.R. Sridharan, s/o K.V.Raman,
aged about 59 years,
Assistant Engineer,
South Eastern Railway,
Rayagada (Orissa State)

...

APPLICANT

A n d

1. Union of India represented by
its General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
2. The Chief Engineer,
South Eastern Railway,
Garden Reach, Calcutta.
3. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta.
4. Senior Divisional Engineer(Coordination),
South Eastern Railway, Waltair Division,
Visakhapatnam.
5. Sri K. Ramachandran, S/o and age
not known to the applicant,
Assistant Engineer,
South Eastern Railway,
(Orissa State). ...

RESPONDENTS

Counsel for Applicant : Mr. Shiva

Counsel for Respondents: Mr. N.R. Devaraj,
S.C. for Railways.

Coram :

The Honourable Mr. Justice D. H. Nasir, Vice-Chairman.

Contd... 2.

O R D E R.

Justice D.H.Nasir, VC :

1. The applicant was appointed as Works Supervisor in the respondent-railways on 15.2.1963. By letter dated 3.11.1998 the applicant was transferred from Rayagada to Visakhapatnam. It is pointed out by the learned counsel for the applicant that the applicant was to retire on attaining the age of superannuation originally on 31.8.1998 which stood subsequently extended to 31.8.2000 on account of extension of age of superannuation from 58 to 60 years. Being aggrieved by the order of transfer, the applicant preferred an appeal on 9.11.1998 on several grounds, such as, less than 2 years of service was left for him and it would cause hardship if he is transferred at this fag end of his service. The applicant also pleads that his wife is an heart-patient and was undergoing treatment at the District Hospital, Rayagada and that in view of her serious ailment, it was desirable to keep her under constant medication. Under these circumstances, according to the applicant, it would be impossible for him to shift his family from Rayagada. The applicant himself is suffering from Hypertension and Diabetes. For all these reasons, according to the applicant, it is necessary that his transfer order should be quashed and he should be permitted to continue in the pre-transfer post till he retires on 31st August, 2000.
2. It is not alleged by the applicant that the transfer is vindictive or punitive and therefore, according to the Standing Counsel Mr. Devaraj it was



not proper for the Tribunal to interfere with this matter of transfer. The oft repeated principles were also urged by Mr. Devaraj that transfer is an incidence of service and it is required to be resorted to for administrative convenience. We have no dispute on these propositions relating to transfer. However, at the same time there are certain norms which are required to be followed by the Department before issuing a transfer order, one of which is to the effect that the Departments as far as possible may refrain from resorting to transfer of a Government servant during last 3 years prior to his retirement. If we do not dispute the tenability of the argument that the transfer is an incidence of service and that the Courts of law or the Tribunals should refrain from interfering with the orders of transfer, it is also necessary on the part of the Department to ensure that the norms set out for transfer are not flagrantly violated without giving convincing reasons or circumstances under which ^{The transfer is} it was made under the guise of administrative convenience.

3. The learned Standing Counsel Mr. Devaraj further submitted that the transfer in question was not an isolated case of transfer nor was it a case of mutual transfer. The impugned transfer was a sequel to a chain of transfers from one place to another involving as many as 6 officials in addition to the applicant. All these officials who are transferred are likely to be put ~~into~~ inconvenience if the applicant's transfer was either quashed or suspended.

4. ^{On the other hand} We would not have hesitated in accepting the arguments advanced by the learned counsel Mr. Shiva for the applicant if the question was not that of chain of transfers affecting as many as 6 officials. It has also been revealed during the course of arguments that the

post concerned is that of Assistant Engineer and that one Sri K. Ramachandran who was transferred to the place from where the applicant was transferred has already taken charge of his transferred post on 5th April, 1999, and that this was prior to the interim directions given by this Tribunal on 8.4.1999 in the earlier OA No.534/99 filed by the present applicant before this Tribunal. While disposing of the aforesaid O.A., this Bench gave a direction to the respondent No.1 to consider the case of the applicant sympathetically keeping in view the observations made in the body of the judgment and to decide the applicant's case within a period of one month. It was further directed that if respondent No.5 had already been relieved, he should be allowed to join at Rayagada and that the transfer should be treated as a temporary transfer till the case was disposed of by the General Manager. Respondent No.5 is none else than Mr. K. Ramachandran who is respondent No.5 in the present O.A. also.

5. In view of what is stated above, there could be no denial of the fact that neither the department nor the private respondent No.5 in the present O.A. were unaware of the fact that Mr. Ramachandran's transfer ^{to be treated as} was a temporary transfer made by the General Manager. In that view of the matter, therefore, it would not be in order for us to take a view that merely because the incumbent had already taken charge of the post from the applicant, the transfers in question were likely to be seriously prejudiced on the ground that transfer in question is a part of chain transfer of 6 officials.

6. We are, therefore, firmly of the opinion that this is a case where the norms of transfer have been flagrantly disregarded and no effort is made to show as to how the administrative convenience would be seriously jeopardised if the applicant is ordered to be retained at his post at Rayagada.

7. Keeping the above situation in view, we believe that it is necessary in the interests of justice to allow the applicant to continue in the same place of posting till he retires on attaining the age of superannuation, more particularly, in view of the fact that the applicant's wife is suffering from a serious ailment. This is a fit case for interference by the Tribunal in a transfer matter. However, alternatively, as fairly conceded by the learned counsel Mr. Shiva for the applicant, the applicant's transfer may not be interfered with but he should be allowed to retain the possession of the Government quarter allotted to him at Rayagada till he retires on attaining the age of superannuation on 31st August, 2000.

8. This O.A. is, therefore, disposed of with a direction that the applicant should be allowed to retain at Rayagada till he attains the age of superannuation, or alternatively the transfer may not be stayed, but the applicant may be allowed to retain the possession of the Government quarter ^{on the same terms & conditions} at Rayagada till he attains the age of superannuation without any direction contrary to his transfer from Rayagada to Laxmipur. The respondents shall exercise any one of the above two options within two weeks from today. No costs.

D. H. Nasir
(D. H. NASIR)
VICE-CHAIRMAN.

Dated the 09th day of August, 1999.

Right side can
see today
82
1st AND 2nd COURT.

COPY TO:-

- 1. HDHND
- 2. HHRAM (A)
- 3. HESDP M (J)
- 4. D.R. (A)
- 5. SPARE

TYPED BY
COMPIRED BY

CHECKED BY
APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH, HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD
MEMBER (ADMIN)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (ADMIN)

THE HON'BLE MR. O.S. JAI PARAMESHWAR :
MEMBER (JUDL)

ORDER: Date. 9/8/99

ORDER / JUDGMENT

MA / RA / CP. NO
IN
DA. NO. 850 / 99

ADMITTED AND INTERIM DIRECTIONS
ISSUED.

ALLOWED.

C.P. CLOSED

R.A. CLOSED.

D.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS.

केन्द्रीय प्रशासनिक अदिकरण
Central Administrative Tribunal
शेषण / DESPATCH

11 AUG 1999

हैदराबाद न्यायालय
HYDERABAD BENCH

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.850 of 1999.

DATE OF ORDER: 09-8-1999.

Between :

K.R. Sridharan, s/o K.V.Raman,
aged about 59 years,
Assistant Engineer,
South Eastern Railway,
Rayagada (Orissa State)

...

APPLICANT

And

1. Union of India represented by
its General Manager,
South Eastern Railway,
Garden Reach, Calcutta.
2. The Chief Engineer,
South Eastern Railway,
Garden Reach, Calcutta.
3. The Chief Personnel Officer,
South Eastern Railway,
Garden Reach, Calcutta.
4. Senior Divisional Engineer (Coordination),
South Eastern Railway, Waltair Division,
Visakhapatnam.
5. Sri K. Ramachandran, S/o and age
not known to the applicant,
Assistant Engineer,
South Eastern Railway,
(Orissa State). ...

RESPONDENTS

Counsel for Applicant : Mr. Shiva

Counsel for Respondents: Mr. N.R. Devaraj,
S.C. for Railways.

Coram :

The Honourable Mr. Justice D. H. Nasir, Vice-Chairman.

Contd... 2.

O R D E R.

Justice D.H.Nasir, VC :

1. The applicant was appointed as Works Supervisor in the respondent-railways on 15.2.1963. By letter dated 3.11.1998 the applicant was transferred from Rayagada to Visakhapatnam. It is pointed out by the learned counsel for the applicant that the applicant was to retire on attaining the age of superannuation originally on 31.8.1998 which stood subsequently extended to 31.8.2000 on account of extension of age of superannuation from 58 to 60 years. Being aggrieved by the order of transfer, the applicant preferred an appeal on 9.11.1998 on several grounds, such as, less than 2 years of service was left for him and it would cause hardship if he is transferred at this fag end of his service. The applicant also pleads that his wife is a heart-patient and was undergoing treatment at the District Hospital, Rayagada and that in view of her serious ailment, it was desirable to keep her under constant medication. Under these circumstances, according to the applicant, it would be impossible for him to shift his family from Rayagada. The applicant himself is suffering from Hypertension and Diabetes. For all these reasons, according to the applicant, it is necessary that his transfer order should be quashed and he should be permitted to continue in the pre-transfer post till he retires on 31st August, 2000.
2. It is not alleged by the applicant that the transfer is vindictive or punitive and therefore, according to the Standing Counsel Mr. Devaraj it was

not proper for the Tribunal to interfere with this matter of transfer. The oft repeated principles were also urged by Mr. Devaraj that transfer is an incidence of service and it is required to be resorted to for administrative convenience. We have no dispute on these propositions relating to transfer. However, at the same time there are certain norms which are required to be followed by the Department before issuing a transfer order, one of which is to the effect that the Departments as far as possible may refrain from resorting to transfer of a Government servant during last 3 years prior to his retirement. If we do not dispute the tenability of the argument that the transfer is an incidence of service and that the Courts of law or the Tribunals should refrain from interfering with the orders of transfer, it is also necessary on the part of the Department to ensure that the norms set out for transfer are not flagrantly violated without giving convincing reasons or circumstances under which it was made under the guise of administrative convenience.

3. The learned Standing Counsel Mr. Devaraj further submitted that the transfer in question was not an isolated case of transfer nor was it a case of mutual transfer. The impugned transfer was a sequel to a chain of transfers from one place to another involving as many as 6 officials in addition to the applicant. All these officials who are transferred are likely to be put into inconvenience if the applicant's transfer was either quashed or suspended.

4. We would not have hesitated in accepting the arguments advanced by the learned counsel Mr. Shiva for the applicant if the question was not that of chain of transfers affecting as many as 6 officials. It has also been revealed during the course of arguments that the

post concerned is that of Assistant Engineer and that one Sri K. Ramachandran who was transferred to the place from where the applicant was transferred has already taken charge of his transferred post on 5th April, 1999, and that this was prior to the interim directions given by this Tribunal on 8.4.1999 in the earlier OA No.534/99 filed by the present applicant before this Tribunal. While disposing of the aforesaid O.A., this Bench gave a direction to the respondent No.1 to consider the case of the applicant sympathetically keeping in view the observations made in the body of the judgment and to decide the applicant's case within a period of one month. It was further directed that if respondent No.5 had already been relieved, he should be allowed to join at Rayagada and that the transfer should be treated as a temporary transfer till the case was disposed of by the General Manager. Respondent No.5 is none else than Mr. K. Ramachandran who is respondent No.5 in the present O.A. also.

5. In view of what is stated above, there could be no denial of the fact that neither the department nor the private respondent No.5 in the present O.A. were unaware of the fact that Mr. Ramachandran's transfer ^{to be held as} was a temporary transfer made by the General Manager. In that view of the matter, therefore, it would not be in order for us to take a view that merely because the incumbent had already taken charge of the post from the applicant, the transfers in question were likely to be seriously prejudiced on the ground that transfer in question is a part of chain transfer of 6 officials.

6. We are, therefore, firmly of the opinion that this is a case where the norms of transfer have been flagrantly disregarded and no effort is made to show as to how the administrative convenience would be seriously jeopardised if the applicant is ordered to be retained at his post at Rayagada.

7. Keeping the above situation in view, we believe that it is necessary in the interests of justice to allow the applicant to continue in the same place of posting till he retires on attaining the age of superannuation, more particularly, in view of the fact that the applicant's wife is suffering from a serious ailment. This is a fit case for interference by the Tribunal in a transfer matter. However, alternatively, as fairly conceded by the learned counsel Mr. Shiva for the applicant, the applicant's transfer may not be interfered with but he should be allowed to retain the possession of the Government quarter allotted to him at Rayagada till he retires on attaining the age of superannuation on 31st August, 2000.

8. This C.A. is, therefore, disposed of with a direction that the applicant should be allowed to retain at Rayagada till he attains the age of superannuation, or alternatively the transfer may not be stayed, but the applicant may be allowed to retain the possession of the Government quarter at Rayagada till he attains the age of superannuation without any direction contrary to his transfer from Rayagada to Laxmipur. The respondents shall exercise any one of the above two options within two weeks from today. No costs.

प्रमाणित प्रति
CERTIFIED TRUE COPY

क्रम संख्या

CASE NUMBER

निम्नांकित

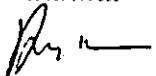
DATE FILED

प्रति तिथि

COPY MADE

O. A. 850/23

9/8/94



कौन से अधिकारी

Court Officer

कौन से अधिकारी

Central Administrative Tribunal

हैदराबाद आवास

HYDERABAD BENCH