

(1992) 10 AP CK 0007

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 481 of 1992

Team Leader, Army Team, Bharat Dynamics Limited and
Others

APPELLANT

Vs

Major C.V.V. Reddy

RESPONDENT

Date of Decision : 23-10-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 3 ALT 537

Hon'ble Judges : P.L.N. Sarma, J;A. Lakshmana Rao, J

Bench : Division Bench

Advocate : K. Rajanna, for the Appellant; K. Gopala Rao, for the Respondent

Final Decision : Allowed

Judgement

A. Lakshmana Rao, J.—This writ appeal arises out of the judgment of the learned Judge dated April 15,1992 in writ petition No. 3131 of 1992 which was filed by the respondent herein for the issue of a writ of Mandamus declaring the action of the appellants herein, in posting him to 43 EME Battalion vide Army Headquarter's Signal (Telegram) 389339/MS EME dated December 20, 1991 as illegal, unjust and contrary to the principles of natural justice. The learned Judge allowed the writ petition declaring that the transfer of the respondent herein to 43 EME Battalion by the Army Headquarter's Signal, dated December 20,1991 was illegal, invalid and inoperative. Aggrieved by that order, the respondents in the writ petition have filed this writ appeal.

2. For the appreciation of the points that arise for consideration in this writ appeal, it would be necessary to refer to the relevant facts. After completing his education at Sainik School, Korukonda, the respondent herein, joined the National Defence Academy at Pune in August, 1976. He was commissioned in the Army on June 7,1980 in the corps of Electrical and Mechanical Engineers. During the period from 1981 to 1984 he completed his degree in engineering course at College of Military Engineering, Pune and Military College of Electronics and

Mechanical Engineering, Secunderabad. In the year 1985 he joined Master in Engineering (M.E.,) Course in Aerospace at Indian Institute of Science, Bangalore and secured the post-graduate degree. He was selected and posted on July 1,1991 to Army Team on the Project of Prithvi and Trishul, which is located at Bharat Dynamics Limited, Kanchanbagh, Hyderabad. The Army Team consisted of seven officers including the Team Leader, Lieutenant Colonel P. Kumar, the first appellant herein. Since permanent establishment for the Army Team had not yet been sanctioned by the Government of India, the officers were posted to the local units in and around Hyderabad to enable them to report for work at Bharat Dynamics Limited. The respondent herein was posted to 1EME Centre, Secunderabad, his corps unit, while the first appellant herein was posted to a unit under Artillery Brigade as he belongs to artillery. The team was entrusted with the work of preparing "users" documentation".

3. Commander, 54 Artillery Brigade, 2nd appellant herein has been entrusted with the overall responsibility for the co-ordination of development of Prithvi Missile System and conduct of training as well as supervision of preparation of documentation at the Bharat Dynamics Limited. He had addressed a letter dated October 29,1991 to the Project Manager (Prithvi), Additional Director General (A), New Delhi, the 4th appellant herein, stating that the performance of the respondent herein as a member of the team and his suitability for the assignment had been assessed over the past three months and that his behaviour on a number of occasions had been highly irresponsible and immature. It was further stated that the officer had not been able either to fit into the team or contribute anything of significance despite guidance, warnings and persistent counselling. It was mentioned that the officer was not mentally and physically prepared to take on the assignment which involved sustained work. Finding that his overall performance was indicative of a negative approach, the 2nd appellant informed the 4th appellant that the respondent was being directed to report to his parent unit, 1-EME Centre, Secunderabad. The 4th appellant was therefore requested to arrange nomination of a suitable person in place of the respondent as a member of the Team. On September 25,1991, the Team Leader, the 1st appellant herein, called for explanation from the respondent on the lapses mentioned therein relating to his failure to attend Prithvi Cadre on September 20. 1991 and absence from the quarter from 20th September to 25th September 1991, etc. The respondent submitted his explanation dated September 26,1991, stating that he had no valid excuse as regards any of the lapses cited in the letter dated September 25,1991. He tendered his apology for having taken a "totally unwarranted egoistic stand".

4. The respondent submitted a representation dated October 1,1991 to the Military Secretary, Army Headquarters, New Delhi through the Headquarters Andhra Sub-Area (A), Secunderabad, requesting for a posting at one of the labs of Defence Research and Development Organisation "at Hyderabad. The relevant portion of the representation reads as follows:

"I think that I will be able to contribute a lot more to the organisation in case I have an appointment which involves research as the primary role. In view of my recent posting to 1-EME Centre, Secunderabad, loss to State can be avoided by suitably locating me at one of the labs of Defence Research & Development Organisation at Hyderabad. I submit that the above request of mine is borne by my desire to contribute something out of the ordinary, with the help of mental faculties I believe I have been gifted with, which, if not used, will wither away, as time passes further.

In view of the above, and in case none of the labs of DRDO at Hyderabad have requirements of an aerospace engineer, I may even be considered for deputation outside Minister of Defence, say, to any lab of the Council for Scientific and Industrial Research (Indian Institute of Chemical Technology, Centre for Cellular and Molecular Biology, National Institute of Nutrition) or to National Geophysical Research Institute or Survey of India located at Hyderabad, where I could be engaged in either fundamental or applied research."

5. While so, on November 1, 1991 the first appellant issued a Movement Order to the respondent asking him to report back to his parent unit 1-EME Centre from Bharat Dynamics Limited. Through its letter dated November 20, 1991, the Military Secretary's Branch informed the respondent that his request for posting in any research institute mentioned in his representation dated October 1, 1991 had been examined by the Advisory Board and that it was not acceded to. It was, clarified in that letter that the respondent cannot be moved to 1-EME Centre by the Team Leader, the 1st appellant herein. On November 30, 1991, the respondent was returned to Bharat Dynamics Limited from 1-EME Centre.

6. While so, on December 3, 1991, the Additional Director General (A), New Delhi, the 4th appellant herein addressed a letter to the Additional Military Secretary (A), Army Headquarters, New Delhi, the 5th appellant requesting for a suitable replacement in place of the respondent, giving the following reasons for such a request:

"Cdr 54 Arty Bde has been overall responsible for co-ordination of development of Prithvi Msl System, conduct of trg and supervising of preparation of documentation at Hyderabad on behalf of Prithvi & Pinaka. He has found Maj CW Reddy unsuitable for the task entrusted to him. In this connection a photograph of Cdr 54 Arty Bde letter No. 403501/32/A dated 29 Oct. 91 is enclosed. Consequently, the offer was asked by the Team Leader to report back to his parent unit (1EME Centre).

It may be noted that development of Prithvi Msl System is a sensitive Project which is in advance state of development with the user trials expected early next year. Degree of importance of the duties assigned to Maj CVV Reddy and the team of which he was part can be assessed from the fact that team was detailed on the personal directions of the VCOAS. Sense of commitment displayed by the offr leaves much to be desired. His continued association with the Project is not

considered advisable."

7. The Commandant, 1-EME Centre, Secunderabad, the 3rd appellant herein interviewed the respondent and the first appellant. He observed that the respondent had developed a feeling that he was wasting his talent and expertise in his appointment as a member of the Team on the Project "Prithvi & Trishul" and he was not deriving the necessary job satisfaction from the work entrusted to him. The 1st appellant felt that the respondent was disinterested and lacked motivation. Therefore, he wanted the respondent to be posted out. The Commandant felt/keeping in view the special type of job to be handled by the team, that it would be better in the interest of the organisation "to post out the officer".

8. In such circumstances, the Additional Military Secretary (A), New Delhi, passed orders directing transfer of the respondent from Bharat Dynamics Limited, Kanchanbagh, Hyderabad, to 43 EME Battalion, Jammu, vide Army Headquarter's Signal (Telegram) dated December 20, 1991.

9. The only question that arises for consideration in this writ appeal is whether the impugned transfer of the respondent can be interfered with by this court in the exercise of jurisdiction under Article 226 of the Constitution of India, having regard to the facts and circumstances referred to above. It is a settled principle of law that transfer from one place to the other is an incident of service and if it has been effected either in public interest or due to administrative exigencies, the court shall be reluctant to interfere with an order of transfer.

10. "Prithvi and Trishul Missile Project" is a prestigious project of national importance. As pointed out by the Additional Director General (A), New Delhi, it is a sensitive project which is in an advanced stage of development with the user trials expected early 1992. The degree of importance of the duties assigned to the respondent and the other team members can be assessed from the fact that the team was detailed on the personal directions of the Vice-Chief of Army Staff. The Commander 54 Artillery Brigade, who was kept in overall charge for the coordination and development of the Prithvi and Trishul Missile System, found the respondent unsuitable for the task entrusted to him, on the basis of his assessment of the respondent's performance and suitability for the assignment over the past three months prior to October 1991. The material on record including the show cause notice dated September 25, 1991 issued to the respondent by the first appellant and the comments of the Commandant 1-EME Centre, Secunderabad, the third appellant herein, clearly establish that the first appellant, who is the team leader, and the respondent have not been able to work amicably with a team spirit for achieving the purpose for which the team has been posted in the missile project. The third appellant interviewed the respondent and the first appellant and felt that in view of the special type of job entrusted to the team, it would be better in the interest of the project to transfer the respondent. The appellants 2, 3 and 4 are responsible military officers occupying fairly high posts. All of them felt that in the interest of the project, the

respondent shall be transferred from Bharat Dynamics Limited. Accordingly, the fifth appellant passed the orders of transfer.

11. The respondent himself submitted a representation on October 1, 1991 to the Military Secretary, Army Headquarters, New Delhi, commenting upon his recent posting to 1-EME Centre, Secunderabad as a loss to State and pointing out that the loss can be avoided by suitably locating him at one of the laboratories of Defence Research and Development Organisation at Hyderabad. He mentioned that his request was the outcome of a desire to contribute something with the help of mental faculties he believed he had been gifted with. The Commandant, 1-EME Centre, Secunderabad, the 3rd appellant herein, gained an impression after interviewing the respondent that he was feeling as if he was wasting his talent and expertise as a member of the team, posted in the missile project, and that he was not deriving the necessary job satisfaction from the work he was entrusted with.

12. In such circumstances, can it be said that the respondent had been transferred with any ulterior motive or that the transfer was an outcome of an arbitrary exercise of power. In our considered view, the facts and circumstances of the case do not at all warrant such a conclusion.

13. It may be true that when the respondent made a representation that he may be posted to a technically challenging assignment, the 3rd appellant recommended that he may be posted to an establishment where his technical knowledge can be made use of. So also, Colonel J.S. Kapoor, Joint Director (Production), Missile System Quality Assurance Agency (MSQAA), Hyderabad might have stated that the posting of the respondent to 43 EME Battalion, Jammu will be waste of a trained officer. The request made by the respondent to Major General J.S. Ahluwalia, Colonel Commandant of EME for keeping his transfer in abeyance was brought to the notice of the Military Secretary-16. The matter had been discussed by the Colonel Commandant with the concerned Military Secretary and thereafter the respondent was informed through the letter dated February 6, 1992 that there would be no change in his transfer. On February 8, 1992 the respondent submitted a representation to the Additional Director General, EME (Personnel & Administration), New Delhi, expressing his grievance against the order of transfer. The representation was considered by the appropriate authority and thereafter the respondent was informed by the Additional Director General through the communication dated February 14, 1992 that it would not be possible to divert his transfer.

14. We do not see any substance in the contention of the learned counsel for the respondent that the appellants 1, 2 and 4 acted vindictively and arbitrarily in getting the respondent transferred from Bharat Dynamics Limited to 43 EME Battalion. The facts and circumstances referred to above clearly indicate that the concerned authorities acted solely in the interest of "Prithvi & Trishul Missile System" in transferring the respondent. The validity of such an order of transfer cannot be said to have been vitiated by reason of a wrong movement order

dated November 1, 1991 issued by the first appellant shifting the respondent from Bharat Dynamics Limited, Hyderabad to 1 EME Centre, Secunderabad.

15. May be that the respondent had worked for about 56 months in field postings, i.e., 15 months in Baramulla in Jammu & Kashmir, 17 months in Jaipur in Rajasthan, 17 months in Dingjion and 7 months in a long and therefore in normal circumstances, he was entitled to serve in Secunderabad for a minimum period of three years before being posted out.

16. But, from the foregoing discussion, we are fully satisfied that: the impugned transfer of the respondent from Bharat Dynamics Limited, Hyderabad to 43 EME Battalion, Jammu, had been effected solely in the interest of the prestigious "Prithvi & Trishul Missile Project" and not with any ulterior motive. The request of the respondent to post him in one of the laboratories of Defence Research & Development Organisation at Hyderabad, was rejected by the authorities as it was not possible. Even if there are instructions that a person posted at a place shall not normally be disturbed for a period of three years, such instructions do not preclude the authorities to transfer an employee within three years, if such transfer is necessitated either in public interest or due to administrative exigencies. Equally, we do not find any merit in the contention that the normal procedure of processing the proposal for transfer of the Military personnel through the Sub-Area, Area Headquarters and Command Area Headquarters to the Army Headquarters at Delhi, has been deviated in the instant case and therefore, the order of transfer is vitiated. The second appellant, who is entrusted with the overall control of co-ordination and development of the missile project, proposed the transfer of the respondent giving the reasons. This proposal had been reiterated by the fourth appellant. The third appellant also agreed with the proposal of the second appellant. Accordingly, the fifth appellant effected the transfer of the respondent. In the matter of transfer which had been effected either in public interest or due to administrative exigencies, question of following a particular procedure does not arise.

17. For the aforesaid reasons, the order under appeal is set aside and I consequently the validity of the impugned order of transfer is upheld. The writ appeal is accordingly allowed. No costs.