

(2001) 03 AP CK 0122

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3998 of 2001

V.V. Ramana Reddy

APPELLANT

Vs

Chief General Manager, A.P. Circle, Bharath Sanchar Nigam
Ltd., Govt. of India, Hyd. and another

RESPONDENT

Date of Decision : 13-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2001) 3 ALD 50 : (2001) 3 ALT 435 : (2001) 90 FLR 1013

Hon'ble Judges : Satya Bratha Sinha, C.J;S.R. Nayak, J

Bench : Division Bench

Advocate : Mr. P. Naveen Rao, for the Appellant; Mr. L. Narasimha Reddy, SC,
for the Respondent

Judgement

Satya Bratha Sinha, CJ.

1. This writ petition arises out of a common order dated 1-3-2001 passed by the Central Administrative Tribunal in OA Nos.283 and 284 of 2001 whereby and whereunder the learned Tribunal has dismissed the original applications filed by the petitioner herein and one P. Anjaneyulu. Aggrieved by the said order of the learned Tribunal the applicant in OA No.283 of 2001 has preferred this writ petition.

2. The petitioner herein, in the said original application, inter alia questioned an order dated 12-2-2001 passed by the respondents transferring him from Karimnagar to Srikakulam. The said order of transfer reads thus :

"No.TA/STB/1-5/93/KAA/IV dated 12-2-2001

Sub :--Transfers and postings in the cadre of TOA (a)/SS(O) under Rule 37 of P&T Manual, Volume IV - Reg.

The Chief General Manager, BSNL, A.P. Telecom Circle, Hyderabad has ordered the following transfers and postings under Rule 37 of P&T Manual, Volume IV

with immediate effect :

1. Sri V.V. Ramana Reddy, SS(O), Karimnagar is hereby transferred and posted to O/o. TDM, BSNL, Srikakulam.
2. Sri P. Anjaneyulu, TOA (G) Karimnagar is hereby transferred and posted to O/o. GMTD, Cuddapah.

The officials are entitled to TA/DA. They may be relieved immediately in the instructions to report to the concerned SSA Heads.

Sd/- (Ch. V.S. Jaganadha Rao)

Asst. Director Staff,

For COM, BSNL, A.P. Circle, Hyd."

3. The basic fact of the matter is not in dispute. The learned Counsel for the petitioner submitted that the petitioner at all material times is working as Telecom Office Assistant, Grade-I, in the district of Karimnagar and he was eligible for promotion to Grade-II and was expecting his promotion shortly. The learned Counsel further submits that the posts in relation to the said cadre up to Grade-III are organised at the district level i.e., Secondary Switching Area (hereinafter referred to as "SSA" for the sake of brevity), which was earlier called as Telecom district and for the purpose of recruitment and promotions up to Grade-III, SSA is the unit.

4. The grievance of the petitioner is that by reason of the impugned order he had unjustly been transferred from Karimnagar to Srikakulam. The petitioner contends that each Revenue District is organised as SSA and the Revenue District is headed by a General Manager and he was transferred outside the unit of appointment/cadre, which is without jurisdiction.

5. The respondents have filed a counter-affidavit before the learned Tribunal supporting the order of transfer. The relevant portion of the statements made by the respondents in support of the order of transfer at paragraph 2(A) and (B) of the counter-affidavit reads thus :

"2.....

(A)The applicant alongwith another Shri P. V. Rama Reddy were involved in a case of financial embezzlement to the extent of Rs.1,47,000/- in Karimnagar, SSA. Though disciplinary action was taken up against the applicant alongwith another official, the same could not be concluded due to the transfer of enquiry officer/presenting officer and other administrative reasons. Ultimately, the administration could not finalise disciplinary proceedings and they were terminated due to the delay.

(B)The authorities reviewed the conduct of the applicant and came to the conclusion that the official who involved in financial frauds should not be continued at the same place and to avoid repetition of such frauds and to avoid

demoralising effect on other honest officials, invoked Rule 37 of P&T Manual, Vol.IV and issued the impugned transfer order."

6. The learned Counsel for the respondents has reiterated before us the same contentions, which were raised before the learned Tribunal.

7. Having regard to the order proposed to be passed by us, we are of the opinion that it is not necessary to go into the question as to whether in terms of Rule 37 of the P&T Manual, Volume IV, the petitioner can be transferred or not.

8. In the instant case, admittedly the departmental proceedings were initiated against the petitioner. The petitioner questioned the said proceedings before the learned Tribunal, which was numbered as OA No.376 of 1997, on the ground of delay. The learned Tribunal, by an order dated 2-4-1997, directed the disciplinary authority to conclude the proceedings within a certain period, failing which the same shall abate. As admittedly the disciplinary proceedings could not be concluded within the period specified by the learned Tribunal, the Telecom District Manager, Karimnagar, who was the disciplinary authority, in his letter bearing No.X/DE(A)/R-14/Disc/1997-98/15, dated 27-11-1997, passed the following order:

"Sub :--Rule 14 Inquiry against Sri V.V. Ramana Reddy, TOA (G), O/o. TDM, Karimnagar - Reg.

Ref:--1. This office letter dated 22-8-1992.

2. CAT-HD verdict vide OA No.376 of 1997.

3. CGMT-HD Lr.No.TA/LC/5-83/97, dated 20-11-1997.

The undersigned acting as Disciplinary Authority in the above case, in pursuance of the CAT-HD judgment and in accordance with CGMT-HD letter cited under reference 3, do hereby drop the charge-sheet issued under Rule 14.

Sd/- (N. Janardhana Rao), Telecom District Manager, Karimnagar-505001."

9. Despite the said order of dropping the charges against the petitioner herein, the impugned order has been passed after a period of four (4) years.

10. As indicated hereinbefore, the respondents support the impugned order of transfer on the ground that it was passed on administrative exigencies.

11. Having heard the learned Counsel for the parties, we are of the opinion that the impugned order of transfer cannot be said to have been passed either as a routine affair or on administrative exigencies or in a routine manner.

12. The petitioner was said to have embezzled a sum of Rs. 1,47,000/- and a disciplinary proceeding had been initiated against him. As indicated hereinbefore, for one reason or the other, the said disciplinary proceeding was dropped. In that situation, it was impermissible for the respondents herein to transfer the petitioner so as to avoid purported repetition of such frauds, as also demoralising

effect on the other officials. The statements made in the counter-affidavit clearly show that the impugned order has been passed for unauthorised purpose. The appropriate authority with a pre-determined view that the petitioner herein is guilty of commission of the said misconduct, although, as noticed hereinbefore, the departmental proceedings against the petitioner had been closed as far back as on 27-11-1997, has passed the said order. Although a Court or a Tribunal does not normally interfere with an order of transfer, it is also well settled that no order of transfer can be passed by way of Or in lieu of punishment. Such an order of transfer would be vitiated in law, inasmuch as prior thereto, neither any departmental proceeding has been initiated nor the petitioner had been granted an opportunity of being heard.

13. In *Secretary of State v. Tameside* 1976 (3) All.ER 665, Lord Scarman, LJ, observed :

"As always with judicial review, it is vital to determine, and then strictly to follow, the correct judicial approach to the problem placed before the Court. Counsel for the Secretary of State put it correctly when he submitted that the letter of 11th June was crucial to the Secretary of State's case, and that it must be read fairly, not legalistically, and must be studied in contemporary context, that is to say, as things were on 11th June. Counsel was also right to remind the Court that it is not suggested (a) that in the letter any reliance was placed on extraneous or irrelevant matters; (b) that the Secretary of State had omitted or failed to take into consideration any relevant matters (unless being misinformed is such a failure); (c) that the Secretary of State in using his power of direction u/s 68 had any intention other than to secure compliance with the policy and intendment of the statute; and (d) that there was bad faith on his part."

14. In *Smt. S.R. Venkataraman Vs. Union of India (UOI) and Another*, , at paragraphs 6 and 7 of the judgment, the Apex Court has clearly held :

"6. It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard C.J., in *Pilling v. Abergele Urban District Council* (1950) 1 KB 636, where a duty to determine a question is conferred on an authority which state their reasons for the decision, "and the reasons which they state show that they have taken into account matters which they ought not- to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the Court to which an appeal lies can and ought to adjudicate on the matter"

7. The principle which is applicable in such cases has thus been stated by Lord Esher M.R. in *The Queen on The Prosecution of Richard Westbrook v. The Vestry of St. Pancras* (1890) 24 QBD 371 :

"If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance

of their discretion, then in the eye of the law they have not exercised their discretion,"

This view has been followed in *Sedler v. Sheffield Corporation* (1924) 1 Ch. 483."

15. Yet again, a learned single Judge of the Bombay High Court in *Shamrao Chandrappa Kamnble v. Deputy Engineer* 1998 (2) SLR 418, relying on a decision of the Calcutta High Court in *S.V. Singh v. Union of India* 1988 (2) SLR 545, held that an order of transfer has been issued merely to avoid taking disciplinary action against the petitioner which would have entailed holding a departmental enquiry in accordance with the departmental rules and regulations. This powerful weapon of transfer has been used vindictively and maliciously. The least that the authorities could have done was to consider the explanation of the petitioner and to give him an opportunity of hearing.

16. The case at hand is worse, inasmuch as herein the petitioner was transferred on the same allegations despite the fact that the disciplinary proceedings against him were closed.

17. A learned Judge of this Court in *R. Sudhakar v. M/s. Indian Immunologicals*, Hyderabad 1997 (5) ALD 175, held that when an order of transfer is arbitrary, the same would be violative of Article 14 of the Constitution of India.

18. For the reasons aforementioned, in our opinion, the learned Tribunal has committed a grave error in dismissing the original application filed by the petitioner herein. The writ petition is therefore allowed. The impugned order is set aside. Let a writ of mandamus issue directing the respondents to forbear from acting pursuant to or in furtherance of the order of transfer dated 12-2-2001. However, in the facts and circumstances of this case, there will be no order as to costs.