



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2015

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

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WRIT PETITION (MD) No.3276 of 2015
and M.P. (MD) No.1 of 2015

K.Ariyanayagam

... PETITIONER

-vs-

1. The Inspector General-cum-Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Chennai-3.
 2. The Deputy Inspector General-cum-
Additional Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Chennai-3.
 3. The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway, Madurai.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ in the nature of Certiorari, calling for the records relating to the order of the 3rd respondent in his proceedings in O.O.No.08/2015 dated 24.02.2015 and quash the same.

For Petitioner : M/s.Y.Krishnan &
G.Murugesan

For Respondents : Mr.S.Manohar
Standing Counsel

O R D E R

This writ petition has been filed by the petitioner, challenging the order of his transfer dated 24.02.2015, passed by the third respondent mainly on the ground of lack of jurisdiction.

2. The case of the petitioner in nutshell is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

i) The petitioner, who was appointed as Nakshak in the Railway Protection Force (in short "the RPF") by the first



respondent, has completed 30 years of service. Subsequently, he was promoted as Assistant Sub Inspector and joined Milavitan Out Post in 2013 and on 26.06.2014, a formal enquiry was conducted by the In-charge Inspector without any complaint and the same was conducted without any charge memo and affording any opportunity of hearing him, as a result of which, he was relieved from the Milavitan Out Post and sent to Madurai and thereafter to Virudhunagar on 18.09.2014. He has been working as ASI at the Virudhunagar Station from that day onwards.

ii) It is submitted by the petitioner that on 30.12.2014, the third respondent issued a charge sheet for the charges of gross negligence, falsehood and pre fabrication of records, while he was working at Milavitan and he also submitted his explanation to the charges levelled against him on 16.01.2015. After considering the same, the third respondent found him guilty of the charges and awarded the punishment of withholding his next annual increment due on 01.07.2015 for a period of two years without recurring effect by his proceedings in Office Order No.3/2015 dated 10.02.2015.

iii) It is further submitted that subsequent to that, the third respondent passed an order of transfer, transferring him from Virudhunagar to ICF, Perambur vide proceedings in O.O.No.08/2015 dated 24.02.2015 on administrative grounds and challenging the said order, the petitioner has preferred the present writ petition stating that the order of transfer is arbitrary, in gross violation of law, besiding stating the third respondent has no jurisdiction to pass the order of transfer and that the order of transfer has been inflicted within two weeks from the date of order of punishment of withholding of the petitioner's next annual increment due, which amounts to double punishment and is in violation of Article 20(2) of the Constitution of India.

iv) It is also submitted by the petitioner that the third respondent has no power to transfer an enrolled member of the Force like that of the petitioner from one division to another or from one railway to another railway or Railway Protection Force to Zonal Railway and vice versa as per Rule 92.02 r/w Schedule II of the Railway Protection Force Rules, 1987, which reads as under:

"92.1: Transfer of enrolled members of the Force -
Transfers of enrolled members of the Force may be ordered by the Chief Security Commissioner concerned and other officers specified in Sch.II."

v) The petitioner has also filed an additional affidavit stating that the transfer was not on the administrative ground and that under the guise of general transfer, the petitioner. It is stated that one Manoj Kumar Yadhav, Sub-Inspector of Railway Protection Force, Tuticorin demanded Rs.1,000/- to Rs.1,500/- every month and when the petitioner refused to do so, he



threatened him with dire consequences, which was brought to the notice of the higher authorities by the petitioner. But the higher authorities instead of taking action against the said Mr. Manoj Kumar Yadhav, conducted oral enquiry against the petitioner on the basis of some anonymous complaint dated 11.06.2014. It is submission of the petitioner that the said Manoj Kumar Yadhav is highly influential person and only at his instance, the third respondent issued him a charge memo under Rule No.158 of Railway Protection Force Rules, 1987.

vi) It is also the submission of the petitioner that within three years, he has been transferred three times in the name of temporary attachment and transfer on administrative grounds. On 01.03.2015, his daughter sent a representation dated 01.03.2015 stating that false allegations have been levelled against her father and due to the mental torture given by the said Manoj Kumar Yadhav, her father was admitted in the Railway Hospital and that she also requested for CBI investigation in the matter. In view of her representation, the first respondent has given a reply dated 10.03.2015 stating that there was a written complaint dated 11.06.2014 against the petitioner and enquiry was held with regard to the complaint by the Assistant Security Commissioner, Chennai, wherein he has stated that he had given Rs.1000/- to Rs.1500/- to the said Yadhav against his demand of Rs.5,000/-. However, the daughter of the petitioner later on sent a letter dated 16.03.2015 stating that the petitioner had not given any such statement.

v) It is his submission that since the petitioner has been transferred from Southern Railway Zone to other Railways, the 1st respondent should have got concurrence from the Director General before transferring him. He has also submitted that he has been taking treatment at Railway Hospital for his backbone problems and his higher authorities are forcing the hospital authorities to get him discharged from the hospital before recovery from backbone ailment for his early transfer.

3. The respondents have filed a counter, wherein they have stated that the competent authority only has issued the transfer order and a preliminary enquiry as per the orders of the first respondent was conducted regarding his misuse of power and hence, there is no necessity to inform the petitioner about the same, since he was in charge of the records. A minor charge alone was issued to the petitioner for the gross negligence, falsehood and pre-fabrication of records with the evidences and he was also advised to submit his explanation under Rule 158 of RPF Rules, 1987 and that he also submitted his explanation without any supporting documents. Finally, he was given a punishment with penalty of increment cut for 24 months without affecting his actual retirement benefit and the same has nothing to do with the transfer proceedings. It is further stated in the counter that the first respondent is the competent authority to transfer a member



of the force to anywhere in the Zonal Railway on administrative grounds based on Rule 90 and the third respondent has only conveyed the same to the petitioner. It is also stated that the petitioner, being a member of Armed Force of the Union is to obey the transfer order and that all the procedures were followed in passing the impugned order. Therefore, no interference is called for in the transfer order.

4. The petitioner has filed a reply affidavit to the counter of the respondents stating that the respondent has not stated in his letter that he conducted only preliminary enquiry and also has not informed about the action taken against the erring staff. The petitioner has further stated that a plain reading of the 1st respondent's letter dated 10.03.2015, which has been obtained by his daughter under RTI Act, reveals that the order of transfer is only punishment transfer and it is not an administrative transfer. The operative portion of the 1st respondent's letter reads as follows:

".... Enquiry reveals that the allegations brought against the Sri.K.Ariyanayagam are found to be true. On perusing the merits of the case, considering his service, age, and family circumstances etc., Sri.K.Ariyanayagam has been transferred to ICF, Chennai which is non sensitive place and comparatively has lesser work load. Sri.Manoj Kumar Yadav, Sub Inspector/RPF/Tuticorin has been transferred to Palghat Division of Kerala State and Sri.P.Senthil, Asst.Sub Inspector/RPF/Tuticorin has been shifted to Salem Division on administrative grounds. Thus suitable action against the erring staff duly adopting all the departmental procedures...."

Thus, it is reiterated by the petitioner that the Court should interfere with the order of transfer by retaining him at the same place.

5. Heard the learned counsel on either side.

6. A reading of the affidavit would disclose that the petitioner was transferred from Virudhunagar to ICF, Chennai on administrative ground. It is also seen that the petitioner has not joined duty so far on account of his health problem. Learned counsel for the petitioner has also relied on a decision of the Hon'ble Supreme Court in the case of **Somesh Tiwari vs. Union of India and others**, reported in **AIR 2009 SC 1399**, wherein it has been held that if the order of transfer is passed by way of or in lieu of punishment, the same is liable to be set aside being wholly illegal. Thus, his main contention is that from the reading of the letter of the first respondent dated 10.03.2015, it is seen that the order of transfer is nothing but punishment.



7. However, the letter of the first respondent is not so specific only against the petitioner and it also states that other similarly placed persons were also transferred to remote areas. While transferring the petitioner, his health condition has also been taken into account by the first respondent as found mentioned in the letter and therefore, it cannot be said that the order of transfer is a mala fide one.

8. The respondents have also relied upon the decisions of this Court in the case of **M.Amirtham vs. The Chief Security Commissioner, Chennai and others (W.P.(MD) No.4672 of 2006)** decided on **10.07.2006** and also **S.P.Manikandan and another vs. The Inspector General , RPSF, New Delhi and another (W.P.(MD) Nos.10593 and 10594 of 2012)** decided on **13.08.2012** to contend that the order of transfer is an incidence of service and in absence of malafide or violation of any statutory provisions, the Court cannot interfere with the order of transfer.

9. In this case, this Court do not see any such malafide intention or violation of any statutory provisions, because two other persons, against whom allegations were levelled were also transferred along with the petitioner to distant places.

10. The next contention of the petitioner is that right now he has been taking treatment in the Railway Hospital for his backbone problem and his higher officials are forcing the hospital authorities to get the petitioner discharged at the earliest so as to transfer him to the new place forthwith. Even assuming that the said contention of the petitioner is true, the petitioner can very well get the same medical treatment in the Railway Hospital, Chennai attached to ICF, which is very close to the place of work.

11. The Hon'ble Supreme Court in the case of **State of Punjab vs. J.S.Dhutt**, reported in **1995 (4) SCT 225**, had held that it is entirely for the employer to decide when, where and at what point of time, a Public Servant is to be posted and the Courts have no jurisdiction to interfere with the order of transfer unless it is situated by malafide or is in violation of any statutory provisions of law.

12. Keeping in view the ratio laid down by the Apex Court, the contention of the petitioner that the order of transfer has been issued with malafide intention and is a colourable exercise of power, vindictive, punitive and amounts to double punishment cannot be accepted. Hence, the writ petition is dismissed with cost of Rs.2,500/- payable by the petitioner to Ponmudiyar Corporation Higher Secondary School, Goripalayam, Madurai. It is made clear that the cost should be paid by the petitioner within a period of six weeks from the date of receipt of a copy of this order and if the cost is not paid by the petitioner within the stipulated time, the respondents are directed to deduct the amount



from the salary of the petitioner in five installments commencing from July, 2015 and paid to the said School. No costs. Consequently, connected miscellaneous petitions is closed.

Sd/-

Assistant Registrar (Per Admn)

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/True Copy/

Sub Assistant Registrar

To:

1. The Inspector General-cum-Chief Security Commissioner,
Railway Protection Force,
Southern Railway,
6th Floor, Moore Market Complex,
Chennai-3.
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Additional Chief Security Commissioner,
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3. The Divisional Security Commissioner,
Railway Protection Force,
Southern Railway, Madurai.

Copy to :

The Correspondent
Ponmudiyar Corporation Higher Secondary School,
Goripalayam, Madurai

+1cc to M/s. Y.Krishna, Advocate Sr.No.24091

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AA/06.05.2015/6p-6c/(IT)

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