

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.25931 OF 2016

ORDER:

Heard Mr.Mohd. Ghousuddin for petitioner and Mr. A.Ravi Babu for respondents.

At request of respondents, on 17.08.2016, time was granted till date to enable the respondents to file counter affidavit. The respondents filed counter affidavit.

The petitioner prays for Mandamus declaring transfer order No.E2/225(1)/2016-RM:KR dated 21.07.2016 made on the recommendation of Depot Manager vide letter No.01/227(16)/2016-MNTY dated 01.07.2016 as biased, suffering from grudge and *mala fide* intention to humiliate the petitioner and simultaneously the inaction of respondents in taking action against lady Conductor amounts to creating enmity among the union leaders and workers of Manthany Depot.

It is convenient to preface the order impugned in the writ petition and then refer to the chronology of events happened in a very short duration. The impugned transfer order reads thus:

"T.S.R.T.C.
ND.E2/255(1)/2016-RM-KR

O/O.THE REGIONAL MANAGER
KARIMNGAR, DT.21/07/2016

OFFICE ORDER

SUB:ESTABLISHMENT-Posting of Drivers on raising Suspension
who involved in Desertion of duty case-Orders issued-Reg.

REF: DM/MNTY Lr.No.01/227(16)/2016-MNTY, Dt.01/07/2016.

Sri V. SRINIVAS, E-323301, Driver of MANTHANY Depot whose suspension has been raised in an Desertion of duty case and directed to this Office for further posting orders vide reference cited, is hereby posted to Jagitial Depot.

**He shall report to the Depot Manger concerned immediately.
This has the approval of Regional Manager, Karimnagar.**

**PERSONAL OFFICER,
KARIMNAGAR REGION"**

The petitioner is working as Driver in Manthany Depot TSRTC. The services of petitioner as Driver have been regularized with effect from 01.09.2013. The petitioner claims to be taking active part as a union member/leader of C.I.T.U. On 21.04.2016, the petitioner was operating the bus bearing No. AP 15 Z 0037 from Manthany to M.G.B.S and M.G.B.S to Manthany. On 06.05.2016, the 2nd respondent placed the petitioner under suspension. The petitioner filed W.P. No.17086 of 2016. On 06.06.2016, the writ petition was allowed and the operative portion of the order in W.P. No.17086 of 2016 reads as follows:

" I called for the record and noticed that the conductor gave a statement on 22.04.2016, but no complaint was given. However, as the matter is under enquiry, this Court is not inclined to stall the enquiry. In view of nature of charge levelled against the petitioner, the suspension of the petitioner from service is not warranted. In the circumstances, the order, dated 06.05.2016 issued by the 2nd respondent suspending the petitioner from service is set aside. However, the 2nd respondent is at liberty to conduct the enquiry and take necessary action in accordance with law by following the principles of natural justice.

Accordingly, the writ petition is allowed to the extent indicated above. It is needless to observe that the petitioner shall co-operate with the enquiry."

On 01.07.2016, 2nd respondent has issued proceeding No.01/227(16)/2016-MNTY revoking suspension of petitioner. The 2nd respondent on the same day nominated Enquiry Officer to conduct enquiry into the charges leveled against the petitioner. While

taking the action for revoking the suspension and appointing Enquiry Officer, the 2nd respondent recommended to 4th respondent for transfer of petitioner from Manthany Depot on administrative grounds vide reference No.DM/MNTY Lr.No.01/227(16)/2016-MNTY dated 01.07.2016. The 4th respondent issued the impugned Office Order transferring petitioner from Manthany to Jagitial Depot. Hence the writ petition.

The reference to the happenings immediately preceding the order in the writ petition avoids reiteration of what is alleged in great detail in the writ affidavit. It suffices in recording the contentions of Mr.Mohd. Ghousuddin in challenging the transfer Order. He challenges the Office Order firstly, on the ground that the entire reason for initiating the disciplinary enquiry, suspension of petitioner, revocation of suspension and appointment of Enquiry officer is on account of petitioner's alleged failure to conform to MTD-141 i.e. not operating the bus as per the time schedule. For the commission or omission of MTD-141, petitioner cannot and could not be transferred. Had respondents taken same and similar action of appointing an Enquiry Officer or initiation of enquiry against the Conductor as well then no discrimination can be complained. But due to malafides, the petitioner is subjected to enquiry and transfer, impugned in the writ petition. In fact, he contends that the administrative grounds are not available and transfer is on account of bias or prejudice the respondents have against petitioner. He further contends that the 2nd respondent by directing appointment of Enquiry Officer has shown the discriminatory treatment and the report dated 01.07.2016 forwarded to 4th respondent should not

have been the basis for transfer of petitioner from Manthany Depot to Jagtial Depot. The 2nd respondent having been confronted with the difficulty of implementing the order of this Court in W.P.No.17086 of 2016 has resorted to administrative power of transfer for collateral reasons. He prays for setting aside the order impugned in the writ petition.

The respondents filed counter affidavit and counter affidavit sets out in detail the version of respondents. Paragraph 9 of the counter affidavit deals with the allegation of petitioner that no action initiated against the Conductor is erroneous and unfounded, for the respondents have already initiated disciplinary action against Conductor for not following MTD-141 and imposed penalty of stoppage of one annual increment without cumulative effect. On the allegations of bias and prejudice, the respondents placed reliance upon the following reply.

“There is no pressure on Depot Manager from the rival union leaders against this case for taking action. Based on the gravity of the case and basing on the complaint of passenger and the report of Security guard, the action has been taken against the petitioner. There is no intention and enmity and grudge against the petitioner. The action has been taken as per the conduct regulation and CCA regulation of TSRTC in the interest of Corporation.”

It is finally justified that the 2nd respondent is guided by guidelines issued in Circular No.PD-44/1987 dated 20.04.1987 and one of the guidelines reads thus:

“When an employee is involved in unruly behavior pending or leading to disciplinary action, the respondents are justified in transfer of employee.”

Though the counter affidavit refers to so many circumstances, this Court considers it unnecessary to refer to the stand taken by the respondents. The petitioner confined his challenge to the Office Order of transfer on the limited grounds referred to above.

Counsel have substantially reiterated the respective stands taken in the pleadings. I have taken note of the submissions, perused the material available on record.

Now the point for consideration is:

Whether the Office Order dated 21.07.2016 is vitiated with bias, grudge, *mala fide* intention and discriminatory in nature?

For brevity, the basis for each one of the grounds is not referred once again. The petitioner is subjected to disciplinary enquiry for alleged misconduct of regulation MTD-141. The statement of fact preceding MTD-141 is that the bus operated by petitioner from Manthany to Hyderabad and Hyderabad to Manthany is not as per schedule and bus reached the destination one hour ahead of the schedule time. The 2nd respondent having found the deviation of MTD-141 placed the petitioner under suspension. This Court has found that suspension is unwarranted. The 2nd respondent issued consequential order of revoking the suspension and the petitioner is permitted to report to duty. The scope of judicial review against orders of transfer is well established. It is not the case of petitioner that the transfer is not by Competent Authority or procedural deviation has vitiated the transfer order. Normally challenge to transfer orders is not entertained. In this background the challenge to transfer order is tested on the grounds

canvassed by petitioner. The petitioner does not challenge the jurisdiction of 2nd respondent to recommend for transfer and the authority of Regional Manager under Office Order to transfer petitioner from one Depot to another. The petitioner alleges bias, *mala fide* intention and due to the grudge borne against the petitioner. I have carefully perused the material placed on record and appreciated each one of the circumstances from 21.04.2016 till 01.07.2016. As the disciplinary enquiry is pending against the petitioner, I am not getting into the merits of the matter. The starting point for presuming bias is that no action against Conductor of the same bus is taken by respondents. As already noticed this allegation is untenable. Once the basis for the allegation is lost, the other inferences drawn by petitioner are untenable. The ground of bias or discrimination is completely incorrect and untenable, therefore, this ground is liable to be rejected. The circular relied upon by the respondents provides broad guidelines while effecting transfers. The circular guidelines do provide for one of the situations viz. where disciplinary enquiry is pending, the authorities can take appropriate decision for transfer. The petitioner is subjected to mere transfer from one Depot to another Depot. The challenge laid by the petitioner fails and the writ petition is dismissed. No order as to costs.

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT, J

Date: 24.08.2016

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