
(2009) 12 AP CK 0030
In the Andhra Pradesh High Court
Case No : Writ Petition No. 22873 of 2009

M. Nagarajan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-12-2009

Acts Referred:

Railway Establishment Code — Rule 230

Citation : (2010) 1 ALD 584 : (2010) 2 ALT 291

Hon'ble Judges : Vilas V. Afzulpurkar, J;V. Eswaraiah, J

Bench : Division Bench

Advocate : Siva, for the Appellant; T.S. Venkata Ramana, S.C. for Respondent Nos. 1 to 8 and K.R.K.V. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Vilas V. Afzulpurkar, J.—This writ petition is directed against the order passed by the Central Administrative Tribunal in O.A. No. 289 of 2009 dated 05.08.2009, wherein 10th respondent challenges the said order.

2. For the sake of convenience, parties herein are referred to as they are arrayed in the O.A.

3. Applicant, 9th respondent and 10th respondent are employees working in Indian Railways. While the applicant and 10th respondent were working at Guntakal Division in South Central Railway, the 9th respondent was working at Madurai in Southern Railway. Under the Indian Railway Establishment Code, under Rule 230, transfer on mutual exchange is permissible. The same is regulated by a circular described as Serial Circular No. 66/2006 based upon Board's letter bearing No. E[NG]I-2006/TR/6 dated 21.04.2006 wherein it is further provided that in case of inter-railway and intra-railway transfers on mutual exchange, the Board had reviewed the work out of the scheme of transfers on mutual exchange and on noticing that there are instances where the employees who earlier made a request for such mutual exchange transfer and

later opted to back out from the same when orders are issued and even after one of the two employees gets relieved to join the new place. In that view, the Board had reviewed the matter and decided that as mutual transfers are ordered with the consent of both parties, it should be made clear right at the time of forwarding applications for mutual transfer that no request for backtracking from the mutual exchange arrangement will be entertained under any circumstances. Based on the aforesaid scheme and Circular of the Indian Railways, the 9th respondent applied for mutual transfer with the applicant vide his application in Proforma-D dated 30.08.2004. By the aforesaid mutual transfer arrangement, 9th respondent had agreed for mutual transfer vis-a-vis the applicant herein and the effect of the mutual transfer will be that while the applicant will take the place of 9th respondent at Madurai Division in Southern Railway and in turn the 9th respondent would take the place of applicant at Guntakal Division in South Central Railway. In terms of the Circular referred to above, Proforma-D of the 9th respondent, duly filled in, was sent to the General Manager, South Central Railway, Secunderabad, vide letter No. P(S)676/VI/RG/1RMT/249 dated 22.06.2005 by the Southern Railways, Headquarters Office, Personnel Branch, Chennai,. In turn, the applicant also applied for mutual transfer simultaneously by submitting an application duly filled in the requisite proforma as stated above to the authorities in South Central Railways on 01.02.2005 and the said proforma, along with the Service Register extract and DAR clearance of the 9th respondent, was duly forwarded to the CPO/SC vide letter No. 676/Mech/TP/ALP/341 dated 01.08.2005. In turn, the said proposal was duly approved by the Divisional Railway Manager, on 23.11.2006, and after communication of the said approval to CPO/SC vide letter dated 24.11.2006, the same was duly sanctioned by the CPO/SC and was in turn forwarded to the GM(P), Southern Railway, vide letter No. P.676/Mech/TP/ALP/341 dated 14.12.2006 of the South Central Railway. While this was the position pending, 10th respondent applied for similar mutual transfer on 19.09.2006 proposing mutual transfer with the 9th respondent. Since the 9th respondent had already given consent in favour of the applicant for mutual transfer, which was already processed as referred to above, the request of the 10th respondent was rejected by the South Central Railway vide letter No. G/P.676/III/I/MNN dated 13.09.2007.

4. At that stage, it appears that the 9th respondent had applied for withdrawal of his consent for mutual transfer with the applicant and the same got processed at Southern Railway and was approved there. On an assumption that withdrawal of the request for mutual transfer of 9th respondent with the applicant was valid, the processing of mutual transfer applications between 9th and 10th respondents was done at both the ends i.e. at Southern Railway and the South Central Railway, respectively, and had ultimately resulted in an order of acceptance of the said mutual transfer under proceedings dated 01.04.2008. Consequently, the South Central Railway issued proceedings No. P.Mech/676/TP/ALP/209 dated 01.04.2008 accepting the mutual transfer of 10th respondent with the 9th respondent as above and with the result, the 10th respondent was relieved from

Guntakal Division and joined at Madurai. In the meanwhile, applicant filed the present O.A. questioning the proceedings dated 01.04.2008 on various grounds including that the 9th respondent cannot withdraw the consent for mutual transfer having already given such consent with the applicant. The Tribunal passed an order of status quo and on account of which the 9th respondent was not relieved from Madurai Division and as of now the applicant and the 9th respondent both appear to be continuing at Madurai Division.

5. In the said O.A., the South Central Railway as well as the Southern Railway were impleaded as respondents and they filed separate counter affidavits. The Tribunal considered the rival contentions in the light of the counter affidavits of both the railways and was of the view that in terms of the Circular referred to above, the undertaking given by the respective employees seeking mutual transfer that each of them will not withdraw the mutual transfer proposed with the other was binding and no such withdrawal by the 9th respondent could have been entertained by the railways. The Tribunal also was of the view that subsequent processing of the application for mutual transfer between 9th and 10th respondents based upon the alleged Withdrawal of the consent by 9th respondent is totally unjustified and against the Circular referred to above. The Tribunal was also of the view that the reasons stated by 9th respondent in his two applications dated 11.09.2006 and 04.12.2006 for withdrawal of his consent for mutual transfer with the applicant are at variance and are not sustainable. Further the statement of 9th respondent in his first letter of withdrawal that he is withdrawing the request for mutual transfer as the same was not accepted was also found to be factually incorrect. The Tribunal, therefore, quashed the said impugned order dated 01.04.2008 and directed to process the case of the applicant and 9th respondent as per the transfer scheme already mentioned above. Aggrieved by the said order, the 10th respondent is before us by this writ petition.

6. We have heard the elaborate submissions of Sri Siva, learned Counsel for 10th respondent, Sri K.R.K.V. Prasad, learned Counsel appearing for the applicant and Sri T.S.Venkata Ramana, learned Standing Counsel appearing for Railways.

7. The notice taken out in the writ petition so far as the 9th respondent is concerned has been returned "refused" and as such it is treated as served on the 9th respondent. No other respondent has contested this writ petition.

8. It is elaborately contended by Sri Siva that preceding of mutual transfer on the basis of undertaking that the applicant will not withdraw the consent cannot be treated as valid for an indefinite period and the Southern Railway was, therefore, justified in processing the mutual transfer subsequently proposed by the 9th respondent with the 10th respondent in view of the long lapse of time taken by both the railways in finalizing the mutual transfer of the 9th respondent proposed. He, therefore, submits that even after two years there was no order passed on the said proposal and as such the 9th respondent was justified in withdrawing his consent after sufficient wait of two years. He also submitted that

the request transfer was a scheme whereby the employee anxious to get transferred to a particular station has to make arrangement with the co-employee and that the same must be finalized in a particular time and the consent once given cannot be said to be alive for an unduly long period. He also submitted that the Tribunal has considered the mutual transfer scheme as regarding a consent as completely inflexible without giving any scope for the employees to reconsider their position after a reasonable time and in any case it amounts to a complete restraint on freedom to contract. He, however, fairly submits that neither the scheme nor the said condition of giving undertaking is questioned in these proceedings and only issue, therefore, is regarding validity of the transfer order dated 01.04.2008. In view of the fact that the 10th respondent has already joined at Madurai and working there, he submits that interference with the transfer by the Tribunal was not justified.

9. Per contra, Sri K.R.K.V. Prasad, learned Counsel appearing for the applicant, submits that the mutual transfer earlier proposed by the 9th respondent with the applicant emanated from Southern Railway at the instance of 9th respondent himself and later the same was approved and was sent over to the South Central Railway. Later, the South Central Railway also has issued proceedings which are referred to in detail above whereby the said request was forwarded after duly approved by the General Manager, South Central Railway, for approval of the General Manager, Southern Railway. In the interregnum, however, the 10th respondent had an arrangement with the 9th respondent for mutual transfer and the 9th respondent vide his letters dated 11.09.2006 and 04.12.2006 had applied for withdrawal of the consent given in favour of the applicant. He, therefore, submits that since the said withdrawal later itself being against the mandate of the transfer on mutual exchange scheme under the Circular referred to above, both the railways were not justified in processing the subsequent request for mutual transfer as proposed between the 9th and 10th respondents ignoring the mutual transfer approved at respective ends between the applicant and the 9th respondent.

10. Learned Standing Counsel for Railways has drawn our attention to the counter affidavit filed by the Railways before the Tribunal and submits that the South Central Railway has duly approved the said mutual transfer between the applicant and the 9th respondent in their proceedings dated 23.11.2006 and forwarded a communication to that effect to the General Manager, Southern Railway, on 14.12.2006. In the meanwhile, the application of 10th respondent for inter-railway mutual transfer with the 9th respondent and also the withdrawal of mutual transfer of 9th respondent with the applicant was rejected by the South Central Railway on 13.09.2007 itself. He, however, justifies the subsequent consideration of mutual transfer on the basis of the Southern Railway's approval thereof.

11. We have considered the contentions of all the learned Counsel. We are of the view that the decision of the Tribunal impugned herein is justified for two

principal reasons.

12. Firstly, the very mutual transfer as proposed by the 10th respondent with the 9th respondent is subsequent to the mutual transfer between applicant and 9th respondent duly approved at both the ends i.e. by the Southern Railway as well as the South Central Railway. The later request of 10th respondent stood rejected by the South Central Railway vide proceedings dated 13.09.2007 referred to above and the said proceedings remain unchallenged by the 10th respondent. In spite of the said rejection, his mutual transfer was, however, considered and that resulted in issuance of the impugned proceedings dated 01.04.2008. We are of the view that, once the said request stood rejected on 13.09.2007 by the South Central Railway, there was no question of reconsideration of the same for mutual transfer all over again.

13. Secondly, we are of the view that the Circular No. 66 of 2006 issued by the railways was only to avoid a situation of the present nature as has happened in the present case. The said Circular in categorical terms prohibits any such withdrawal of the consent for mutual transfer. It is not in dispute that mutual transfer is a scheme and once an employee seeks to take benefit of the scheme, the terms and conditions of such scheme cannot be said to be conditions in terrorem or conditions opposed to contract or conditions opposed to freedom of contract. There was no compulsion on the 9th respondent to agree to a mutual transfer with the applicant. He has voluntarily on his own given consent for mutual transfer and in terms of the Circular referred to above, it was not open for the 9th respondent to resile from the conditions stipulated therein. It was therefore not open for the 9th respondent to withdraw his consent and consequently his two letters of withdrawal dated 11.09.2006 and 04.12.2006 are by themselves ought not to have been entertained by the South Central Railway as they were directly opposed to the aforesaid Circular. Once the said withdrawal is not permissible and contravenes the specific undertaking given by the 9th respondent, the consideration of any further application for mutual transfer between the 9th and 10th respondents does not arise.

14. Thirdly, the Tribunal has examined the entire matter in a right perspective with reference to the pleadings as well as the circular of the Indian Railways. We are not

able to find any illegality or error in the impugned order of the Tribunal and the reasons given by the Tribunal in the O.A. are clearly sustainable and no interference is called for under our certiorari jurisdiction. The writ petition is, therefore, devoid of merits and is liable to be dismissed.

15. The writ petition is, accordingly, dismissed. However, as mentioned above, the 10th respondent appears to be already working at Madurai for the last over one year. Keeping that in view, we permit the 10th respondent in the O.A. i.e. the writ petitioner to make a representation to the respondents 3 and 5 herein requesting them to consider his case for retention at Madurai under any other

scheme, otherwise than under the mutual transfer scheme, if the same is permissible according to the guidelines and policy of the Indian Railways and, if such an application is made by the writ petitioner, within a period of two weeks from today, the respondents 3 and 5 herein shall consider the same in accordance with law and pass appropriate orders thereon under communication to the writ petitioner. There shall be no order as to costs.