

A. Thirumalai Vs. the Garrison Engineer (South) and

A. Thirumalai Vs. the Garrison Engineer (South) and

SooperKanoon Citation : sooperkanoon.com/54063

Court : Central Administrative Tribunal CAT

Decided On : Aug-11-2000

Judge : N S Vice, G a S.K.

Appellant : A. Thirumalai

Respondent : The Garrison Engineer (South) and

Judgement :

1. The applicant is aggrieved by the impugned order dated 22.6.2000 transferring him as an MT Driver Grade II from GE (South), Bangalore, to GE (North), Bangalore. The said order is issued by the Garrison Engineer (South), that is, GE, (South), who is the first respondent, and is found at Annexure-A3 of the O.A. The applicant made a representation against the impugned transfer to the Chief Engineer, (Air Force), that is, CE (Air Force), who is the fourth respondent in the present O.A. That representation dated 26.6.2000 submitted through proper channel, which is described as an appeal, is seen at Annexure-A4. The said representation was rejected by the GE (South) on the ground that the contents of the representation having been examined had not been found convincing for processing the same to the next higher office. This order, thus rejecting the representation, dated 29.6.2000 is seen at Annexure-A6.

(ii) To quash the order of transfer/movement as at Annexure-A3 as unjust and illegal (iii) To order retention in this Unit pending finalisation of the disciplinary proceedings and the completion of the incompleated tenure of his position as General Secretary of the SRMES Employees' Union and the JCM level IV (v) To

award any other relief, that this Hon'ble Tribunal deems fit in the facts and circumstances of this case, in the interest of Equity and justice." 3. The main ground urged by the applicant while seeking the above mentioned reliefs is that the transfer is of a punitive nature and has been ordered after disciplinary proceedings have been initiated against him and on the ground that some complaint has been lodged alleging defalcation of money collected from the members of the Union of which the applicant is the General Secretary. The applicant has contended that the impugned order thus seeks to impose a penalty on him without following and completing the prescribed procedure for imposing the penalty. Besides, the applicant has alleged that the impugned transfer cannot be considered as having been passed in public interest, since no public interest can be served by transferring the applicant. On behalf of the applicant it has further been contended that the said transfer is in violation of the transfer policy which contemplates transfer of an official at the level of Driver only when it is based on voluntary option or the duration of the stay at the station. He has also alleged that the transfer policy prohibits transfer of an office bearer of the Union. In addition, the applicant has pointed out that he has been unauthorisedly removed from the membership of the Joint Consultative Machinery (JCM), Level IV, by the first respondent and that the matter is pending on the file of the Hon'ble High Court of Karnataka in Writ Petition No. 33335/99 and that by shifting him from the Office of the GE (South), Bangalore, to GE (North), his removal from the said JCM is sought to be made a fait accompli; since as a member of the JCM he has to remain in the same unit, the personnel of which he represents at the meetings of the JCM. 4. On the grounds urged by him, the applicant has challenged the impugned transfer as invalid and illegal. On behalf of the applicant certain decisions have been cited in support of his basic position that in the facts and circumstances as narrated by him in the O.A., the impugned transfer is untenable and should, therefore, be quashed. These decisions mainly relied upon by the learned Counsel for the applicant are as follows: (i) *Bijoy Kumar Gharani v. Union of India and Ors.*, (1988) 8 A.T.C. 895 (Calcutta) and (ii) *Charanjit Lal v. Union of India and Ors.*, (1987) 3 ATC 311=1986(4) SLJ 525 (PB-ND) (CAT).

5. The respondents, on the other hand, have clearly admitted that in order to maintain a proper working environment and remedy the bad situation in the

establishment, which had been created by the activities of the applicant, it was found necessary for administrative reasons to transfer the applicant from one office to another in the same station in Bangalore. They have pointed out that the applicant is admittedly involved in disciplinary proceedings and further that there is a specific complaint about the involvement of the applicant in financial transactions involving huge amounts of money of a large number of employees belonging to the same establishment where the applicant has been working. They have further argued that the transfer order is not penal in nature and contended that no stigma is attached to the transfer since it has been ordered for administrative reasons.

It has also been maintained on behalf of the respondents that in these circumstances the transfer of the applicant is not against any norms prescribed for transfers nor has it been ordered for any mala fide reason. The respondents have then pointed out that by virtue of the office order no. 43 dated 15.4.2000 of the third respondent, that is, the Commander Works Engineer (Army), MES, Bangalore, the applicant ceased to be a member/secretary of the JCM IV Level. That order is seen at Annexure-R8. It has also been pointed out by the respondents that due to some disputes among the office bearers/members of the Executive Committee of the SRMES Union in the Bangalore Bench, the CWE (Army), Bangalore, who is responsible for conducting the JCM meetings, has stopped conducting the same till their disputes are settled by the Regional Labour Commissioner (Central), Bangalore. They have further stated that the incumbency of the post of General Secretary in the SRMES Union, which the applicant has claimed to be holding, is under adjudication in the Court of the Additional City Civil Judge in O.S.No. 15287/2000 where the position of the applicant as the General Secretary of that Union has been challenged by certain Union members.

6. We do not find it necessary to discuss the various case laws that have been cited by the learned Counsel for the applicant in support of the reliefs prayed for by the applicant for the simple reason that only when it is found that a transfer order seeks to penalise an official or it is against the policy laid down for regulating the transfers that such a transfer admits of a judicial review and can be held as invalid.

For the reasons discussed below the ratios applied in those case laws do not appear to us to be applicable here.

7. It is well established by now that transfer is not merely an incidence of service, but the scope for interference with a transfer, ordered under competent authority, by the Tribunal or a Court is extremely limited and that unless a transfer is found to be contrary to the statutory provisions or rigid policy directions, but has apparently been ordered either in exigencies of service or for administrative reasons, the transfer cannot be successfully challenged before the Tribunal/Court, It is also equally well established by now that the only other ground for setting aside a transfer by the Tribunal/Court may exist only if it is held that the transfer has been ordered for extraneous reasons, not connected with exigencies of service or administrative grounds, or when the transfer is held to have been ordered for malafide reasons. It has been held by the Hon'ble Supreme Court in Special Leave Petition (Civ). No. 1879/1981 decided on 28.7.1981 in T.D. Subramanian v. Union of India and Ors., 1981(3) SLR 608=1982(2) SLJ 20 (SC), that when the Petitioner therein was found not to have been able to maintain proper relations between the Trade Unions and the Officers of Post and Telegraphs Department, even though he was considered to be a competent and strict officer, and was transferred from the post of Director of Post and Telegraphs, Orissa Circle, Cuttack, to the post of Director, of Posts and Telegraphs, Ambala, the transfer which had been upheld by the Division Bench of the Hon'ble High Court, was appropriate and the transfer in such a situation was rightly held as one made in the exigencies of service. The Hon'ble Supreme Court in Civil Appeal No. 4866/1992 decided on 17.11.1992 in Rajendra Roy v. Union of India and Anr., 1993(1) SLR 126-1993(1) SLJ 93 (SC), has clearly laid down that even if an order of transfer causes a lot of difficulties and dislocations, it cannot be struck down on that score unless the order is passed malafide or is in violation of rules of service and guidelines for transfer without any proper justification. Similary a Full Bench of the Principal Bench of the Tribunal (CAT) has held in Kamlesh Trivedi v. Indian Council of Agricultural Research and Anr., (1988) 7 ATC 253, that a transfer which is made even after or during a preliminary enquiry or investigation against an official is valid and does not amount to a penalty. It is obvious therefore that the ratios of the two cases relied upon by the learned advocate for the applicant declaring punitive transfers as invalid are

not attracted here.

8. Based on the materials made available to us, we are of the considered view that the applicant has failed to establish that the impugned order has been made for any malafide reason. Malafide being a state of mind is normally relatable to an individual or a group of individuals in the facts and circumstances narrated in the O.A. The applicant has not indicated that either one or more among the respondents had any malafide intention for passing the impugned order of transfer or that they were personally unfavourably inclined towards him and thus to serve an oblique purpose the impugned transfer has been ordered by them. We find that none of the respondents has been impleaded in his personal capacity. On the other hand, the contention of the applicant that as a Secretary of the Union, he is protected under the present policy on transfers does not appear to have any validity. We notice that the applicant is not transferred out of Bangalore as a station; but he has only been transferred from the O/O.GE. (South), Bangalore, to GE (North), Bangalore, both coming under the MES organisation. Further, we observe that the transfer policy relied upon by the applicant, made available at Annexure-A5, does not prohibit transfers within the same station of the C&E Civilian Sub-ordinate staff and that even there the transfer of such staff from one station to another is permitted in the exigencies of service and on administrative requirements. We are, therefore, of the opinion that the impugned transfer cannot be held as violative of the norms prescribed under the transfer policy dated 30.12.1983, read along-with the Appendix-A thereof, seen at Annexure-A5 of the O.A. It is also obvious that there are no other provisions statutory or otherwise prohibiting any such transfer. On these counts, therefore, we can hardly find any fault with the impugned transfer order.

9. Maintenance of a proper working environment in the office and remedying the situation where a number of employees in an office are obliged to file a formal and specific complaint with the Police alleging large scale of misuse and defalcation of money are administrative requirements. If in the discharge of the administrative job in such circumstances, a particular official has to be transferred from an office to another office, that too in the same station, it cannot be held that the transfer has been made for a oblique purpose and is not connected either with the exigencies

of service or with administrative reasons. We also find that the applicant has failed to produce any material to support one of his principal allegations that the impugned transfer is really a penalty or that the impugned order attaches any stigma to him in the process of transferring him. In the facts and circumstances of the case, we are of the considered view that the first respondent is competent to decide whether for administrative reasons the applicant should be transferred from office of the GE (South), Bangalore to GE (North), Bangalore and since he has so decided and since his decision is obviously based on clear administrative grounds, we do not find that there is any warrant for the Tribunal to interfere with that decision.

10. For the reasons discussed at some length above, we decline to interfere with the impugned transfer order dated 22.6.2000 transferring the applicant from Office of the GE (South), Bangalore to GE (North), Bangalore, seen at Annexure-A3. As the O.A. is found to be without any merits, we reject the same. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com