
(1995) 07 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5022 of 1995

Major Thakur Singh Kaundal

APPELLANT

Vs

Military Secretary, Army Headquarters and Others

RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 1 ALT 337

Hon'ble Judges : S.V. Maruthi, J

Bench : Single Bench

Advocate : Bathula Venkateswara Rao and Bathula Kiran Kumar, for the Appellant; A. Chaya Devi for Central Govt. for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

S.V. Maruthi, J.—This writ petition is filed for a direction to the respondents not to give effect to the order of transfer by declaring the same as illegal, arbitrary and violative of Articles 14 and 16 of Constitution of India.

2. The petitioner was working as Major in the Army (Ministry of Defence). The Government of India sanctioned a post of Public Relation Officer at Hyderabad. The petitioner was posted on 26-8-1993 as Public Relation Officer at Hyderabad. The petitioner was selected by a duly constituted selection panel consisting of Principal Information Officer, Press Information Bureau, New Delhi, Member from Defence Ministry and Director of Public Relations (Defence), New Delhi. Pursuant to his appointment as a Public Relation Officer, he assumed charge on 10-10-1993 at Hyderabad. The petitioner was provided with the office accommodation after a lapse of six months. From the date of assuming office as Public Relation Officer, he was discharging his duties to the entire satisfaction of higher officials and he received letters appreciating his services as a Public Relation Officer. The petitioner received transfer orders directing him to report to the new appointment by 12-4-1995. Challenging the above orders, the present

writ petition is filed.

3. The main contention of the learned counsel for the petitioner is that since the petitioner was appointed on selection as a Public Relation Officer he cannot be transferred before the expiry of three years tenure as Public Relation Officer. The order of transfer was effected on account of mala fide intention of Sri P.S. Bhatnagar, the then Director of Public Relations. Sri P.S. Bhatnagar requested the petitioner to approach a Senior Retired Government Official and see that his son could get success in the Merchant Navy Competitive Examination through whatever means possible; but the same could not be materialised. Due to the incident, Sri P.S. Bhatnagar got annoyed with him for not having managed in getting his son passed through the Merchant Navy Competitive Examination. Therefore, Sri P.S. Bhatnagar with biased and prejudicial mind took up a case with Military Secretary's branch for posting petitioner out. Therefore, the order of transfer is vitiated on account of mala fides of Sri P.S. Bhatnagar. Though Sri P.S. Bhatnagar is made as a party to the writ petition, he did not file any counter affidavit, which establishes mala fides on his part. It is next contended that while transferring the petitioner, Sri P.S. Bhatnagar attached one Sri T.V.K. Reddy to the Public Relation's Office at Hyderabad, as Sri P.S. Bhatnagar is on his way of foreign assignment. Sri T.V.K. Reddy is a Grade II officer and not eligible to hold the post of Public Relation Officer, as the post Public Relation Officer should be manned by an officer holding a rank of Major only. Since Sri T.V.K. Reddy belongs to Hyderabad and though he has not completed one year at Shillong, to show special favour to Sri T.V.K. Reddy, Sri P.S. Bhatnagar posted him at Hyderabad. In view of the above, the petitioner submits that the orders of transfer are liable to be set aside.

4. In the counter affidavit filed by the respondents, it is stated that the Public Relation Officer is a post which can be manned by serving Defence personnel i.e. Army, Navy and Airforce as well as Civilian (Indian Information Service) Officers. As far as serving officers are concerned, depending upon the vacancy in the organisation, the Army Headquarters call for applications, from volunteer serving officers. On getting the applications, an interview is conducted at New Delhi consisting of the members including from Department of Public Relations. The Officers who were found otherwise suitable, are posted on deputation basis. Accordingly, the petitioner was posted on deputation as Public Relation Officer at Hyderabad. Since the petitioner was appointed on deputation basis due to service requirements, the Military Secretary's Branch, Army Headquarters issued the posting order. Since the implementation authority is the Director of Public Relations, Sri P.S. Bhatnagar implemented the order by issuing a message on 19-1-1995. Sri T.V.K. Reddy was required to post to the Public Relation's Office, Hyderabad on attachment and not as a permanent incumbent. Sri T.V.K. Reddy is on the rolls of Public Relation Officer, Defence, Shillong and moved to Hyderabad on attachment to relieve the petitioner. Sri T.V.K. Reddy is eligible to hold the appointment of Public Relation Officer, Hyderabad, as he is already holding similar appointment of Public Relation Officer (Defence) Shillong and he worked

as a Public Relation Officer, Shillong from 15-6-1993 to 27-1-1995. The 1st respondent viz, Military Secretary, Army Headquarters, South block, is the competent authority to transfer and the Director of Public Relations is the authority who has to implement the orders of transfer. The Army persons hold a transferable post and they are liable to be transferable from one place to another place as per the exigencies of service requirements. Hence, they have no legal right to insist to continue in a particular appointment or in a particular place. An officer can be permitted to remain in a post for not more than 3 years; but there is no Rule which says that he cannot be posted out before three years. There is an overall deficiency of 40 to 60% in the officer cadre in infantry. Therefore, the tenure of officer can be cut short for better utilisation in their parent corps/ Regiment. Therefore, the order is neither vitiated on account of mala fides of Sri P.S. Bhatnagar nor is a violation of Articles 14 and 16 of Constitution of India.

5. The main argument of the learned counsel for the petitioner is that the order of transfer is vitiated by mala fides on the part of Sri P.S. Bhatnagar who is the 3rd respondent in the writ petition and that in spite of making him as a party, he has not filed any counter. He relied up on number of decisions wherein it was held that the failure to file a counter denying the allegations of mala fides, amounts to establishing the mala fides.

6. In order to consider the argument advanced by the learned counsel, it is necessary to refer to the order of transfer. The order dated 12-1-1995 transferring the petitioner reads as follows:

1. The following post has been approved:

Presdent	Now	Appt.	No. Unit	Rank,	Name & Remarks
Kaudal, 8. Madras Appointment	Officer to report Hyderabad	Madras PRO, MOO, by 12	10A	40246	Major TE APO new 95

Sd. R.R. Dularia (CSO) DAMS- 3B for Military Sec.

From the above, it is clear that the order of transfer was issued by the Military Secretary and not Sri P.S. Batnagar and therefore, it is not necessary to consider the averments of the petitioner that the order is vitiated on account of the mala fide attitude of Sri P.S. Bhatnagar.

7. The order of transfer states that the petitioner was directed to report to 8.Madras. That indicates that in the exigencies of military service, the petitioner was called. Further being an officer of Army, the petitioner is liable to be transferred and has no right to claim that he should be posted at a particular place for a period of 3 years. In this context, it is necessary to refer to the judgment of this Court in Team Leader, Army Team, Bharat Dynamics Limited and Others Vs. Major C.V.V. Reddy, , wherein it was held that "in the matter of

transfers which had been effected either in public interest or due to administrative exigencies, the question of following a particular procedure does not arise".

8. In view of the above, the petitioner has no right to continue in the post of Public Relation Officer and therefore, this Court cannot interfere with the same under Article 226 of Constitution of India.

9. The contention of the learned counsel for the petitioner that the orders of transfer were passed as Sri. P.S. Bhatnagar influenced the Military Secretary to issue the orders of transfer, cannot be countenanced, as there is absolutely no evidence in support of this contention.

10. The Counsel for the petitioner also submitted that the Army Headquarters issued directions not to implement the orders of transfer, as Sri P.S. Bhatnagar was on his way to a foreign assignment which indicates that the order of transfer was made with a mala fide intention by Sri P.S. Bhatnagar. This argument also cannot be countenanced as stated in the earlier paragraph, the orders of transfer were made by the Military Secretary.

11. In view of the above, I see no merit in the writ petition and it is accordingly, dismissed. No costs.