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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A. 1090/99

Date: 4.10.1999

Between:

S. Babulal

.. Applicant

A N D

The Divisional Engineer,
Construction/Mudkhed
SC Railway, Nanded,
Mudkhed

.. Respondent

Counsel for the Applicant: Mr.K. Sudhakar Reddy

Counsel for the Respondent: Mr. V. Rajeshwar Rao

Coram:

Hon. Shri B.S. Jai Parameshwar, Member (J)



O R D E R

(per Hon. Shri B.S. Jai Parameshwar, Member(J)

Heard Mr. K. Sudhakar Reddy, learned counsel for the Applicant and Mr. V. Rajeshwara Rao, learned standing counsel for the respondents.

2. This application was heard on merits when M.A.787/99 filed by the respondents to vacate the interim order dt. 27-7-1999 came up for consideration.

3. While the Applicant was working as Head Clerk in the O/O DRM(P)/Organisation at Guntakal in the scale of pay of Rs.1400-2300 volunteered to work in the construction unit of the DEN/Construction at Nanded, on deputation basis.

4. The Applicant reported at the DEN/Nanded during June'90. While he was working on deputation basis, he was promoted on ad-hoc basis to the post of Depot Store Keeper in the scale of pay of Rs.1600-2660 w.e.f. 5-10-1990.

5. The respondents, relying upon the office order No.115/97 dt. 14-8-1997 of the CAO/Construction/SC, by the impugned order No.EST/Construction/MAC/102 dt. 19-7-1999 relieved the Applicant from the post of Depot Store Keeper and directed him to report to the Sr.DPO at Guntakal. Thus he was repatriated to his parent unit.

6. The Applicant has challenged the impugned order dt. 19-7-1999 on the ground that he was not made known the contents of letter dt. 14-8-1997

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referred to in the impugned order and that even a copy of the said letter was not served on him and that therefore the impugned order is not sustainable in law.

7. He has filed this OA to set aside the impugned order dt. 19-7-99 passed by the respondent and for a consequential direction to the respondent to retain him at Nanded.

8. The respondent has filed his reply. He submits that the Applicant was working as Depot Store Keeper on deputation basis, that the Applicant was placed under suspension w.e.f. 5-7-97, as the Applicant was arrested by the RPF authorities, that a case in Crime No.2/97 was registered against the Applicant, that the Divisional Security Commissioner had advised to withdraw the services of the Applicant from the active duties of the Depot Store Keeper (Construction) as per Annexure R-1, that besides two disciplinary proceedings are pending against the Applicant; that taking all these factors into consideration the competent authority took a decision to repatriate Applicant to his parent unit at Guntakal, that accordingly office order No.115/97 dt. 14-8-1997 was issued repatriating the services of the Applicant to Sr.DPO,Guntakal that the said order was served on the Applicant on 19-8-1997(Annexure R-III); that, however, the Applicant could not be relieved from the post of Depot Store Keeper as he was continued under suspension; that the suspension of the Applicant was revoked by order dt. 15-7-1999(Annexure R-IV) and that, thereafter, he was relieved from the post of Depot Store Keeper by the impugned order dt. 19-7-1999 with a direction to the Applicant

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to report to the Senior DPO Guntakal. He has denied the averments in the OA. He submits that the repatriation of the Applicant to his parent unit was purely due to administrative reasons.

9. Further he submits that in pursuance to the impugned order the Applicant obtained railway passes to perform journey to Guntakal. Hence challenge to the impugned order is an after thought. The Applicant has no prescriptive right to continue to work in the construction organisation. Thus he prays for the dismissal of the application.

10. Applicant has filed a rejoinder. In the rejoinder he submits that he was deputed to work in the O/O DEN/Construction, Nanded, on the following terms and conditions :

- "1. His lien will be maintained in his parent department viz., Personnel Branch/Guntakal.
2. He will be repatriated back whenever the construction Project work is wound up.
3. He is not eligible for any benefits on transfer account."

that he could be repatriated to his parent unit only when the work in the construction organisation is wound up, that as on 14-8-97/19-7-99 the work in the construction organisation was not wound up, hence the impugned order is illegal. Further he submits that as admitted by the respondents in the reply he is facing two disciplinary cases hence he could not be relieved till the conclusion of the disciplinary proceedings, that repatriation to his parent

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department at such a stage may amount visiting him with penalty indirectly, hence his repatriation to his parent unit is illegal. He further submits that he is willing to work at Mudkhed or in the office of the DRM Nanded.

11. Further he submits that the present repatriation to his parent department at Guntakal causes immense hardship to his school going children as the impugned order has been issued in the middle of academic year.

12. The only point that arises for my ~~consideration~~ is whether the impugned order dt. 19-7-1999 relieving the Applicant and directing him to report to Sr.DPO Guntakal (Parent unit) is liable to be interfered with ?

13. My findings is in the negative for the following reasons :

14. The first contention of the Applicant in the application is that the impugned order refers to office order No.115/97 dt. 14-8-1997, that the said office order was not served on him, that he was not aware of the contents of the said letter, ^{and} that there was nearly two years delay in implementing the said order. The respondent ^s had denied the said averments. In fact he has categorically stated that by office order No.115/97 dt. 14-8-1997 the competent authority took a decision to repatriate the services of the applicant to his parent unit. Further it is stated that they could not immediately do so as the applicant was under suspension w.e.f. 5-7-97. They submit that a copy of the order dt. 14-8-97 was in fact served on the Applicant as per Annexure-III, page 9 to the reply.

15. The Applicant has not disputed this aspect in his rejoinder. Therefore the contention of the Applicant that the impugned order is not enforceable for the simple reason that he has not been served with the office order No.115/97 dt. 14-8-97 cannot be accepted. On this score the impugned order is not liable to be interfered with.

16. The next contention of the Applicant is that as per the terms and conditions of the order of the deputation dt. 14-6-90 he can only be repatriated to his parent department when the construction project work is wound up. For this he relies upon the conditions incorporated in the order of deputation. He submits that unless and until the construction project work is wound up he cannot be repatriated to his parent unit. I feel that so long as the borrowing department is willing to extract work from a deputationist the employee can continue on deputation basis or even so long as the lending department is prepared to continuously sent on deputation basis. In fact the deputationist has no right to claim to continue on deputation basis. In the present case, as seen from the reply, the performance of duties by the Applicant as the Depot Store Keeper appears to be not satisfactory.

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17. Moreover the respondent has explained the circumstance under which the competent authority took a decision to repatriate him to his parent unit. The Applicant does not dispute those circumstances and in fact he takes shelter under those circumstances to claim that he cannot be repatriated to his parent department. Therefore in my opinion the clause in the order of deputation cannot be made use of by the Applicant to claim that he can be continued till the construction project work is wound up at Nanded. The construction project work is a laborious work. It may not be possible to predict when the construction project work will be wound up. If the clause in the order of deputation is taken to its literal meaning then it may be possible that the Applicant may have to retire from the said construction project work itself. Therefore I am of the opinion that the condition in the order of deputation does not debar the competent authority to repatriate the Applicant to his parent department.

18. The next contention of the Applicant is that repatriation to his parent unit is contrary to the Railway Board instructions. In fact by the impugned order the Applicant has been ~~relieved~~ from the post of Depot Store Keeper with a direction to report to Sr.DPO at Guntakal. That means his services have been placed at the disposal of his parent unit. This in my opinion does not in any way amount to transfer.

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19. Transfer and repatriation are quite different and distinct ^{terms.} Repatriation will be done either at the instance of the borrowing authority or at the instance of the lending authority. The lending authority is the supreme authority so long the Applicant continued on deputation. ^{otherwise} Even ~~if~~ the borrowing authority has the same power to continue an employee on deputation. If the borrowing authority feels that the services of the deputationist is not upto the mark or his ^{them} services are no longer required ~~the~~ the borrowing authority even without the consent of the ~~lending~~ authority can place the deputationist at the disposal of the lending authority.

20. Hence repatriation cannot be equated with transfer. It is entirely at the discretion of the borrowing authority to retain the Applicant in the construction organisation. The respondent has explained the circumstances under which the office order No.115/97 dt. 14-8-97 could not be complied with immediately. It is stated that the Applicant was under suspension w.e.f. 5-7-97, that his suspension was revoked on 15-7-99 and immediately thereafter the impugned order was issued. In fact the respondents have produced Annexure-IV wherein the Applicant has acknowledged the order of revocation of his suspension.

21. The respondent in his reply has clearly stated that certain disciplinary proceedings ^{are} ~~were~~ pending against him. Taking advantage of this fact the learned counsel for the Applicant relied upon the Railway Board letter E(D&A) 65 RG-6-62 dt. 20-3-67 to contend that he could not have been transferred to

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his parent department when the disciplinary proceedings were pending. I have gone through the said instructions of the Railway Board. Instructions of the Railway Board are only the guidelines for the authorities. Moreover the Applicant was not transferred but was repatriated to his parent department. Therefore the competent authority taking note of the pendency of the disciplinary proceedings has taken a decision to repatriate the services of the Applicant to his parent department. When that is so I am of the opinion that the Railway Board's instructions relied upon by the learned counsel for the Applicant cannot be applicable in the case of repatriation of an employee to his parent unit.

22. Another contention raised by the Applicant is that he should not have been repatriated to his parent unit while he was under suspension. Incidentally order No. 115/97 dt. 14-8-1997 was passed while the Applicant was under suspension. Applicant takes advantage of this to contend that he should not have been ordered so while he was under suspension. It is his case that he should have been reinstated into service and then a decision should have been taken. I am agreeable with such a proposition. In fact the competent authority took a decision to repatriate the services of the Applicant to his parent unit on 14-8-1997 and the respondents implemented the same only after the Applicant was reinstated into service by order dtd. 15-7-1999. Hence I find no irregularity in issuing the impugned order or order of repatriation dt. 14-8-1997



23. Learned counsel for the Applicant submitted that the Applicant is prepared to work in Mudkhed or in the O/O DRM Nanded. Further he submitted that the present impugned order of repatriation causes inconvenience to his school going children. These are the matters to be considered by the respondents. These are the grounds urged by the Applicant for the first time during the course of arguments. I am not prepared to express any opinion on these aspects. In case, Applicant is so advised may submit a representation to the respondent explaining these factors and if such a representation is received from the Applicant, the respondent may take a suitable decision, as per rules.

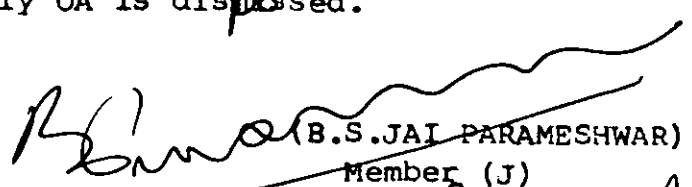
24. Lastly the learned counsel for the Applicant contended that the respondent has taken an ⁱvindictive attitude because he had approached this Tribunal and obtained interim order dt. 27-7-99. He submits that the respondent has not disbursed his salary and other emoluments. I am not prepared to accept this submission of the Applicant at its face value. However, if the same is true, it is a serious matter to be viewed. Merely because the Applicant approached this Tribunal the respondent is not justified to withhold ~~the~~ disbursement of his salary. I ^{hope} ~~feel~~ that the respondent will realise his responsibility and disburse salary to the Applicant within ^{three} ~~seven~~ days from the date of receipt of a copy of this order. More than that I do not wish to express any further in this matter.

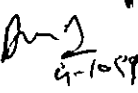
25. For the reasons stated above I find no merits in the application and the OA is liable to be ~~disposed~~ ^{dismissed}.

26. Accordingly OA is ~~disposed~~ ^{dismissed}.

27. No costs.

MD


B.S. JAI PARAMESHWAR)
Member (J)
4.10.99


4-10-99

11/10/99
IST AND IIND COURT

COPY TO :-

1. HDHND
2. HRRN (A)
3. HBSJP M (J)
4. D.R. (A)
5. SPARE
6. ADMOCATE
7. STANDING COUNSEL

TYPED BY
COMPARED 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. R. RANGARAJAN :
MEMBER (ADMN.)

THE HON'BLE MR. S.S. JAI PARAMESWAR
MEMBER (JUDL.)

* * *

DATE OF ORDER: 11/10/99

MA/RA/CP.NO.

IN

CA. No. 1090/99

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

CP CLOSED

RA CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED / REJECTED

NO ORDER AS TO COSTS

