

(2010) 04 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8602 of 2004

General Manager, South Central Railway and Others

APPELLANT

Vs

Syed Abdul Kareem

RESPONDENT

Date of Decision : 12-04-2010

Acts Referred:

Citation : (2010) 3 ALD 650 : (2010) 4 ALT 394 : (2010) 127 FLR 68

Hon'ble Judges : Noushad Ali, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Rajiv Reddy, for the Appellant; L. Ravichander, for the Respondent

Final Decision : Allowed

Judgement

Goda Raghuram, J.—The writ petition is directed against the order dated 21-04-2004 of the Hyderabad Bench of the Central Administrative Tribunal (for short "the Tribunal") in O.A. No. 1392 of 2003.

2. The respondent filed the application before the Tribunal challenging an order dated 13-11-2003 of the Senior Divisional Personnel Officer, Secunderabad, transferring the petitioner, a Travelling Ticket Examiner from Secunderabad Division to Nanded Division on "administrative grounds". Though the order of transfer did not set out any reason which could characterize the transfer as punitive or comment on the reputation of the respondent-employee, in the counter affidavit to the respondent's application, the writ petitioners pleaded that the transfer was on account of an incident which took place in a school administered by the Railway Women's Welfare Organization wherein the respondent was allegedly involved in an altercation with the watchman of the school, along with his wife and children. Though no complaint in this behalf was received from the school, on coming to learn about the incident, the order of transfer was passed.

3. Before the Tribunal, the transfer was challenged on several grounds including the incompetence of Senior Divisional Personnel Officer to transfer the

respondent from one Railway division to another. The Tribunal rejected the challenge on the ground of competence on finding that the order though passed by the Senior DPO was on the basis of file orders passed by the Chief Personnel Officer, who was competent to order a transfer from one division to another. The Tribunal however invalidated the order of transfer on the ground that it was issued not in administrative interest or for administrative reasons, but for extraneous reasons and in violation of principles of natural justice, by misusing the discretionary power of the Senior DPO.

4. Sri Rajiv Reddy, the learned Counsel for the petitioners relies on the judgment of the Supreme Court in *Union of India v. Janardhan Debanath* 2004 (2) SLR 15 : 2004 (3) ALT 31.2 (DNSC) to contend that though the motive for the transfer may have been the event in the school where the respondent-employee was involved in an altercation with the watchman of the school, the basis for the action as apparent from the order of transfer is "administrative exigency" and no adverse comment is recorded in the order as would impinge on the reputation of the respondent and hence on well settled principles, that an order of transfer is not punitive per se, neither is an enquiry or compliance with the principles of natural justice required nor is a neutral order of transfer liable to be invalidated only on account of non-compliance with the audi alterant partem principle.

5. In the facts of the case in *Janardhan Debanath* (1 supra), the respondents were employed in the Postal Services Department and were transferred from Agartala Division to Meghalaya Division by the order impugned therein. On challenge to the order of transfer, the Gauhati Bench of the Tribunal directed the authorities to consider the representations made without however interfering with the order of transfer. Aggrieved thereby the transferees filed a writ petition. The High Court interfered and the Union filed an appeal by Special Leave. The order of transfer that fell for consideration by the Supreme Court in this case noted that the transfer was made since the conduct of employees of the Postal Department was "un-desirable". On facts it would appear that the transferees had misbehaved with the Director (Postal Services), a senior lady officer; confined and dragged her from one room to another with a view to force her to withdraw the charge sheet against the Deputy Postmaster; apart from abusing her in filthy language and physically manhandling her. While allowing the appeals and reversing the judgment of the High Court, the Supreme Court held that the allegations against the transferees were serious in nature and the conduct alleged was certainly "unbecoming"; though whether any misbehavior was involved would be a matter for a departmental inquiry, for effecting a transfer, the question of holding an enquiry to ascertain whether there was misbehavior or a conduct unbecoming of an employee, is not required and what adequate is a prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of. The Court further held that if the requirement of holding an enquiry as asserted by the transferees were to be insisted upon, the very purpose of transferring an employee in public interest or in the exigency of administration to enforce decorum and ensure probity, would

get frustrated. A transfer is an incident of service and whether the employee could be transferred to a different division is a matter for the employer to consider depending upon administrative necessities, held the Supreme Court.

6. It is now well settled by consistent catena of binding authority that a transfer is an incident of service and per se has no adverse consequences vide *B. Varadha Rao Vs. State of Karnataka and Others*, ; *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, ; *Union of India and another Vs. N.P. Thomas*, ; *Union of India and Others Vs. S.L. Abbas*, and *Mohd. Masood Ahmad Vs. State of U.P. and Others*,

7. Sri L. Ravichander, the learned Counsel for the respondent would strenuously contend that it would encourage arbitrary conduct by an employer in the matter of transferring an employee from one place to another, if even a minimal enquiry were not a condition precedent where an order of transfer is made for reasons of misbehaviour or unbecoming conduct of an employee. It would encourage nepotism and even corruption, contends Sri Ravichander.

8. As observed in *Janardhan Debanath* | (1 supra) where an order of transfer is shown to be on the outcome of mala fide exercise of power or in violation of statutory provisions prohibiting such transfer, the Court can and would interfere with an order of transfer. But such judicial scrutiny is warranted only where there are specific pleadings of mala fides and the concerned officer against whom the malice is alleged is properly impleaded.

9. In the light of the judgment in *Janardhan Debanath* (1 supra) and in the light of the raft of consistent and binding authority, that an order of transfer is an incident of service and not punitive per se, we are not satisfied that there is a legal obligation to hold an enquiry as a condition precedent for effecting a transfer where unbecoming conduct of an employee is the motive for the transfer and not the basis.

10. The apprehensions presented by the learned Counsel for the respondent do not commend acceptance by this Court. In a given case where a transfer is made for mala fide reasons, for extraneous considerations or on the basis of allegations of unbecoming conduct of the transferee and such assertions are baseless, a specific pleading could be made in any proceeding challenging the order "of transfer, if warranted by impleading the concerned officer. In such an event if irrationality or animus is established, the same could be corrected in judicial review.

11. On the aforesaid analysis we are unable to sustain the order dated 21-04-2004 of the Tribunal in O.A. No. 1392 of 2003, insofar as the order holds that the order of transfer dated 13-11-2003 issued by the Senior D.P.O., Secunderabad Division is vitiated for extraneous considerations and on account of non-compliance with principles of natural justice. The writ petition is allowed. There shall be no order as to costs.