

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.29771 of 2014

G.Bharathi

.. Petitioner

Versus

1. The Union of India rep.by
the General Manager
Southern Railways
Head Quarters Office
Park Town, Chennai 600 003.
2. The Chief Personnel Officer/Admn.
Head Quarters, Park Town
Chennai 600 003.
3. The Controller of Stores
Joint Office, Southern Railway
Ayanavaram, Perambur
Chennai 600 023.
4. The Senior Personnel Officer/Stores
Joint Office, Southern Railway
Ayanavaram, Perambur
Chennai 600 023.
5. The Deputy Chief Materials Manager
LOCO Works, Southern Railway
Ayanavaram, Chennai 600 023.
6. The Central Administrative Tribunal
rep.by its Registrar
High Court Compound
Chennai 600 104.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records relating to the order vide

No.P(S)359/V/OA310/00505/2014 dated 18.07.2014 issued by the first respondent and communicated by the fourth respondent and the order dated 31.10.2014 passed by the sixth respondent Tribunal in O.A.No.1103 of 2014 and to quash the same.

For Petitioner : Mr.P.V.S.Giridhar

For Respondents: Mr.V.G.Suresh Kumar
for RR1 and 2
R3- Tribunal

O R D E R

(Order of the Court was made by HULUVADI G.RAMESH,J.,)

The prayer in the writ petition is for the issuance of a writ of certiorari to call for the records relating to the order vide No.P(S)359/V/OA310/00505/2014 dated 18.07.2014 issued by the first respondent and communicated by the fourth respondent and the order dated 31.10.2014 passed by the sixth respondent Tribunal in O.A.No.1103 of 2014 and to quash the same.

2. The brief facts of the case runs as follows:

(i) The petitioner joined service as Clerk in Loco Works, Southern Railways during the year 1996. Subsequently he was promoted to the post of DSK 3 and DSK 2 during 1990 and 1994 respectively. On 01.11.2003, he was further promoted to the post of DSK, which post was re-designated as Chief Depot Material Superintendent.

(ii) The case of the petitioner is that he is an active fighter against corrupt officials and used to send complaints to the Central Vigilance Commission against those officials who have misused their power. Being dissatisfied with the same, the respondent-Railways transferred the petitioner to Trichy by order dated 28.03.2014. He challenged the said order of transfer before the Tribunal, which granted an interim order directing the respondent-Railways to maintain status quo. Despite the same, the petitioner was relieved from service vide order dated 05.04.2014. He once again filed another application before the Tribunal wherein the Tribunal directed the first respondent herein to examine the case of the petitioner, particularly with respect to the allegations made against him relating to the theft,

which happened in the Stores Depot during the year 2012 and in regard to the selection process of one Murugan, Assistant Materials Manager and based on enquiry if it nothing is found adverse against the petitioner, to cancel his transfer order.

(iii) However, the first respondent without conducting any enquiry whatsoever, vide order dated 18.07.2014, transferred the petitioner with immediate effect to Trichy, which was communicated by the fourth respondent. The petitioner challenged the said order before the Central Administrative Tribunal, Chennai Bench in O.A.No.1103 of 2014, which application was dismissed vide impugned order dated 31.10.2014.

(iv) Aggrieved against the said order, the petitioner is before us seeking the aforesaid prayer.

3. Learned counsel representing the petitioner submits that this is a clear case of victimisation and with mala fide intention the petitioner has been transferred. He further submits that the respondents, without giving any opportunity of hearing or conducting any enquiry, has transferred the petitioner, when several requests for transfer to GOC workshops at Trichy were kept pending for want of vacancy. Accordingly, he prays for setting aside the order of transfer passed by the fourth respondent and also to quash the impugned order passed by the Tribunal.

4. The learned Standing Counsel representing the Railways submits that certain high valued cables have been stolen from the Stores Depot/Loco Workshop, Perambur for which the petitioner along with another person, who is a subordinate to him are in-charge. Therefore, based on the recommendation of the investigating authorities, the petitioner was transferred to Trichy and that his subordinate was transferred to Ernakulam on administrative grounds. He further submitted that there is no mala fide intention involved in the transfer of the petitioner. It is his further contention that charge sheet invoking major penalty also has been issued to the petitioner on 18.06.2015. Accordingly, he prayed for sustaining the order passed by the Tribunal.

5. We have heard the learned counsel representing the petitioner as well as the learned Standing Counsel appearing for the respondent-Railways.

6. The factual matrix, as it appears, reveals that the petitioner had been transferred, nearly after 10 years of

service at Chennai. From the arguments advanced by the learned counsel for the petitioner, it is seen that certain mala fides are involved in this matter, which is punitive in nature. Further the petitioner being a law abiding citizen and exposing the case of the corrupt officials to the Central Vigilance Commission, was made a scape goat. But the fact remains, he was transferred from Chennai to Trichy after continuously working for nearly 10 years at Chennai. In the meanwhile, certain allegations are also made against the petitioner regarding theft of certain high valued materials from the Stores Depot for which the petitioner is in-charge, which might also be one of the reason for his transfer. It is also brought to the notice of this Court that charge memo dated 18.06.2015 also has been served on the petitioner regarding dereliction of duty in connection with the maintenance of the Stores Depot. According to him, his transfer is not a transfer simpliciter but based on certain serious allegations made by him against his superior officials, for which he has been victimised. Otherwise, in normal course he would not have been transferred.

7. On a perusal of the order passed by the Central Administrative Tribunal, Chennai Bench, it is seen that the Tribunal had held that it is not possible for it to give any positive direction to the respondents to continue the petitioner in his original post and in regard to the allegations levelled against him, he has to defend himself in the inquiry/disciplinary proceedings, if instituted and it would be premature for the Tribunal to interfere with the order of transfer at the threshold and dismissed the prayer of the petitioner in limini.

8. Further, the Tribunal had also referred to the judgments of this Court as well as the Apex Court and had observed that transfer is not only an incidence, but a condition of service, and that the Courts and Tribunals cannot interfere with such order of transfer if it does not involve any adverse impact or visit the person with any penal consequences.

9. In the case on hand, it is contended that the petitioner is being victimised and transferred from his original post nearly after ten years with a mala fide intention as he was exposing the case of the senior officials who have indulged in corruption. However, it is evident from the record, a charge sheet has also been issued, for which, necessarily enquiry has to be conducted by the Enquiry Officer and that the petitioner has to prove his innocence.

10. It is brought to the notice of this Court by the learned counsel for the petitioner that pursuant to the transfer

order, the petitioner has also joined the service at the transferred place.

11. In the above circumstances, while holding that the transfer of the petitioner was not on administrative grounds and the same may also have been on some allegations against senior officials, however, the reversal of the same cannot be looked into at this stage. It is needless to state that if it is found otherwise, the petitioner has got remedy to approach the appropriate forum concerned for necessary relief. It is further directed that the petitioner shall continue in the same place, where he is holding the present post till the enquiry proceedings are over.

12. To enure to the benefit of the petitioner, we would emphasize that the order of transfer is not due to administrative reasons but it is on a mala fide intention. The disciplinary authority is directed to conclude the enquiry proceedings within a period of three months from the date of receipt of a copy of this order. If the petitioner is aggrieved by any order that may be passed after conclusion of such enquiry, he is at liberty to approach either this Court or the Tribunal, as the case may be, seeking appropriate remedy in accordance with law. It is also made clear that since the order of transfer has been passed with a mala fide intention, the petitioner can very well make out an application seeking transfer to his original post after conclusion of the enquiry and if he is not found guilty, the same may be considered by the respondent-Railways in accordance with law.

13. In the result, while confirming the order of the Tribunal, we hereby dispose of the writ petition on the above terms. No costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vj2

To

1. The General Manager
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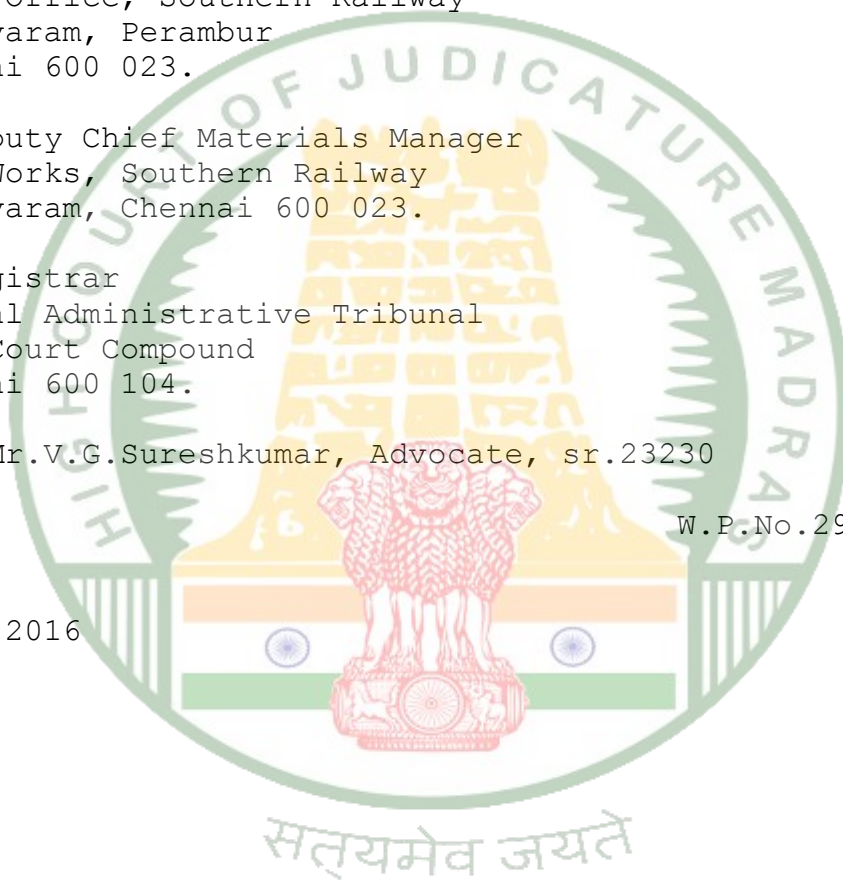
5. The Deputy Chief Materials Manager
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+1 cc to Mr.V.G.Sureshkumar, Advocate, sr.23230

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kra 04.05.2016



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