

M. Nandagopal Vs. The Union of India, Rep. by General Manager, Chennai and Others

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Court : Chennai

Decided On : Oct-24-2016

Judge : S. Manikumar & N. Authinathan

Appeal No. : W.P. No. 20772 of 2016 & WMP No. 26606 of 2016

Appellant : M. Nandagopal

Respondent : The Union of India, Rep. by General Manager, Chennai and Others

Judgement :

(Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari Mandamus, calling for the records relating to the order passed in O.A./310/0166/2015 dated 25.08.2015 by Central Administrative Tribunal, Madras Bench and quash the same and consequently direct the respondents herein to continue the petitioner in the same place at Arakkonam with all attendant and consequential benefits with due regards to petitioner seniority.)

S. Manikumar, J.

1. Challenge in this writ petition is to an order made in O.A.No.310/0166/2015 dated 25.08.2015 by which, the tribunal has declined to quash the order dated 02.07.2014 and the further directions dated 08.08.2014, issued by the Senior

Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai. Consequently, the Tribunal also declined to issue any directions to the respondents, to retain the petitioner at SSE/SIG/AJJ.

2. Short facts leading to the writ petition are that the petitioner joined Railways as Kalasi at Jholarpet on 19.11.2005. While in service, he joined B.Tech Course MGR Engineering College, Maduravoyil, under intimation to the respondents. He submitted an application on 09.08.2010 requesting for transfer to Basin Bridge (BBG) or Madras Beach (MSB) or Madras Central(MAS), to pursue his studies. The request for transfer was not considered. However, he pursued his studies.

3. On 14.11.2013, the petitioner made a request to the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai, the 2nd respondent, to cancel his request for transfer. When the matter stood thus, the said authority, passed an order on 02.07.2014, transferring the petitioner to Madras Beach on the grounds that such transfer has been effected on request.

4. Aggrieved, the petitioner submitted a representation on 03.07.2014 to the 2nd respondent to cancel the transfer. There was no response. Vide order dated 08.08.2014, the 2nd respondent, directed the petitioner to join duty at Madras Beach and register afresh, for transfer. Being aggrieved by the same, the writ petitioner has filed O.A.No.310/0166/2015 before the Central Administrative Tribunal, Madras Bench.

5. Before the tribunal, the respondents in their counter affidavit contended that the writ petitioner has been working in Arakkonam since 2005. In 2010, he made a one way transfer request and that the same was registered. Railways have further contended that the plea of the writ petitioner that request for transfer would automatically lapse on the expiry of two years, is based on the administrative instruction, for which, there is no guideline or rule framed by the Railways. According to them, there were complaints against the writ petitioner. The co-workers have given a representation, dated 24.07.2014 that he was fighting with everybody; does not attend office in time; threatened one Shri Dharmalingam,

Senior Technician / Arakkonam and therefore, they have requested for his transfer from Arakkonam, failing which, they would be constrained to resort to tool down strike.

6. Before the Central Administrative Tribunal, Madras Railways have further contended that request of the petitioner dated 14.11.2013 for cancellation of registration made in 2010, has not been received. It is also their contention that transfer is an incidence of service and that the employer has every right to decide, where an employee has to be posted. Thus, for the abovesaid reasons, the railways have prayed for dismissal of the Original Application.

7. Adverting to the rival submissions and by observing that employer is the best judge to decide where an employee should be posted and not agreeing with the contentions of the writ petitioner that as per the instructions contained in the application form for registration, for transfer, registration made on 09.08.2010 would lapse after the expiry of two years, if not renewed by the applicant, before the expiry of the said period, the tribunal declined to quash the order of transfer dated 02.07.2014 and the further order, dated 08.08.2014. While doing so, the tribunal has also observed that the writ petitioner has not produced any rule or guideline, to support the contention that registration for transfer will lapse after expiry of two years. Being aggrieved by the same, instant writ petition has been filed.

8. While inviting the attention of this Court to the registration made on 09.08.2010, by the petitioner, with the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai, the 2nd respondent herein, to undergo B.Tech Course in MGR Engineering College, Maduravoyal, and the reason for transfer, stated in the impugned order dated 02.07.2014 and to the averments made in the counter affidavit filed by the respondents, wherein, it is stated that transfer is effected on account of complaints made by the co-workers, Mr.Gnanasekar, learned counsel for the writ petitioner submitted that the Tribunal has failed to consider the instructions contained in the application form, submitted for registration for transfer.

9. According to him, on the expiry of two years, from 09.08.2010, registration for request transfer has lapsed, and therefore, it is not open to Railways to contend otherwise. He also submitted that an administrative order of transfer, has to succeed or fail for the reasons contained in it, and the Tribunal has erred in accepting the reasons, assigned in the counter affidavit, to sustain the transfer order. He also submitted that when the transfer has been made on 02.07.2014, there was no complaint against the writ petitioner and that the complaint dated 24.07.2014, is subsequent to the order of transfer.

10. Learned counsel for the petitioner submitted that the tribunal had failed to advert to the facts and law. It is also his contention that when it is the specific instruction of Railways that registration for request transfer, will lapse after expiry of two years or until renewal by the applicant, rejection of the said plea on the grounds that the writ petitioner has not produced any guidelines or rules to that effect, is arbitrary. For the abovesaid reasons, he prayed for to set aside the order of transfer.

11. Based on the averments made in the counter affidavit of the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai - 600 003, 2nd respondent herein, Mr.S.M.Deenadayalan, learned counsel appearing for the respondents submitted that there were several complaints against the petitioner and that co-employees have given a representation, dated 24.07.2014, stating that the petitioner has fought with almost every employee in Arokonam. He further submitted that the transfer has been effected to ensure peaceful atmosphere at the work spot.

12. According to the learned counsel of the respondents, transfer is an incidence of service and should not be interfered with. In that context, he relied on the following judgments,

1. State of U.P. v. Gobardhan Lal reported in 2004 (11) SCC 402,
2. Nirmalandan v. Dinakaran reported in 1989 (1) KLT 126,
3. Union of India v. S.L.Abbas reported in JT 1993 (3) SC 678,

4. Shilpi Bose (Mrs.) and Ors., v. State of Bihar and Ors., reported in AIR 1991 Supreme Court 532.

13. Learned counsel for the respondents submitted that since 2005, the writ petitioner is stationed at Arokonam. He further submitted that request for transfer, made on 09.08.2010, would not automatically lapse on the expiry of two years' period and that there is no rule. It is also his submission that letter, dated 14.11.2013, of the writ petitioner for cancellation of his request for transfer, was not received by the department. For the abovesaid reasons, he prayed to sustain the impugned order of transfer and that of the Tribunal.

Heard the learned counsel appearing for the parties and perused the materials available on record.

14. Fact that the writ petitioner has submitted an application, dated 09.08.2010, requesting for transfer to BBQ or MSB or MAS, to pursue his studies, is not disputed. The said request has not been considered. Application submitted for registration of his name for transfer, indicates that the registration would expire on the expiry of two years, unless renewed by the applicant. After completion of studies, the petitioner is stated to have sent a letter, dated 14.11.2013, to the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai - 600 003, 2nd respondent herein, to cancel the registration for request transfer. A copy of the letter, dated 14.11.2013, is stated to have been marked to the Senior Division Signal and Telecom Engineer-I, Southern Railway, Chennai Division, Chennai - 600 003, the Additional Divisional Signal and Telecom Engineer/AJJ, Southern Railway, Arakkonam and the Senior Section Engineer, Southern Railway, Arakkonam, respondents 3 to 5 herein.

15. Though the respondents have denied the receipt of the letter, dated 14.11.2013, copy of the said letter, enclosed in the typed set of papers, indicates two seals of the Office of the Senior Section Engineer/Signal, Southern Railways, Arakonam, 5th respondent herein. Notwithstanding the above, when there is a specific instruction in the application form for registration, stating that the said registration for transfer on request, would lapse on the expiry of two years, unless

renewed, the contention of the respondents that such instructions are not supported by any rule or guideline, issued by the Ministry and therefore, not binding on the Railways, cannot be accepted. When the Railways have contended that there is no rule or guideline for the abovesaid instructions, in the application form, for registration for request transfer, there is no reason, as to why, Railways impose such condition in the registration form. The reasoning of the Tribunal for dismissing the Original Application, on the grounds that the writ petitioner has not produced any rule or guideline, is not correct. It is well known that administrative instruction, can fill up the gaps in the rules. If there was no rule or guideline, then why should Railways impose such a stipulation, while registering the request for transfer. There is no answer.

16. Transfer order, dated 02.07.2014, issued by the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai, the 2nd respondent herein, merely states that among others, the writ petitioner has been transferred to Chennai (MSB), on request. As stated supra, there is a seal and signature in the application form, dated 14.11.2013, of the Office of the Senior Section Engineer/Signal, Southern Railways, Arakonam, 5th respondent herein. Contention of the Railways that they have not received the representation of the petitioner for cancellation of the request, is doubtful.

17. Yet another factor to be taken note of, is that when the transfer order was issued on 02.07.2014, by the Senior Divisional Personnel Officer, Divisional Manager's Office, Personnel Branch, Southern Railway, Chennai Division, Chennai, the 2nd respondent herein, the same is sought to be sustained, on the grounds that the respondents have received a complaint/representation, dated 24.07.2014, from the co-employees and therefore, the employer has every right to say, where the petitioner has to be posted. Transfer, dated 02.07.2014, is also sought to be justified, on the grounds that the co-workers have requested for transfer of writ petitioner, out of Arokonam, failing which, they would be constrained to resort to tool down strike.

18. It is well settled that an administrative order has to fall or succeed, on the grounds, stated in such order, and the same should not be allowed to be supported with any averments in the counter affidavit. Reference can be made to a decision of the Hon'ble Apex Court in *Mohinder Singh Gill v. Chief Election Commr.*, reported in 1978 (1) SCC 405, wherein, at Paragraph 8, held as follows:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr., of Police, Bombay v. Gordhandas Bhanji*, reported in AIR 1952 SC 16:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

19. The above position of law has been restated in *Hindustan Petroleum Corpn. Ltd., v. Darius Shapur Chenai* reported in 2005 (7) SCC 627, and at Paragraph 24 of the judgment, the Hon'ble Supreme Court held as follows:

"When an order is passed by a statutory authority, the same must be supported either on the reasons stated therein or on the grounds available therefor in the record. A statutory authority cannot be permitted to support its order relying on or on the basis of the statements made in the affidavit dehors the order or for that matter dehors the records."

20. As rightly pointed out by the writ petitioner that the representation, dated 24.07.2014, a subsequent event, not available on record, while passing order on 02.07.2014, the date on which, the writ petitioner has been transferred. When

there was no complaint, as on 02.07.2014, the order of transfer, cannot be justified on the grounds, stated in the counter affidavit. In the light of the decisions, stated supra, we are of the view that the Tribunal has erred in submitting the order of transfer, on the basis of the subsequent events, not available on the date of transfer.

21. As pointed out earlier, transfer is stated to have been effected only on the request of the writ petitioner and not on any complaint. No doubt, it is a settled principle of law that transfer is an incidence of service and not to be interfered with lightly, by the Courts, but when the respondents themselves, in their application form, have categorically mentioned that registration for request transfer, would be valid only for two years, unless it is renewed, Railways cannot simply disown the same, by stating that the said instruction, is not supported by any rule or guidelines and transfer an employee, after two years and contend that registration was alive, when the order of transfer was issued. For the reasons, stated supra, the contention of Railways that the writ petitioner is stationed at Arakonam, since 2005 and therefore, transfer effected need not be interfered with, also cannot be countenanced.

22. For the reasons, stated supra, we are of the view that the impugned order of transfer, is liable to be set aside and accordingly, set aside. The respondents 1 to 5 are directed to restore the writ petitioner, within a period of two weeks, from the date of receipt of a copy of this order.

23. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

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