

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.07.2019

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THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.No.14570 of 2019
and
W.M.P.No.14545 of 2019

R. Anurajan

... Petitioner

Vs.

1.Government of India,
Ministry of Defence
rep.by its Defence Secretary,
South Block,
Cabinet Secretariat,
Rasina Hill,
New Delhi.

2.The Director General of Ordinance Factory,
No.10A, S.K. Bose Road,
Kolkata - 700 001.
West Bengal.

3.The General Manager,
Cordite Factory,
Aruvankadu,
The Nilgiris.

4.The General Manager,
Ordinance Factory,
Itarsi,
Madhya Pradesh.

5.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the order dated 30.04.2019 in O.A./310/00497/2019 of the 5th respondent/Central Administrative Tribunal, Madras Bench.

For Petitioner : Mr.N.G.R. Prasad
Senior Counsel for M/s.Row and Reddy

For Respondents : Mr.V. Chandrasekar for R1 to R4

O R D E R

(Order of the Court was made by P.T. ASHA, J.,)

The above Writ Petition is filed challenging the order passed by the Central Administrative Tribunal, Madras Bench, in O.A./310/00497/2019, in and by which the Tribunal has rejected the Original Application filed by the Writ Petitioner herein seeking to set aside the order passed by the 2nd respondent transferring him from Cordite Factory, Aruvankadu (CFA) to Ordinance Factory, Itarsi (OFI).

Facts of the case:

2.The petitioner was appointed as Chemical Process Worker at Cordite Factory, Aruvankadu, on 16.08.1999. In course of time, he was also elected as Organising Secretary of the Cordite Factory Labour Union. It is the case of the petitioner that his wife is also working in the same post with the CFA and he has two school going children, both girls studying schools near CFA.

3.The Writ Petitioner would state that he has been issued with a transfer order by the 3rd respondent transferring him from CFA to OFI on 08.03.2019. He had immediately moved the Central Administrative Tribunal, Madras Bench, in O.A./310/00375/2019. On 20.03.2019, the Tribunal was pleased to dispose of the above Original Application with a direction to the 3rd respondent to consider the representation of the petitioner within a period of ten days and Status-Quo was directed to be maintained. By order dated 28.03.2019, the 2nd respondent had rejected the request of the Writ Petitioner not to transfer him to OFI.

4.The petitioner would submit that in paragraph 4 of the order of this Court in W.P.No.18261 of 2010 filed by the Defence factory Labour Union against the CFA, it has been stated that "Class III personnel should not be transferred except for the following reasons:

(1) Adjustments of surpluses and deficiencies of personnel borne on common roster.

2. Promotions

(3) Compassionate grounds/Mutual basis

(4) Exigencies of service or administrative requirements."

5. The petitioner would submit that no guidelines have been framed for transfer on administrative grounds for the Group-C industrial employees. The petitioner would submit that his transfer to OFI would result in loss of seniority, promotions, etc.

6. The petitioner would further submit that he has been penalised unnecessarily and has been facing a spate of disciplinary proceedings. The petitioner would also submit that the departmental enquiry is also not proceeding quickly. The petitioner would therefore submit that the transfer is with malafide intentions. He would further contend that his spouse is also in the same station and the Management ought to have considered retaining him as CFA.

7. The respondent/Management had filed a counter to this application in which they had stated that the transfer was purely on an administrative ground. The respondents have further stated that they have also given an offer to transfer the spouse of the Writ Petitioner along with him provided request is given for such a transfer.

8. The respondents have stated that the petitioner has been transferred on administrative ground in order to maintain an amount of discipline in the factory premises. This was on account of the fact that the Writ Petitioner was vitiating the atmosphere in the premises and was setting a bad example. The transfer was ordered only taking into account larger public interest.

9. The respondents have made it clear that the seniority and the other service benefits of the Writ Petitioner would in no way be affected. In response to the Writ Petitioner's contention, the respondents have stated that the petitioner was never continuously at work and was regularly out of the factory under one pretext or the other. He was also responsible for the employees making false allegations against the Officers and during the enquiry, they had categorically stated that it was the Writ Petitioner who had instigated the workmen and in fact, one of them has filed a complaint in the local police station, against the writ petitioner. The respondents therefore

justifying the transfer order.

10.The Tribunal by its order dated 30.04.2019 was pleased to dismiss the Original Application filed by the Writ Petitioner stating that the transfer is not hit by any malice or malafides and that he has been guilty of a series of misconduct. The fact that his wife is also working in the same factory does not give him any right to be retained at CFA. With these observations, the Tribunal had dismissed the application filed by the Writ petitioner. Challenging the said order, the Writ Petitioner is before this Court.

Submission:

11.Heard Mr.N.G.R.Prasad, learned Senior Counsel for the Writ Petitioner. He would contend that the transfer is a vindictive act and an attempt to victimize the Writ Petitioner. The learned counsel would submit that since the Writ Petitioner was an active Labour Union representative he was being unnecessarily targeted. He would further argue that the transfer is therefore hit by malafides and by reason of the transfer the Writ Petitioner would stand to loose monetarily as well as in terms of seniority.

12.The learned counsel for the Writ Petitioner has relied upon the Judgment of the Division Bench of this Court in W.P.Nos.42783 and 42784 of 2016 dated 12.01.2017, wherein this Court considering the following Judgment rendered by a Division Bench of this Court in W.P.No.12812 of 2013 in the matter of P. Karunakaran v. The Union of India and others. He would rely on the following:

"33.Thus, by considering all the facts and circumstances of this case and considering the admitting 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 21.01.2013 as well as the order of the Central Administrative Tribunal dated 09.04.2013 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 proceedings with the disciplinary proceedings initiated against the petitioner. Consequently, the connected M.Ps. Are closed. No costs."

13.The learned counsel would further submit that the Writ Petitioner has been issued with several charge memos. On 04.01.2018, the petitioner was given a charge memo wherein it was contended that he along with three other persons had threatened the HOS/CD and had manhandled him and not permitted him to enter the office. Thereafter, on 08.06.2018, the petitioner was served with other charge memo in which once again it was alleged that he had abused the HOS/CD by forcing himself into the office of HOS/CD. He was accused of shouting and holding of work in the CD Section over 15 minutes. The Writ Petitioner had also used unparliamentary words against the superior. On 22.09.2018, he was served with yet another charge memo in which the following charges were imputed against him.

(a)The Writ Petitioner had availed a duty pass from the HOS/CD for undergoing physiotherapy from 21.12.2017 to 31.01.2018 without actually undergoing such treatment.

(b)When he was asked to submit his explanation about the same the Writ Petitioner refused to respond with an explanation whereby not only misconducting himself but also showing object in subordination.

14.Therefore the learned counsel would submit that the Transfer is on account of the above charge memos and was therefore punitive.

15.Mr.V.Chandrasekar, learned counsel appearing on behalf of the respondents would contend that the Writ Petitioner is taking advantage of his being an Office Bearer of the Labour Union. He has been causing a great deal of disturbance in and around the factory. The Writ Petitioner was totally indisciplined and was causing a great deal of hardship in the smooth running of the factory by the respondents herein.

16.On 08.03.2019, the impugned order of transfer was issued by the 1st respondent to the 3rd respondent, wherein it has been stated that based on the input received from various sources and considering the overall service records, the Writ petitioner has been transferred to CFA to OFI. Thereafter, on the same day, the 3rd respondent had informed the Writ Petitioner about the orders transferring him from CFA to OFI. In the said order, it was stated that the transfer was on administrative grounds in public interest.

Discussions:

17. From a perusal of the papers, it appears that the transfer has been ordered on administrative grounds in public interest. The respondent is a Cordite Factory. The CFA is one of the 40 Ordnance Factories in India and the oldest defence factory in the Country. It was established as early as in the year 1903 by the then British Government. The Factory, to date, caters to the defence service by manufacturing cordite and antiquated type of smokeless propellant which is used for manufacturing the small arms and ammunitions. Therefore, the Factory caters to the defence needs of the Country and considering the highly sensitive and strategic nature of the goods manufactured therein, there is a necessity for maintaining core discipline in the said premises at all levels.

18. From the files that have been produced by the respondents, it is seen that the petitioner has not been very diligent/sincere in the performance of the work entrusted to him. It is seen that on many occasions, he was away from his work spot and there are notings to show that his contribution to the production by carrying out the duties entrusted to him is very low. There has been a spate of disciplinary proceedings initiated against him. From the records, it is seen that the petitioner has been responsible for disturbing the work place by his individual behaviour. He is also instigating the others. By his activities he has practically attempted to hold at ransom the administration of the factory. Therefore, in order to create a healthy atmosphere in the work place, his transfer has been ordered. The transfer is not punitive in any manner but only on account of the administrative exigencies as provided in the office memorandum dated 21.05.1975 relating to transfer of Class 3 and 4 employees of the defence installation. The service conditions of the petitioner is in no way disturbed as is only being shifted to another Ordnance factory.

19. Even in the Judgment which has been relied upon by the learned counsel for the petitioner in W.P.Nos.42783 and 42784 of 2016, the Division Bench though it had ultimately set aside the orders of transfer, observed that the facts in that case was not similar to the facts in the Judgment reported in 2011 (12) Supreme Court Cases 137 [Registrar General, High Court of Judicature of Madras v. R.Perachi and others.

20.The Division Bench observed as follows:

"22.... Even otherwise, the fact 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 this Hon'ble Supreme Court."

Therefore implying that in cases where the delinquent was causing trouble by conducting himself in a manner whereby he dominates the administration and his continuance was not in the interest of the company he could be transferred.

21. In the instant case, it is seen that the petitioner has been guilty of dominating the administration and causing a great deal of hardship to the Management. He has also been intimidating his co-workers particularly the woman. Therefore in the public interest and to maintain a peaceful environment, the transfer has been ordered.

22.A Division Bench of this Court in a Judgment reported in (1996) MLJ 153 [The Registrar, High Court, Madras v.Vasudevan, A.K. and others] has observed as follows:

" 23.Transfer is a contingency of service. Any employer has full discretion to transfer his employees depending upon the administrative contingencies. The court is not exercising administrative control over the affairs of various Departments. When a specific misconduct is alleged against the petitioners, and if transfer is resorted to, in order to avoid embarrassment to the employer as well as the employee, the said approach by the employer can never be stated as mala fide, especially when the misconduct alleged against the petitioners is not an issue before court. The same may be a motive. But the same cannot be said to be the foundation for transfer. In the case of transfer, nothing more is done than to remove the concerned officers from a particular place. Transfer is not a penalty. In every administration, day in

and day out orders of transfer are passed on account of exigencies of administration.

23.This Judgment was taken up on appeal and the Supreme Court has upheld the said order. In fact, in the Judgment reported in 2011 (12) Supreme Court Cases 137 supra, the Hon'ble Supreme Court has observed that the Judgment in The Registrar, High Court, Madras v.Vasudevan, A.K. and others had been left undisturbed by the Supreme Court when the Special Leave Petition against the same was dismissed.

24.The Hon'ble Supreme Court in 2011 (12) Supreme Court Cases 137 [Registrar General, High Court of Judicature of Madras v. R.Perachi and others has relied upon this Judgment. The Hon'ble Supreme Court in Perachi Judgment has held that the transfer in that case was on an administrative ground, in view of the pending complaint and departmental enquiry against the 1st respondent therein. The Hon'ble Supreme Court had observed that where the complaint against an employee is being investigated it is desirable that he be transferred to the alternate unit of the concern. The Hon'ble Supreme Court had ultimately upheld the transfer order issued to the respondents therein.

25. On a conspectus of the above, we are of the view that the order of transfer issued by the respondents is not punitive but only on account of administrative exigencies. Therefore, we do not find any reason for interfering with the order passed by the Tribunal.

26.Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1.The Registrar,
Central Administrative Tribunal,
Madras Bench,
Chennai.

2.The Defence Secretary,
Government of India,
Ministry of Defence,
South Block,
Cabinet Secretariat,
Rasina Hill,
New Delhi.

3.The Director General of Ordnance Factory,
No.10A, S.K. Bose Road,
Kolkata - 700 001.
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4.The General Manager,
Cordite Factory,
Aruvankadu,
The Nilgiris.

5.The General Manager,
Ordnance Factory,
Itarsi,
Madhya Pradesh.

+1cc to M/s.Row and Reddy , Advocate SR.No. 59852

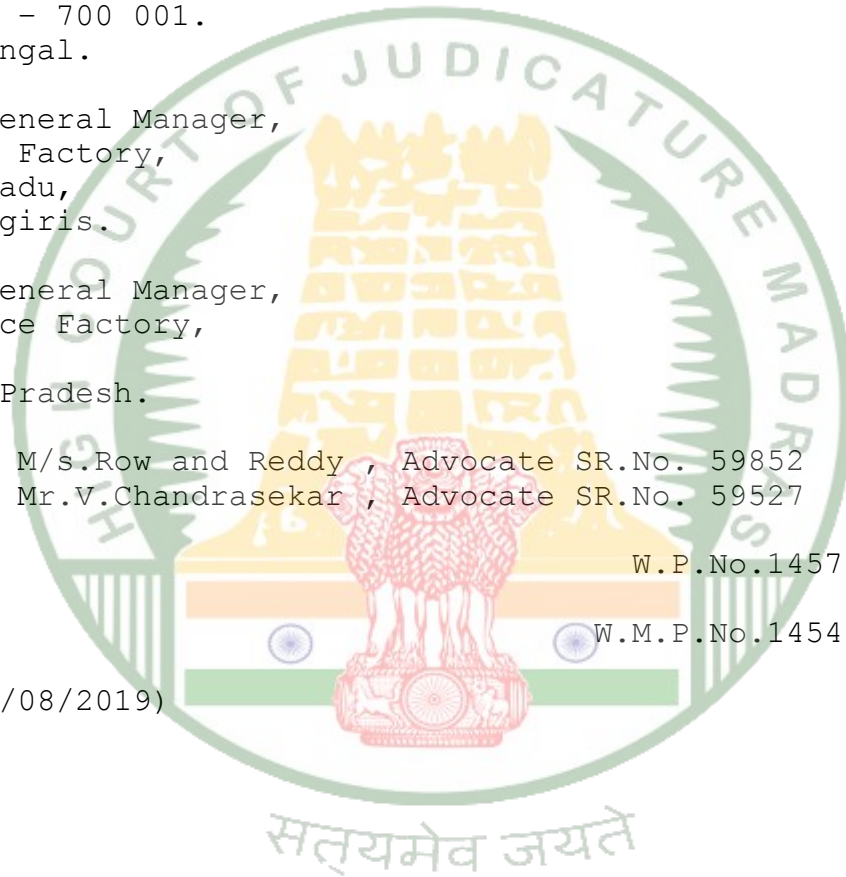
+1cc to Mr.V.Chandrasekar , Advocate SR.No. 59527

W.P.No.14570 of 2019
and

W.M.P.No.14545 of 2019

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A.SK(14/08/2019)



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