
(2015) 08 AP CK 0066
In the Andhra Pradesh High Court
Case No : Writ Petition No. 19813 of 2015

P. Venkanna

APPELLANT

Vs

Hindustan Aeronautics Limited and Others

RESPONDENT

Date of Decision : 20-08-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 1 ALD 673 : (2016) 2 ALT 268

Hon'ble Judges : R. Kantha Rao, J.

Bench : Single Bench

Advocate : J. Sudheer, for the Appellant; V. Uma Devi, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—The Transfer Notification vide No. HAL/HD/46(10)/2015/2, Personnel Notification (No.1898/735/2015) dated 27-6-2015 issued by the 3rd respondent and the consequential proceedings No. HAL/HD/407/1/HR, dated 29-6-2015 issued by the 5th respondent whereunder and whereby the petitioner, a Deputy Manager in Hindustan Aeronautics Limited (HAL) was transferred from Strategic Electronic Research Design Centre (SLRDC), Hyderabad to Korwa in Uttar Pradesh State are impugned in the present writ petition. The petitioner prays for issuance of a Writ of mandamus setting aside the aforementioned proceedings and to issue necessary direction to the respondents to retain him in SLRDC, Hyderabad.

2. The contentions of the petitioner as well as the respondents-HAL, which are necessary for disposing of the present writ petition, may be stated briefly as follows:

"(a) The petitioner is a Deputy Manager (Grade III) in Radar Department in SLRDC, Hyderabad, which is one of the Units of HAL, a Central Government Public Sector Undertaking under the Ministry of Defence. The petitioner is working in Designs Division i.e. SLRDC, Hyderabad headed by a General

Manager, which is under the Accessories Complex headed by CEO situated at Lucknow in the State of Uttar Pradesh. The petitioner and some other officers working under one Mr. Thyagarajan, Chief Manager, gave written complaint/representation against him alleging that some of the officers were being harassed and discriminated on the basis of regionalism. Thereafter, according to the petitioner, not only Mr. Thyagarajan but also the Assistant General Manager, RADAR Smt. T.S. Parma Priya who hails from the State of Mr. Thyagarajan started harassing the petitioner and others on regional basis. Thereafter, it is said that some of the signatories were transferred to other Labs/Departments and they did not agitate the same and suffered in silence. It is submitted by the petitioner that he was the next target and he was transferred from RAMLAB of RADAR Department to work in Engineering Department in a different Lab involving different work (Business Development) which is nothing to do with the designs/research work, which the petitioner was discharging. The petitioner made a representation protesting the said transfer to the higher authorities and brought it to the notice of the higher authorities about his transfer which was done in a discriminatory manner. Thereafter, the petitioner was suspended by the General Manager, SLRDC, Hyderabad, the 4th respondent herein vide proceedings dated 31-10-2014.

(b) The petitioner challenged the suspension order dated 31-10-2014 in W.P. No. 33105 of 2014 in this Court. This Court suspended the suspension order, however, without reinstating the petitioner pursuant to the order passed by this Court. One Mr. Ganesh, Assistant General Manager (Engineering), who incidentally hails from the State Mr. Thyagarajan and Smt. T.S. Padma Priya, was appointed as Enquiry Officer and he conducted an enquiry. After conducting the enquiry, a punishment of stoppage of four increments with cumulative effect was imposed on the petitioner. The suspension order passed against the petitioner was revoked only after completing the enquiry but not pursuant to the interim orders passed by this Court in the aforementioned writ petition. Therefore, the petitioner contends that Mr. Thyagarajan and Smt. T.S. Padma Priya developed bias and vindictive attitude against him and resorted to victimise the petitioner in clear disregard of the orders passed by this Court. Against the order passed by the Disciplinary Authority imposing the punishment of stoppage of four increments with cumulative effect, the petitioner preferred an appeal to the Director (HR), the Appellate Authority on 07-02-2015 and the same is pending. However, in the meanwhile, the petitioner joined the Engineering Department to which he was transferred by the respondents.

(c) It is further submitted that while the matters stood thus, the 3rd respondent issued transfer order dated 27-6-2015 which is meant for transferring various officials. From SLRDC, Hyderabad, the petitioner and another were transferred. The same was communicated by the 5th respondent to the petitioner. According to the petitioner, since he sent representations against Mr. Thyagarajan and also on account of the fact that he challenged the suspension order by filing a writ petition in this Court, Mr. Thyagarajan, the other superior officer Smt. T.S. Padma

Priya and the Enquiry Officer Mr. Ganesh are responsible for sending the name of the petitioner to the 3rd respondent for the purpose of transferring him from SLRDC, Hyderabad. The petitioner seeks to justify his version basing on the chronological events which are mentioned herein above and he submits that his transfer is not a routine and general transfer but is punitive in nature. It is submitted by him that he is a Grade III Officer, there are more than 100 people working in SLRDC in 3 different departments, the petitioner alone was picked up for special treatment and nobody in his cadre was shifted even within the SLRDC. There are several colleagues of the petitioner who have been working in the same place ever since they were recruited but the petitioner alone was transferred as a measure of punishment. It is further stated that he is neither one of the senior most officers nor the junior most officials to be chosen to discharge the functions at Korwa in Uttar Pradesh State but he was intentionally picked up to punish him for raising his voice on certain issues in the Organisation.

(d) It is further submitted by that the petitioner's wife is also an employee of HAL and working in SLRDC, Hyderabad under Smt. T.S. Padma Priya and as per the guidelines while issuing transfer orders, the respondents are expected to take note of the spouse employment but in the case of the petitioner, the said factor has not been taken into consideration. The transfer order, therefore, according to the petitioner, is atrocious and inhumane.

(e) It is further submitted that though the initial transfer order dated 27-6-2015 was issued by the 2nd respondent situated at Bangalore, he was given information obviously by the local office i.e. the respondents 4 and 5 and as stated above, the name of the petitioner was obviously proposed from SLRDC, Hyderabad for the above reasons. Therefore, though the transfer order was issued by the 3rd respondent, not knowing about these factors and issuing transfer of petitioner at the behest of the respondents 4 and 5 would make the transfer order illegal and discriminatory. The petitioner seeks to set aside the transfer order in the present writ petition on the ground that besides being the administrative act, it is tainted with malice, vendetta, victimisation and outcome of the abuse of power and for extraneous reasons."

3. In the counter affidavit filed by the respondents, they stoutly refuted several allegations made by the petitioner in the Affidavit filed by him in support of the writ petition. Inter alia, they contended as follows:

"(a) In the Notification issued by the 3rd respondent transferring the petitioner, as many as 106 HAL officers in various cadres from one unit to the other unit of HAL within India have been transferred. It is a normal order of transfer intended at job rotation of officers in various cadres such as Chief Managers, Senior Managers, Managers, Deputy Managers, Engineers/Officers and Assistant Engineers in the normal and routine course as an administrative action by the respondents-Company. The various allegations levelled by the petitioner attributing mala fides to the respondents 4 and 5 are absolutely false and they have nothing to do with the transfer of the petitioner. The transfer order dated

27-6-2015 is a job rotation order issued by the corporate office of HAL, Bangalore transferring as many as 106 officers including the petitioner and there is absolutely no scope of making any allegations of bias, discrimination or arbitrariness. The petitioner stated all false and misleading facts even though he is fully aware of the existing transfer policy of the Company. In the appointment order issued to the petitioner dated 20-11-2007 at the time of his initial appointment as design trainee at HAL in SLRDC, Hyderabad, it was clearly mentioned that he will be liable to serve in any part of India or abroad at the discretion of the Company on his appointment as a regular officer in the Company. It was further specified in the terms of his appointment that he would be liable to serve in any position, department or shift as may be assigned to him from time to time and the petitioner having accepted the above referred terms and conditions of his employment by duly signing in acceptance of the said terms and conditions, has joined the service of HAL and he is well aware of the basic terms of his appointment and employment as stated above. It appears that as the petitioner is not willing to comply with the transfer order issued by the corporate office of HAL, he has chosen to make various false allegations like casteism, regionalism etc., for the purpose of filing the writ petition. The petitioner is working in the capacity of Deputy Manager and has knowledge that HAL is functioning under the administrative control of the Ministry of Defence, Government of India and that the officers and managers hailing from various regions of the country and speaking various languages like the petitioner himself are employed and posted at various establishments of HAL anywhere in the country. The allegations made by the petitioner are baseless and not supported by any evidence and in fact, his act of making such wild and dangerous allegations against his colleague officers and senior officers might result in creating a hostile and unfriendly environment creating disputes between the citizens speaking various languages and hailing from different regions of the country and thus is harmful and detrimental to the very concept of good ideals and might amount to the violation of constitutional mandates. Having worked for a period of 8 years continuously in Hyderabad, the petitioner to evade such transfer which is made by the corporate office in the normal course of administrative action had chosen to bring in various unconnected aspects and also chosen to make wild and damaging allegations against his co-employees and senior officials by making false attributions of caste and personal discrimination, which if allowed would affect on the very functioning and fabric of a sensitive national organisation like HAL functioning under the administrative authority and contrary to the Ministry of Defence which is involved in the activities relating to the production and maintenance of different types of armoury and equipment for the National Defence Forces. It is further contended that in Personnel Circular No. 675, dated 09-4-2007, it is specifically stated that the job rotation is an important method for career development of officers. The key objectives and job rotation are to expose the officers as they grow up by way of internal promotions.

(b) It is further submitted that the annual company wide job rotations are made

only by the 1st respondent corporate office and the respondents 4 and 5, being the immediate superior officers of the petitioner, have only communicated the order of transfer/job rotation vide proceedings dated 29-6-2015 which the petitioner has impugned in the writ petition. The petitioner with the sole intention of attributing malice, discrimination, arbitrariness, suppression etc., all in order to create a false case before this Court, projected a normal order of transfer at the organisational level as an act of vindictiveness and punitive without there being any basis.

(c) It is further submitted that the petitioner is well aware that Korwa Division and SLRDC are two R & D Divisions of HAL and are involved in Design and Development of Avionics equipment. As both Divisions are involved in similar kind of activities, Engineers are job rotated between these Divisions. The tasks presently being performed by the petitioner involves Business Development of SLRDC's developed products. In order to perform the said task effectively, it requires an officer at the higher level of Senior Manager (Grade V)/Chief Manager (Grade VI). One Senior Manager (Grade V) is being job rotated from Bangalore to Hyderabad to handle the above task. Further, there is an urgent requirement for an officer in Korwa, Uttar Pradesh State at the level of Deputy Manager and Skills and Capabilities essentially matching the petitioner. These inter-Divisional transfers are effected to meet the overall requirement of the Company, so that each individual officer is utilized optimum to his potentials. The transfer of the petitioner is purely based on requirement of Korwa Division in Uttar Pradesh State."

Contending as above, the respondents sought to dismiss the writ petition.

4. I have heard Sri J. Sudheer, learned counsel appearing for the petitioner and Ms. V. Uma Devi, learned Standing Counsel for the respondents-HAL.

5. There is no dispute about the fact that when the petitioner accepted the initial appointment in the respondents-Organisation, he accepted the condition that he can be posted in the Organisation at any place in India and that he was willing to work as such. The petitioner's wife is also working in the same Organisation at Hyderabad. The transfer may cause some inconvenience to the petitioner. But, the order of transfer cannot be revoked or cancelled on the ground that it causes some inconvenience and hardship to an employee. However, if the transfer is made contrary to the Rules governing the Organisation or any statutory rule or if it is prompted by mala fide action, this Court in exercise of the power of judicial review under Article 226 of the Constitution of India can interfere with the transfer.

6. In the instant case, the contention of the petitioner is that as he sent some representations setting forth certain grievances against the respondents 4 and 5, both of them had bent upon harassing him and have chosen his name to the 3rd respondent to be transferred to Korwa in Uttar Pradesh State. Therefore, he terms the transfer as a mala fide action which was made as a measure of

punishment.

7. The learned counsel appearing for the petitioner submits that it is not always possible for an employee to produce any direct evidence showing mala fides of the superiors and the Court has to examine the circumstances to arrive at a decision whether a particular action is prompted by mala fides or not. According to the learned counsel, the incidents preceded the transfer of the petitioner would obviously demonstrate that the transfer is punitive and is a result of colourable exercise of power and therefore, the interference of this Court under power of judicial review is required in the instant case.

8. On the other hand, the learned Standing Counsel for the respondents-HAL submits that the petitioner is an officer among 106 employees transferred by the 2nd respondent at Bangalore, absolutely there is no involvement of the respondents 4 and 5 in the transfer and the transfer/job rotation being purely an administrative action cannot be questioned by the petitioner by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

9. The learned counsel appearing for the petitioner in support of his contention that this case clearly demonstrates a situation of malice in law relied upon the following judgments:

"(a) Somesh Tiwari Vs. Union of India (UOI) and Others, , wherein the Supreme Court held as follows:

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds-one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

(b) Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, , wherein the Supreme Court held as follows:

"Legal malice

25. The State is under obligation to act fairly without ill will or malice-in fact or in law. "Legal malice" or "malice in law" means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an

act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended". It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts."

(c) Rajendra Roy Vs. Union of India (UOI) and Another, , wherein the Supreme Court held as follows:

"7. It may not be always possible to establish malice in fact in a straight-cut manner. In an appropriate case, it is possible to draw reasonable inference of mala fide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestions."

10. From the afore-referred judgments relied on by the learned counsel appearing for the petitioner, it is necessary to find out whether an element of legal malice can be inferred from the pleadings of the parties and the circumstances brought forth by the petitioner having regard to the incidents preceding the impugned transfer.

11. From the pleadings in the writ petition, it can be understood that the petitioner and some other employees in the Organisation sent petitions against Mr. Thyagarajan and Smt. T.S. Padma Priya on the ground that they have been exhibiting regionalism and treating some set of employees in a discriminatory and arbitrary manner. Subsequently, on certain specific allegations, the petitioner was suspended and he was also transferred to a different unit in SLRDC at Hyderabad. Merely because certain events took place prior to the impugned transfer, which show that the petitioner and his superiors, namely, Mr. Thyagarajan and Smt. T.S. Padma Priya are not in good terms, it is not possible to arrive at a definite conclusion that the present transfer is prompted by mala fides. The petitioner only stated in the Affidavit filed in support of the writ petition that Mr. Thyagarajan and Smt. T.S. Padma Priya might have chosen his name to the 3rd respondent for being transferred from Hyderabad to Korwa in Uttar Pradesh State. But, obviously, the transfer is not made basing on the recommendation of Mr. Thyagarajan and Smt. T.S. Padma Priya. The transfer of the petitioner was made by the General Manager of HAL (HRER) at Bangalore. Mr. Thyagarajan and Smt. T.S. Padma Priya are not personally made as respondents in the present writ petition to answer the allegations levelled against them.

12. In Rajendra Roy Vs. Union of India (UOI) and Another, , the Supreme Court clearly pointed out that for drawing inference of legal malice and malice in law, there must be facts pleaded and established and such inference cannot be drawn on the basis of insidious and vague suggestions. Therefore, basing on the bare allegations levelled by the petitioner against the respondents 4 and 5 about their

biased attitude against him, coupled with the suspension order passed against the petitioner on certain charges resulting in initiating disciplinary proceedings, it cannot be said that a strong prima facie case of legal malice has been made out by the petitioner. Further, on the ground that some hostile atmosphere prevailing in the unit between the petitioner and some others on one side and the respondents 4 and 5 on the other, on account of the representations sent by the petitioner and others against the respondents 4 and 5, the petitioner cannot take advantage of the situation and avoid transfer which is made purely out of administrative exigency. No firm foundation has been laid by the petitioner to establish malice in law from his pleadings in the writ petition. As pointed out by the Supreme Court, inference in relation to malice in law cannot be drawn basing on the mere insinuation and vague suggestions. This Court is of the view that the impugned transfer proceedings/job rotation is made by the 2nd respondent at Bangalore is administrative in nature and the petitioner is not able to establish that it is prompted by mala fides and is punitive in nature. The transfer may cause hardship and inconvenience to the petitioner. It may also cause dislocation in the family set up but on that score, this Court is not supposed to exercise the power of judicial review to set aside the transfer order.

13. For the foregoing reasons, this Court is of the view that there are no grounds to interfere with the impugned proceedings whereunder the petitioner was transferred. Consequently, the writ petition is dismissed without any order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.