

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.01.2017

Coram

The Honourable Mr. Justice K.K.SASIDHARAN
and
The Honourable Mr. Justice V.PARTHIBAN

W.P.Nos.42783 & 42784 of 2016

G.Prasad .. Petitioner in
WP No.42783 of 2016

Shashi Chandra Bushan .. Petitioner in
WP No.42784 of 2016

versus

1. The Divisional Railway Manager,
Southern Railway,
Commercial Branch, Chennai-600 003.

2. The Divisional Commercial Manager
Southern Railway, Chennai-600003.

3. The Assistant Personnel Officer,
Personnel Branch, Chennai Division,
Southern Railway, Chennai-600003.

4. The Registrar,
Central Administrative Tribunal
City Civil Court Buildings,
High Court, Chennai-104.

.. Respondents 1 to 4
in WP No.42783 of 2016

1. The Deputy Chief Personnel Officer/T,M&E,
Headquarters Personnel Branch,
Southern Railway, Park Town, Chennai-3.

2. The Chief Commercial Manager (Passenger Services),
Headquarters Personnel Branch,
Southern Railway, Park Town, Chennai-3.

3. The Senior Divisional Personnel Officer,
O/oDRM, Personnel Branch, Southern Railway,
Chennai Division, Chennai-3.

4. The Senior Divisional Commercial Manager,
Personnel Branch, Southern Railway,
Chennai Division, Chennai-3.

5. The Registrar,
Central Administrative Tribunal
City Civil Court Buildings,
High Court, Chennai-104.

.. Respondents 1 to 5
in WP No.42784 of 2016

Prayer: These Writ Petitions are filed under Article 227 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in O.A.Nos.687 & 1158 of 2016, dated 29.9.2016 of the Central Administrative Tribunal and consequently direct the respondents to forthwith retransfer the petitioners to Chennai Division.

For Petitioners: Mr. L.Chandrakumar

For Respondents: Mr.P.T.Ramkumar,
Standing Counsel for Railways
RR1 to 3

R4 in WP.42783/16
&R5 in WP.42784/16 -Tribunal

COMMON ORDER

V.PARTHIBAN, J.

These Writ Petitions have been filed against the common order passed by the Central Administrative Tribunal, dated 29.09.2016 in O.A.Nos.687 and 1158 of 2016 dismissing the Original Applications filed by the petitioners, seeking to challenge the inter-divisional transfer orders.

2. Since the Original Applications have been disposed of by a common order by the Tribunal and also as the issues and grounds raised in the Original Applications and before this Court, are common, and one and the same, the present Writ Petitions are also disposed of by this common order.

3. The facts which gave rise to the filing of the Original Applications and which culminated in the writ proceedings before this Court, are narrated hereunder:

4. The petitioner in W.P.No.42783 of 2016, was appointed as a Commercial Clerk on 18.11.2005 and on certain allegations against him, he was placed under suspension on 11.12.2015, pending contemplation of the disciplinary action. However, without any follow up action, the said suspension order was revoked on 12.2.2016 and immediately after revocation of the suspension order, transfer order was issued on 15.2.2016, transferring him on administrative grounds from Madras Division to Salem Division.

5. The petitioner in W.P.No.42784 of 2016, was appointed as a Commercial Clerk on 20.12.2014. He was also placed under suspension on 15.10.2015 pending contemplation of the disciplinary action. Subsequently, suspension order was revoked by order dated 17.12.2015 and immediately, thereafter, he was transferred vide transfer order dated 22.12.2015 from Madras Division to Salem Division.

6. Aggrieved by their transfer, the petitioners herein approached the learned Tribunal, assailing the transfer orders on the ground that the same being punitive in nature and contrary to the instructions issued by the Railway Board and hence, prayed for quashing the said transfer orders.

7. Before the learned Tribunal, it was contended on behalf of the petitioners that the transfer order was not only punitive, but also contrary to the Railway Board's Master Circular No.67, wherein, para 14(a) provides that non-gazetted staff against whom a disciplinary case is pending or about to start, should not normally be transferred from one Railway Division to another Railway Division till finalization of the disciplinary cases.

8. According to the petitioners, since the transfer orders came to be issued immediately after revocation of the suspension and as there was proximity of the events between revocation of suspension and the order of transfer, such transfer cannot be termed to be on administrative grounds and the same was intended only to achieve collateral purpose.

9. It was also the contention of the petitioners therein that the transfer order cannot be a substitute for taking any disciplinary enquiry against the employees concerned and such power cannot be used to circumvent the procedure contemplated for conducting the departmental enquiries. In substance, the petitioners contended that the transfer being effected for extraneous consideration and being punitive, the same is required intervention of the learned Tribunal.

10. Per contra, the Railway Administration defended the transfer orders, contending that the petitioners were transferred when they were not under suspension and the transfer orders were only passed for administrative reasons and their pay, grade pay and seniority have not been affected and the status of the petitioners has also not been altered. In defence of the transfer orders, on behalf of the Railways, several decisions were also cited that in order to maintain discipline and in public interest, transfer orders became imminent and such transfers are well within the scope of Railway Board orders. Moreover, it was contended on behalf of the Railway Administration that the allegations against both the petitioners were serious in nature and their retention in Madras Division

would be against public interest and in any event, the transfer being incidental to any Government service, the same cannot be questioned except on the grounds of mala fide or violation of enforceable Rules, Regulations and guidelines.

11. After taking note of the rival submissions of the parties, the learned Tribunal relied on Rule 14(b) of the Master Circular No.67 which provides that in case the charged Officer was transferred after initiation of disciplinary proceedings, the disciplinary authority will be with reference to his new post and under whose and under whose administrative control he was working. In fact, there was a clear finding by the learned Tribunal that the foundation of the transfer orders was on the basis of the allegations against the petitioners that they had misappropriated amounts due to the Railways while discharging their duties. In fact, that was the case of the Railways also in the counter affidavit. The learned Tribunal order further held that the transfer order was further protected under RBE 251/98 and in that view of the matter, the learned Tribunal found that there was no merit in the Original Applications and therefore, vide order dated 29.9.2016, the Tribunal dismissed the Original Applications.

12. As against the dismissal of the Original Applications, the present Writ Petitions have been filed.

13. Shri L.Chandrakumar, learned counsel appearing for the petitioners strenuously contended that the facts and circumstances and the records would amply demonstrate that the transfer orders were not issued not for administrative reasons, but by way of punishment. He further pointed out that tenor of the counter statement filed on behalf of the Railways before the Tribunal was that there were serious allegations against the petitioners which prompted the Railway Administration to resort to the impugned orders of transfer. Therefore, there cannot be two opinions as to the nature of transfer, but held the same as punitive. Such punitive transfer, according to learned counsel for the petitioners, cannot be allowed to stand as they would set a wrong precedent and would be made use of by the Railway Administration in all cases where there are allegations against the employees. According to him, the Railway Administration will use the power of transfer in order to circumvent the procedure contemplated for proceeding against the erring employees by way of regular departmental action.

14. Shri L.Chandrakumar, while making his submissions, inter alia, produced a compilation of decisions rendered by this Court and submitted that already a Division Bench of this Court in similar Writ Petition in W.P.No.12812 of 2013 in the matter of "P.Karunakaran versus The Union of India and others" in identical situation, the Division Bench of this Court has quashed the order of transfer being punitive in nature. The

learned counsel also referred to another order, dated 28.4.2015 passed by the learned Tribunal in O.A. No. 154 of 2015 wherein, the Tribunal quashed the order of transfer being punitive in respect of another railway employee which was also confirmed by the Division Bench of this Court in W.P.No.26022 of 2015.

15. Shri L.Chandrakumar further contended that reliance placed by the learned Tribunal on 14(b) instead of 14(a) was incorrect since 14(a) was a substantive provision and any violation of the same has to be viewed strictly. He also contended that in any event, reliance placed by the Railway Administration on RBE 251/98 will not be applicable to the case on hand as the same pertains to Ticket Checking Staff.

16. Per contra, Mr.P.T.Ramkumar, learned standing counsel for the Railways contended that it was well within the power of Railway Administration to transfer erring employees for administrative reasons and in the present orders of transfer, there was no infraction of any Regulation or Rules and therefore, the learned Tribunal has rightly dismissed the O.As. filed by the petitioners herein, which requires no interference.

17. Shri P.T.Ramkumar further contended that the petitioners having by reasons of transfer, their seniority, pay allowances and their status had been kept in tact in the transferred post and therefore, they cannot be heard to complain about the impugned transfers. According to him, their seniority has been fixed as per terms of Para 311 of the Indian Railway Establishing Manual Vol.I which protects the interest of the petitioners and as such, the transfer orders cannot be interfered with at the instance of the petitioners. He also contended that in order to uphold public interest, such transfers did take place and he fortified his argument by citing two judgments. The first Judgment is reported in (2011) 12 SCC 137(Registrar General, High Court of Judicature of Madras versus R.Perachi and others)". The second Judgment cited by him is reported in "(1996) MLJ 153 (The Registrar, High Court, Madras versus Vasudevan, A.K. and others)"

18. The learned counsel strongly relied upon the above judgments, stating that even in the face of allegations, an employee would be transferred on administrative grounds since such action is desirable from the point of view of Administration as well as that of the employee concerned as held by the Hon'ble Supreme Court in the decision cited supra. He also contended that since there was no stigma attached to the order of transfer, the same cannot be termed as punitive and hence prayed for dismissal of the writ petitions.

19. Heard the submissions of the learned counsel appearing for the petitioner and learned Standing counsel for the Railway Administration and perused the entire materials available on record including the citations.

20. As regards the decision reported in "(2011) 12 SCC 137 (cited supra) is concerned, it was referred to and distinguished by the Division Bench of this Court in its order, dated 4.10.2013 in W.P.No.12812 of 2013 in the matter of "P.Karunakaran versus The Union of India and others". The facts of the said writ petition were almost identical to the facts of the present writ petitions and similar issues and grounds were also raised before the Division Bench. The learned Division Bench after adverting to all the case laws and submissions of the parties, finally held that the transfer order was liable to be set aside. In fact, in paragraphs 14 to 16, the learned Division Bench has held as under:

"14. Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party. But in this case such exercise of lifting the veil is also not warranted and the respondents have not given scope for such exercise, when they have specifically admitted in their counter that the transfer order came to be made taking note of the gravity Supreme Today With All High Courts Page 4 of 11 of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. At this juncture, it is useful to extract the relevant averments made at paragraphs 10 of the counter affidavit as follows:--

"10. I submit that the petitioner, a professional Boxer appointed under the Sports Quota had a dubious history of various minor and major misconducts and imposed with penalties. The same had not improved his conduct and further, he had gone to the extent of assaulting the public servants on duty. In view of the gravity of the incident that took place on 14.12.12 and also to boost the morale of the public servants on duty, a proposal was sent to the Railway Board to transfer the petitioner out of Southern Railway with immediate effect in the interest of the administration. "

Therefore, it is an admitted case of the respondents that the petitioner was transferred only because of the incident that took place on 14.12.2012 and also to boost the morale of the public servants on duty. If that is the contention of the respondents, then there can be no doubt that the order of transfer was made only for collateral purpose to punish the petitioner. In our considered view, a punishment cannot be imposed on a person without affording an opportunity of hearing, conducting an enquiry and giving a finding that such person was guilty of charges levelled against him.

"15. Admittedly, in this case, no charge memo was issued to the petitioner and on the other hand, the suspension order issued on him was also revoked on 23.1.2013. No doubt, the transfer is not a punishment and it is only an incident of service. There is no quarrel about the said proposition. At the same time, if it is admitted that the employee was transferred as a punitive measure or preventive measure, then such transfer takes a different colour and shape in the eye of the employee not as an incident of service but as a punishment out of an untold charge levelled against him.

"16. Once it is admitted by the authorities that transfer was made based on certain reasons of unbecoming attitude of the employee, more particularly, based on certain incident said to have taken place on a particular date, then the authorities cannot exercise the power of transfer on that ground without affording an opportunity of hearing and allowing the employee to defend his case. Administrative grounds can be put as the reason for transfer, so long as such administrative grounds do not affect the interest of the employee personally with civil consequences or such grounds do not attribute imputation on the character of the employee. If any of these elements are apparent based on admitted facts, then such grounds can no longer be termed as administrative grounds. Therefore, we are of the firm view that the order of transfer in this case was passed only as punitive measure to achieve the collateral purpose and therefore the same cannot be sustained in the eye of law as the same has been made in violation of principles of natural justice."

21. A perusal of the above, it would reveal that the Division Bench has clearly spelt out as to how the transfer order could not be made on the basis of allegations. From the above, it could be seen that the present facts are also almost similar and therefore, the observations made by the learned Division Bench would squarely be applicable to the present case also. In fact, the Division Bench has in extenso analyzed all the decisions of the Hon'ble Supreme Court and other High Courts including the decision cited by the learned counsel appearing for the Railways reported in "Registrar General, High Court of Judicature of Madras versus R.Perachi and others" (cited supra), as found in para 30 of the judgment, which is extracted as under:

"30. Both the counsels also relied on the decision reported in 2012 (1) MLJ 289 (SC) (Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others). A careful perusal of the above said decision would show that the transfer can be interfered with if it was not made on administrative grounds or if it attaches any stigma or on mala fide reasons. The relevant paragraph 21 is extracted hereunder:-

"21. We have considered the submissions of both the counsel. As far as the action of transfer against the first respondent was concerned, the same was on the basis of the report of the Registrar (Vigilance). Besides, the District Judge had also opined that retention of the appellant in his district was undesirable from the point of view of administration. Thus, it involved inter-district transfer. The respondent no.1 had not disputed the power of the High Court to transfer him outside the district, nor did the division bench interfere therein on that ground. This is apart from the fact that transfer is an incident of service, and one cannot make a grievance if a transfer is made on the administrative grounds, and without attaching any stigma which was so done in the present case."

In the said case, the writ petition was filed principally on the jurisdiction of the Hon'ble the Chief Justice for transfer of a court staff in the subordinate court. No mala fide against the Hon'ble the Chief Justice was alleged and the grievance of the staff was that his promotional right was affected. Hence the facts in that case are distinguishable."

22. Since the decision of the Hon'ble Supreme Court was

distinguishable on the basis of the facts of that case which are almost identical to the present facts of the case, we do not think it necessary to specifically point out the distinguishing features. Even otherwise, the facts of the case which went before the Hon'ble Supreme Court where there was a report by the District Judge that the employee concerned therein was dominating the entire district administration and his retention was not desirable in public interest. Such extreme situation is not the case here and moreover, the principal allegation in the said case was whether the Hon'ble Chief Justice had power to transfer the employee and only in such view of the matter, the judgment came to be rendered by the Hon'ble Supreme Court.

23. In the instant case, it is to be seen that the facts and circumstances of the case, squarely fall within four corners of the Judgment dated 4.10.2013 rendered by the Division Bench of this Court, in W.P.No.12812 of 2013 in the matter of "P.Karunakaran versus The Union of India and others" wherein, the Division Bench has laid down the law after adverting to various case laws cited on either side. In para 33 of the order, the Division Bench concluded as follows:

"33. Thus, by considering all the facts and circumstances of this case and considering the admitted position that the transfer order came to be passed only in pursuant to the incident that took place on 14.12.2012, which undoubtedly causes some allegations against the petitioner for which disciplinary proceeding is already initiated, we are of the view that the order of transfer cannot be sustained and accordingly, the transfer order dated 21.1.2013 as well as the order of the Central Administrative Tribunal dated 9.4.2013 are liable to be set aside and the same are accordingly set aside. The writ petition is allowed. We make it clear that this order will not stand in the way of proceeding with the disciplinary proceedings initiated against the petitioner. Consequently, the connected M.Ps. are closed. No costs."

24. While so, we cannot lose sight of the fact that there were serious allegations against the petitioners of misappropriation of amounts due to the Railways. We were informed that one of the writ petitioners has also been issued with the charge sheet, subsequent to the order of transfer. In the circumstances, in the fitness of things, it is necessary that a direction be issued to the Railways to initiate and complete the disciplinary action against the petitioners while following the due process of law in terms of their Regulations and Railway Board orders. At the same time, if any disciplinary action is initiated and the process is continued against the petitioners,

they shall extend their full cooperation to the Department for expediting the disciplinary action.

25. In the light of the above the impugned transfer orders dated 15.2.2016 and 22.12.2015 passed by the Railway Administration, are set aside together with the impugned common order dated 29.9.2016 passed by the 4th respondent Tribunal in O.A.Nos.687 and 1158 of 2016.

Accordingly, the Writ Petitions are allowed with the above observation. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

suk

To:

1. The Divisional Railway Manager,
Southern Railway,
Commercial Branch, Chennai-600 003.
2. The Divisional Commercial Manager
Southern Railway, Chennai-600003.
3. The Assistant Personnel Officer,
Personnel Branch, Chennai Division,
Southern Railway, Chennai-600003.
4. The Deputy Chief Personnel Officer/T,M&E,
Headquarters Personnel Branch,
Southern Railway, Park Town, Chennai-3.
5. The Chief Commercial Manager (Passenger Services),
Headquarters Personnel Branch,
Southern Railway, Park Town, Chennai-3.
6. The Senior Divisional Personnel Officer,
O/oDRM, Personnel Branch, Southern Railway,
Chennai Division, Chennai-3.
7. The Senior Divisional Commercial Manager,
Personnel Branch, Southern Railway,
Chennai Division, Chennai-3.

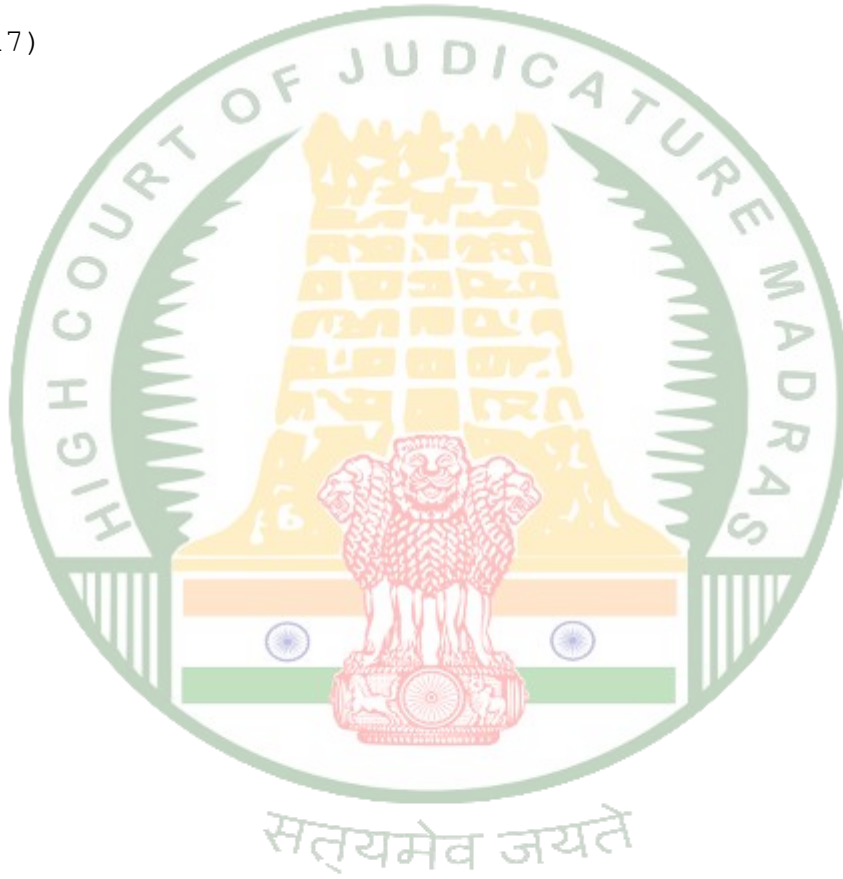
8. The Registrar,
Central Administrative Tribunal
City Civil Court Buildings,
High Court, Chennai-104.

+2ccs to Mr.P.T.Ramkumar, Advocate sr.3487 &3488

+2ccs to Mr.L.Chandrakumar, Advocate sr.3225

Pre Delivery common order in
W.P.Nos.42783 & 42784 of 2016

kjI(co)
ss(8/2/2017)



WEB COPY