

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.2282/2020 & WMP.No.2654/2020

C.Thangaraj ... Petitioner

Versus

- 1.The Registrar
Central Administrative Tribunal
Madras High Court Building
Chennai 600 104.
- 2.Union of India represented by
The Chairman, Railway Board
New Delhi 110 001.
- 3.The General Manager
Southern Railway
Park Town, Chennai 600 003.
- 4.The Senior Deputy General Manager
Southern Railway, Park Town
Chennai 600 003.
- 5.The Chief Personnel Officer
Southern Railway, Park Town
Chennai 600 003.
- 6.The Senior Divisional Commercial Manager
Chennai Division, Southern Railway
Park Town, Chennai 600 003.
- 7.G.Manokaran, Traffic Inspector
O/o.The Sr. Divisional Commercial Manager
Chennai Division, Southern Railway
Park Town, Chennai 600 003.

8. Anichandran, Chief Vigilance Inspector
Vigilance Branch, Southern Railway
Egmore, Chennai 600 008.

9. Gridharan, Chief Vigilance Inspector
Vigilance Branch, Southern Railway
Egmore, Chennai 600 008. .. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of certiorarified mandamus, calling for the records of the 1st respondent Tribunal made in OA.No.1259/2017 dated 17.12.2019, to quash the same and to consequently direct the respondents to continue the petitioner to discharge duties in the same station.

For Petitioner : L.Chandrakumar
Assist by
Mr.K.Manickaraj
For RR2 to 6 : Mr.P.T.Ramkumar
R1 : Tribunal

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

- (1) By consent, the writ petition is taken up for final disposal. Mr.P.T.Ramkumar, learned standing counsel accepts notice on behalf of respondents 2 to 6.
- (2) The petitioner, who is employed as the Chief Ticket Checking Inspector, Arakonam Railway Station, made a challenge to the Order of Transfer dated 24.01.2017 passed by the 6th respondent in transferring him to TVC Division, by filing OA.No.1259/2017 before the Central Administrative Tribunal, Chennai Bench, / the 1st respondent herein and the Tribunal, vide impugned order dated 17.12.2019, has dismissed the Original Application and challenging the legality of the same, the present writ petition is filed.
- (3) A perusal of the materials would disclose the following facts:-
 - ♦ The petitioner claims that he belongs to Scheduled Caste Community and was appointed on Compassionate Ground as Ticket Collector with effect from 09.03.1987. The petitioner was initially posted at Sanitorium Railway Station at Chennai Division and was transferred to Villivakkam Railway Station on the same Scale of Pay and got his promotions as Senior Ticket Collector in the year 1993 and Head Ticket Collector in the year 1999 and the said post was re-designated as

Deputy Chief Ticket Inspector by the Railway Board and he was promoted to the post of Chief Ticket Checking Inspector with a Grade pay of Rs.4,600/- which is a post of supervisory character.

- ♦ The petitioner would submit that Public Announcement System was installed in his office which started creating nuisance and therefore, they represented the same to the 7th respondent who was the Station Manager of Arakonam Railway Station and it was rejected by the 7th respondent and the matter was taken up before the 6th respondent who passed an order for removal of the Public Announcement System and enraged by the same, the 7th respondent herein had developed vengeance against the petitioner herein.
- ♦ It is further averred by the petitioner that while he was on duty at his office on 31.10.2016, an unknown and unidentified persons suddenly pushed a cover in his pocket and gone away immediately and thereafter, he was trapped by the Vigilance Inspector and it is nothing but an illegal act to wreck vengeance. The petitioner was placed under suspension vide order dated 02.11.2016 and it was revoked on 20.12.2016 with effect from 19.12.2016.
- ♦ The 7th respondent herein/6th respondent in the Original Application, vide Order of Transfer dated 24.01.2017, had transferred him to Trivandrum Division and he was not allowed to perform his duty from 25.01.2017.
- ♦ The petitioner filed OA.No.908/2017 to quash the Order of Transfer dated 24.01.2017 before the 1st respondent/Tribunal and however, restricted his prayer to consider and dispose of his representation dated 25.01.2017 and the Tribunal, vide order dated 19.06.2017, had disposed of the said Original Application, by directing the respondents therein to consider and dispose of the petitioner's representation dated 25.01.2017 in accordance with the rules within the stipulated period.
- ♦ The said representation was considered by the 6th respondent herein, who vide impugned communication dated 21.07.2017, has rejected the said request and making a challenge to the same, the petitioner filed OA.No.1259/2017 before the 1st respondent/Tribunal.
- ♦ Respondents 1 to 5 therein, had filed a common Reply Statement, refuting the allegations made in the Original Application and they averred among other things that during the departmental check conducted on 31.10.2016, it was detected that the petitioner had indulged in malpractices and in terms of the Policy Circulars issued by the Ministry of Railways, in Letters No..E [NG]I-98/TR/11 dated 30.10.1998

and 02.11.1998 respectively, which are based upon public policy, stipulate that ticket checking staff as also the other staff in mass contract areas should be transferred on inter-divisional basis where they are detected to be indulging in malpractices and that apart, under Rule 226 of the Indian Railway Establishment Code also, the competent authority is vest with the power to transfer a Railway Servant in the exigencies of service and the order of transfer of the petitioner was purely on the basis of the said Letters and Rule 226 of the IREC. Insofar as the stand taken by the petitioner that paragraph No.14[a] of the Master Circular No.67 and paragraph No.II of the Master Circular No.64 have application, it is the stand of the official respondents that the said provisions have no application for the reason that the petitioner had been transferred only after revocation of the suspension order and not during the currency of the suspension.

- ♦ The Tribunal, after taking note of the rival submissions and consideration of the materials placed, found that though the petitioner made a plea that his Order of Transfer was made on account of the mala fide and oblique motive, he had failed to show prima facie that the respondents were on enmity due to the alleged incident and recorded the finding that the petitioner / Original Applicant had failed to show the mala fide behind the Transfer Order.
- ♦ The Tribunal has also dealt with the said Policy Guidelines and the legal position of transfer and also took note of the judgment of the Hon'ble Supreme Court of India reported in 1994 [6] SCC 98 [N.K.Singh V. Union of India] and observed that considering the totality of the facts and circumstances, found no merits in the case of the petitioner and accordingly, dismissed the Original Application vide impugned order dated 17.12.2019 and challenging the legality of the same, the present writ petition is filed.

(4) Mr.L.Chandrakumar, learned counsel assisted by Mr.K.Manickaraj, learned counsel for the petitioner would submit that in the case on hand, Paragraph 14[a] alone have application and the disciplinary proceedings are yet to be initiated as it is under contemplation and as such, the petitioner cannot be subjected to inter-divisional transfer. Learned counsel also reiterated the submission that the alleged malpractices was nothing but the figment of imagination and put in place at the instance of the 7th respondent herein only for the purpose of transferring the petitioner to a totally different Division for the purpose of causing harassment not only to the petitioner ; but also to his family.

(5) It is the further submission of the learned counsel for the petitioner that though the Order of Transfer, according to the

official respondents, is based on administrative grounds, it is nothing but a punitive transfer and as such, such order is liable to be set aside and if at all, the respondents are still insisting that the petitioner should be transferred, he should be accommodated only on intra-divisional transfer and prays for interference.

- (6) Per contra, Mr.P.T.Ramkumar, learned Standing counsel appearing for the official respondents has invited the attention of this Court to the above cited Letters and Circulars, reply statement filed by the official respondents in the Original Application before the Central Administrative Tribunal as well as the reasons assigned by the Tribunal in the impugned order and would submit that in the light of the detection of malpractice, the petitioner was placed under suspension and subsequently, it was revoked and on account of administrative grounds, he was transferred to Trivandrum Division and the authorities have also got powers under the said instructions and Rules and it cannot be faulted with. The learned Standing counsel also placed reliance upon the decision of the Hon'ble Apex Court reported in 2011 [12] SCC 137 [Registrar General, High Court of Judicature at Madras Vs. R.Perachi and Others] and would submit that in similar facts and circumstances, the Hon'ble Apex Court has set aside the order passed by a Division Bench of this Court and interfered with the order of transfer and upheld the decision of this Court to transfer an employee and since the transfer is admittedly an incidence of service for better and efficient administration, it cannot be faulted with and further add that the petitioner, under the guise of interim orders, continues to remain in the same position, which may not agur well for the better administration and hence, prays for dismissal of this writ petition with exemplary cost.
- (7) This Court paid its best attention to the rival submissions and also perused the materials placed before it.
- (8) The Assistant Personnel Officer/Chief Personnel Officer, vide Office Order dated 05.01.2017, had effected inter-divisional transfer and transferred the petitioner to Trivandrum Division on the same pay band and Grade Pay on administrative grounds and it came to be passed without prejudice to the DAR action to be initiated against him. The petitioner, in this regard, has submitted a representation dated 25.01.2017 and took a stand that his wife was working as a Staff Nurse in Arakonam Railway Hospital and his native place is Arakonam and since he belongs to Scheduled Caste, the order of transfer, transferring him to Trivandrum Division, Kerala State, is against the protection given by the Railway Board to the Scheduled Caste employees and that apart, his two sons are studying 10th and 5th standards in Arakonam itself and his elder son has to write the final Board

Examination and the order of transfer would badly affect his studies and he cannot be shifted to Kerala also as his mother tongue is altogether different. The petitioner got the benefit of interim orders during the pendency of the Original Application and it appears that one of his sons had also completed the Board Examination.

(9) Now, coming to the legality of the Order of Transfer, the Railway Administration has issued a Supplementary Circular No.7 to MC.No.24 RBE No.251/1998 which deals with Inter-Divisional Transfer of Ticket Checking Staff and other Staff in mass contact area and it is relevant to extract the same:-

'Subject:- Inter-divisional transfer of ticket checking staff and other staff in mass contact area.

[No.E[NG]I-98/TR/11 dated 02.11.1998]

In terms of existing instructions the ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on inter-divisional / inter-railway transfer as a matter of policy.

2.The question of feasibility of effecting inter-divisional transfer of staff in mass contact areas including ticket checking staff, was discussed in the Conference on Malpractices and Corruption in mass contact areas organised by the Ministry of Railways on 10.7.98.

3.Pursuant to the above discussion, it has been decided that while the existing policy of inter-divisional / inter-railway transfer of ticket checking staff detected to indulging in malpractices shall continue, other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis.'

(10) So also Rule 226 of the Railway Establishment Code Volume-I, 5th Edition, 1985:-

'226:Transfers:- Ordinarily, a railway servant shall be employed throughout his service in the railway or railway administration to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President

under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be redelegated.''

(11) A perusal of the Reply Statement filed by the Railway Administration would read among other things that there was a malpractice detected in the departmental check and the petitioner was placed under suspension and later on, it was revoked with effect from 19.12.2016 and vide order dated 24.01.2017, he was transferred from Chennai Division to Trivandrum Division with same pay on administrative grounds and that the petitioner has filed the Original Application challenging the legality of the Order of Transfer and the Tribunal gave a direction to consider and dispose of his representation and the said representation was also rejected and challenging the legality of the said rejection, the present Original Application has been filed.

(12) The primordial submission made by the learned counsel for the petitioner is that the Order of transfer is punitive in nature as he had the difference of opinion with the concerned Station Master. It is a settled position of law that the plea of mala fide, not only be alleged, but also to be proved strictly and as rightly observed by the Tribunal in paragraph No.7 of the impugned order, the writ petitioner/original applicant has failed to place any material to show that there was mala fide behind the Order of transfer.

(13) The Tribunal has also placed reliance upon the judgment reported in 1994 [6] SCC 98 [cited supra] which laid down the proposition that "transfer of a Government Servant in a transferable service is a necessary incident of the service career..... Unless the decision is vitiated by mala fides or infraction of nay professed norm of principle governing the transfer, which alone can be scrutinised judicially, there is no judicially manageable standards for scrutinising all transfers and the Courts lack the necessary expertise for personnel management of all Government departments. Thus, must be left, in public interest, to the Departmental Heads subject to limited judicial scrutiny indicated''.

(14) The Hon'ble Apex Court, in the above cited decision, reported in R.Perachi's case [cited supra] reported in 2011 [12] SCC 137, has also elaborately considered similar issue and after taking note of its earlier decision in paragraph No.27, observed that "as seen above, the transfer was purely on administrative ground in view of the pending complaint and the departmental enquiry against the 1st respondent, When a complaint against integrity of an employee is being investigated, very often he is transferred outside the

concerned unit. That is desirable from the point of view of the administration as well as that of employee''.

(15) In the considered opinion of the Court, the above cited administrative instructions as well as the authorities are clothed with the administrative power to effect transfer on administrative ground for the betterment and efficient of the administration and it cannot be faulted with. Moreover, the power of judicial review in respect of administrative action done by the administration following Railway Guidelines, is very limited and this Court cannot sit as an Administrator to do things which falls within the exclusive domain of the said Administration.

(16) In the considered opinion of the Court, the Tribunal, on correct appreciation of the facts and application of law, to the issue involved, has rightly reached the conclusion that the rejection of the representation submitted by the petitioner, questioning the Order of transfer, cannot be interfered with.

(17) This Court, on an independent application of mind and appraisal of the entire materials, is of the considered view that there is no error apparent or infirmity in the reasons assigned by the Tribunal, for reaching the conclusion and finds no merits in this writ petition.

(18) In the result, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

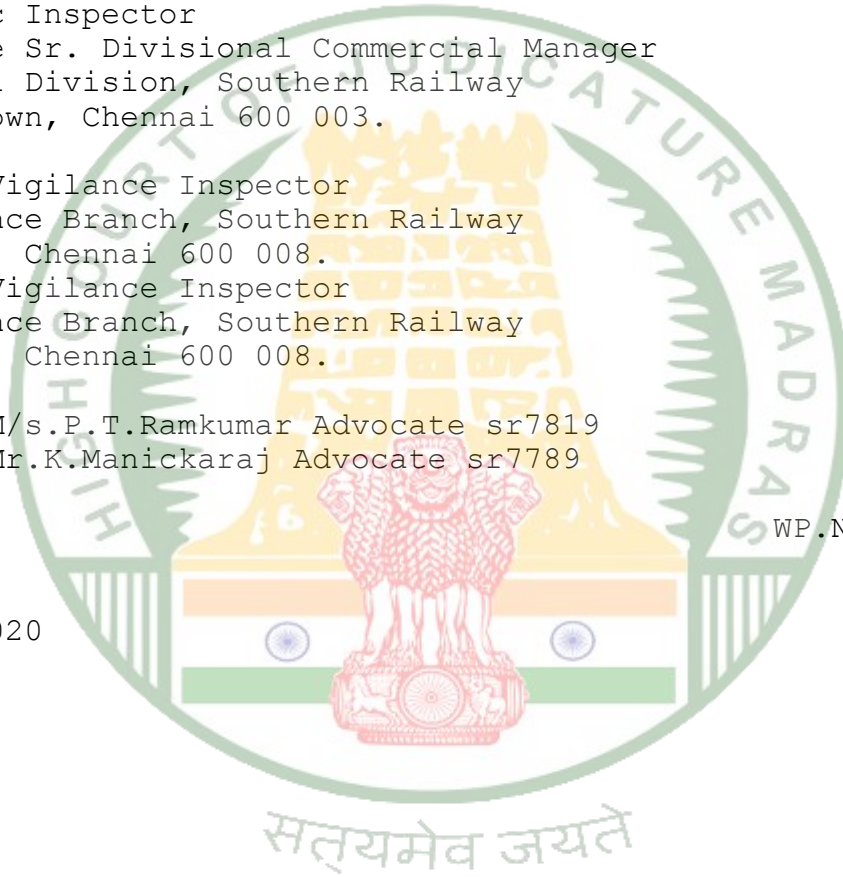
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