

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.40845 of 2016

and WMP No.34852 of 2016

M.Veeramani

... Petitioner

vs.

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

2. Union of India rep. by the General Manager,
Southern Railway,
Park Town, Chennai - 600 003.

3. The Senior Divisional Mechanical Engineer,
Tiruchirappalli Division,
Southern Railway, Trichy.

4. The Senior Divisional Personnel Officer,
Tiruchirappalli Division,
Southern Railway, Trichy.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorarified Mandamus, calling for the records of the 1st respondent passed order in Original Application No.310/926/2016 dated 26.08.2016 arbitrary and quash the same and direct the official respondent 2 to 4 to retain the petitioner at Villupuram.

For Petitioner : Mr.P.Ulaganathan

ORDER

[Order of the Court was made by **S.MANIKUMAR, J**]

Challenge in this writ petition is to an order made in O.A.No.926 of 2016 dated 26.08.2016, by which, the tribunal declined to interfere with the order of transfer dated 02.06.2016, passed by the Senior Divisional Personnel Officer, Tiruchirappalli Division,

Southern Railway, Trichy, the 4th respondent herein.

2. According to the petitioner, he was working as a Senior Technician under the Senior Section Engineer (C&W), at Villupuram. He has 22 months of remaining service. Earlier, vide order dated 24.10.2014 of the Asst. Divisional Officer (Mech.), Southern Railways, Trichy, he was transferred from Villupuram to Tiruchirappalli. He challenged the same, in O.A.No.310/01647 of 2014, alongwith two others and the tribunal, vide order dated 10.03.2016, directed the respondents therein, to reconsider their decision, and pass a speaking order. Pursuant to the abovesaid decision, the Senior Divisional Personnel Officer, Tiruchirappalli Division, Southern Railway, Trichy, the 4th respondent herein, has passed an order dated 02.06.2016. The same is impugned in O.A.No.926 of 2016, on the grounds inter alia that he has a disabled daughter to maintain. Contention has been made that rejection of his request for retention or retransfer is without considering the Railway Board's Order, 1975 and without placing the issue, raised by the petitioner, before the Transfer Committee.

3. Per contra, before the tribunal, the respondents/railways have contended that, earlier, when the writ petitioner was transferred, vide order dated 24.10.2014, the same was challenged in O.A.No.1647 of 2014. Pursuant to the directions of the tribunal, vide order dated 10.03.2016, the case of the petitioner was considered, and decided that the same could not be acceded to, for the following reasons:

"1. As on date, there is no vacancy at VM in Sr. Technician grade

Sanction	Actual	Vacancy
3	5	+2

2. Even if vacancy arises, two employees Shri Baskaran and Shri Paramasivam who were seniors to you had registered on 14.05.2013 and 19.08.2013 respectively to be considered for transfer to VM. They were promoted well ahead of you.

3. Shri Panneerselvam had also filed OA for retention at VM. As soon as Honourable Tribunal declined the case, he carried out his orders dated 13.05.2015 and joined at Mannargudi on 04.04.2016, though he is due for superannuation on 30.06.2016."

4. Adverting to the above submissions, the tribunal has recorded that there were only two vacancies, at Villupuram and as per the seniority position of those registered for transfer, there were two seniors who had registered for transfer well ahead of the petitioner on 14.05.2013 and 19.08.2013 respectively, and that their request is still pending. However, taking note of the remaining 22 months period of service, the tribunal has directed the respondents to consider his request for retransfer to Villupuram.

5. Assailing the correctness of the order of the tribunal, made in O.A.No.310/926/2016 dated 26.08.2016 Mr.P.Ulaganathan, learned counsel for the writ petitioner submitted that the writ petitioner belongs to scheduled caste, a weaker section of the society. He further submitted that as per the Railway Board's order dated 15.01.1975, employees belonging to the depressed class should be transferred very rarely. He therefore, submitted that there is a violation of the Railway Board's order.

6. Learned counsel for the writ petitioner further submitted that the matter should have been referred to the transfer committee. Inviting the attention of this Court to the Railway Board's recent circular dated 30.09.2016, it is also his contention that consequent to restructuring, wherever there are vacancies available, transfer need not be effected. According to him, there is a vacancy at Virudhachalam and that the Senior Divisional Personnel Officer, Tiruchirappalli Division, Southern Railway, Trichy, the 4th respondent, ought to have considered the same. On the abovesaid grounds, he prayed to quash the order of the tribunal and consequently the order dated 02.06.2016 transferring the petitioner from Villupuram to Trichy.

7. Heard the learned counsel for the petitioner and perused the materials available on record.

8. Though, Mr.P.Ulaganathan, learned counsel for the writ petitioner assailed the correctness of the order of the tribunal dated 26.08.2016, made in O.A.No.926 of 2016, on the grounds inter alia, that the writ petitioner has got only 22 months of remaining service and that there is a differently-abled child, to be maintained, perusal of the order made in O.A.No.310/01647/2014 dated 10.03.2016 of the Central Administrative Tribunal, Chennai, shows that the writ petitioner was retained at Villupuram at the time of upgradation, only for the reason that the places where senior posts to be distributed have not been identified, and that the tribunal has recorded that once it was done, the respondents therein were fully within their rights to transfer the applicants therein as long as it was not based on any extraneous considerations. The tribunal further held that the applicant (writ petitioner and two others) have not been able to establish any bias or discrimination on the part of the respondents therein in ordering transfer. Thus, the tribunal has recognised the powers of the authorities, to issue transfer orders. There is no challenge to the abovesaid orders.

9. While declining to interfere with the order of transfer dated 24.10.2014, the tribunal in O.A.No.310/01647/2014, has taken note of the remaining period of 22 months of service of the petitioner at that point of time, when the OA was decided, and directed the respondents therein, to reconsider their decision, and pass a speaking order. Perusal of the subsequent order dated 02.06.2016 of the Senior Divisional Personnel Officer, shows that after taking note of the request of the seniors, registered for transfer and those, who have not carried out their promotion transfers, the Senior Divisional Personnel Officer,

Tiruchirappalli, ordered as hereunder.

"Considering the above facts, retaining you would amount to depriving of the rights of senior employees to join their families at Villupuram as well as the discriminating the employees, who have carried out the administrative order and again registered for request transfer to Villupuram or who have been debarred for not carrying out the promotional transfer."

10. As rightly observed by the Senior Divisional Personnel officer, Tiruchirappalli, two seniors, who have registered for transfer, have to be permitted to join their families at Villupuram. At this juncture, we deem it fit to consider that when the seniors, who stayed in stations far away from their respective families, wanted to join their family members, it would not be appropriate to deny their request. It is stated that their request is still pending.

11. Further, the Railway Board's Order dated 14.01.1975, is only a guideline in the matter of transfer and that it cannot be said to have any statutory force as contended. Moreover, the very same contentions have been made in the earlier round of litigation, wherein the tribunal has upheld the powers of transfer and in such circumstances, it is not open to the petitioner, to raise the same ground.

12. Contention of the learned counsel for the petitioner that the matter ought to have been placed before the transfer committee cannot be countenanced for the reason that the Office order dated 03.03.2014 makes it clear that promotion has been made to the employees as Senior Technician due to cadre restructuring and consequently, transfers have been effected. Office order dated 24.10.2014, shows that in terms of Railways Board's order vide RBE No.102/2013, transfers have been effected considering the request and promotions effected, as many as 41 persons have been transferred.

13. Reliance on the recent Railway Board's order dated 30.09.2016, on restructuring and the prayer for retention based on the above also cannot be countenanced for the reason that the same cannot be retrospectively given effect to the orders of transfer dated 24.10.2014.

14. It is well settled legal position that transfer is an incidence of service and courts can interfere with the same, if only there is jurisdictional error, malafides alleged and proved. Reference can be made to few decisions.

(i). In **State of U.P., v. Siya Ram** reported in **2004 (7) SCC 405**, the transfer order was assailed on the ground that it was punitive in nature. The Hon'ble Supreme Court, while testing the correctness of the order, at Paragraph 5, held that,

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

"5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned."

(ii). In **Somesh Tiwari v. Union of India** reported in **2009 (2) SCC 592**, the Hon'ble Supreme Court held that,

"An order of transfer in an administrative order. Transfer, which is ordinarily an incident of service should not be interfered with, save in cases where *inter alia* mala fides on the part of the authority is proved. Mala fides are of two kinds - first, malice in fact and 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 to passing of an order of transfer and based on an irrelevant ground, i.e., on the allegations made against the appellant in an 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. No vigilance enquiry was initiated against the appellant. Transfer order was passed on material which was non-existent. The order suffers not only from non-application of mind but also suffers from malice in law."

15. The distance between Villupuram and Trichy, is not too long and that there are adequate transport facilities also. The reasons assigned by the Senior Divisional Personnel Officer, Southern

Railways, Tiruchirappalli Division, the 4th respondent herein, and accepted by the tribunal to dismiss the Original Application, cannot be found fault with. However, it is open to the respondents to consider, the observation of the tribunal, on the request for retransfer.

16. For the reasons stated supra, this Court is not inclined to interfere with the order of transfer. Hence, the Writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Ars

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai - 600 104.

2. The General Manager, Union of India
Southern Railway,
Park Town, Chennai - 600 003.

3. The Senior Divisional Mechanical Engineer,
Tiruchirappalli Division,
Southern Railway, Trichy.

4. The Senior Divisional Personnel Officer,
Tiruchirappalli Division,
Southern Railway, Trichy.

+1 CC Mr.P.Ulaganathan Advocate SR.No.67671

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VD [CO]

MSI 02/01/2017