



W.P.Nos.13498,13866 & 13684

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON

07.03.2023

PRONOUNCED ON

.04.2023

CORAM:

THE HONOURABLE Ms.JUSTICE V.M.VELUMANI

and

THE HONOURABLE Mr.JUSTICE V.LAKSHMINARAYANAN

W.P.Nos.13498, 13866 & 13684 of 2019

and

W.M.P.No.13604 of 2019

W.P.No.13498 of 2019

D.Prithiviraj

...Petitioner

Vs.

- 1.Union of India
represented by the General Manager,
Southern Railways,
Chennai.
- 2.The Chief Personal Officer,
Personal Branch
Chennai.
- 3.The Assistant Workshop Manager
O/o, Chief Workshop Manger,
Carriage and Wagon Works,
Perambur, Chennai – 600 0023.
- 4.The Chief Workshop Manager,



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O/o, The Chief Workshop Manager,
Carriage and Wagon Works,
Perambur, Chennai – 600 023.

5.The Senior Section Engineer,
Wagon Repair Shop
O/o The SSE/WR
Carriage and Wagon Works,
Perambur, Chennai – 600 023.

6.The Registrar
Central Administrative Tribunal,
Chennai.

...Respondents.

Prayer in W.P.No.13498 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus by calling for the records pertaining order of the 6th respondent in O.A.No.1606 of 2017 dated 29.11.2018 and the order bearing No.171/2017, dated 06.07.2017 and order bearing No.CPB/353/OA No.1098/2017/380 Dated 18-09-2017 of the 4th respondent and quash the same and consequently direct the respondents to allow the petitioner to continue as Technician Grade III, T.No.W/16/CW/PER in Grade pay of Rs.1900 [Level-2] in Pay Band of Rs.5200-20200 [VI PC] at the 4th respondent administration.

For Petitioner	: Mr.R.Ramesh
For Respondents 1 to 5	: Mr.P.T.Ram Kumar
R6	: Tribunal



W.P.Nos.13498,13866 & 13684

W.P.No.13684 of 2019

Vinoth Metha

...Petitioner

Vs.

- 1.Union of India
represented by the General Manager,
Southern Railways,
Chennai.
- 2.The Chief Personal Officer,
Personal Branch, Southern Railways
Chennai.
- 3.The Executive Electrical Engineer [XEE]
O/o.Chief Electrical Workshop Manager,
Carriage and Wagon Works,
Perambur, Chennai – 600 023.
- 4.The Chief Electrical Workshop Manager,
O/o, The Chief Electrical Workshop Manager,
Southern Railway,
Perambur, Chennai – 600 023.
5. The Senior Section Engineer,
Delux Shop,
O/o.The SSE/DLX/EW/Per
Electrical Workshop, Southern Railway,
Perambur, Chennai – 600 023.
- 6.The Registrar
Central Administrative Tribunal,
Chennai.

...Respondents.



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Prayer in W.P.No.13684 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus by calling for the records pertaining order of the 6th respondent in O.A.No.1606 of 2017 dated 29.11.2018 and the order of the 4th respondent bearing No.56/2017, dated 06-07-2017 and order bearing No.EPB/353/OA No.1100/2017/321 dated 18-09-2017, and quash the same and consequently direct the respondents to allow the petitioner to continue as Technician Grade III, T.No.DLX 3555/DLX/CW/PER in Grade Pay of Rs.1900 [Level-2] in Pay Band of Rs.5200-20200 [VI PC] at the 4th respondent administration.

For Petitioner	: Mr.R.Ramesh
For Respondents 1 to 5	: Mr.P.T.Ram Kumar
R6	: Tribunal

W.P.No.13866 of 2019

D.Manikandan

...Petitioner

Vs.

1.Union of India
represented by the General Manager,
Southern Railways,
Chennai.

2.The Chief Personal Officer,
Personal Branch, Southern Railways



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Chennai.

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3. The Executive Electrical Engineer
O/o.Chief Electrical Workshop Manager,
Southern Railway,
Perambur, Chennai – 600 023.

4. The Chief Electrical Workshop Manager,
O/o, The Chief Electrical Workshop Manager,
Southern Railway,
Perambur, Chennai – 600 023.

5. The Senior Section Engineer,
Electrical Workshop,
O/o, the SSE/Electrical Workshop,
Carriage and Wagon Works,
Southern Railway,
Perambur, Chennai – 600 023.

6. The Registrar
Central Administrative Tribunal,
Chennai.

...Respondents.

Prayer in W.P.No.13866 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus by calling for the records pertaining to order of the 6th respondent in O.A.No.1608 of 2017 dated 29.11.2018 and the order bearing No.56/2017 dated 06.07.2014 and order bearing No.EPB/353/OA No.01099/2017/322 dated 18.09.2017 of the 4th respondent, and quash the same and consequently direct the respondents to allow the applicant to continue as Helper



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T.No.3781/CW/E/PER in Grade pay of Rs.1800 [Level-2] in Pay Band of rs.5200-20200 [VI PC] at the 4th respondent administration.

For Petitioner : Mr.R.Ramesh
For Respondents 1 to 5 : Mr.P.T.Ram Kumar
R6 : Tribunal.

COMMON ORDER

(Order of the Court was delivered by V.LAKSHMINARAYANAN,J.)

The petitioners filed these writ petitions to issue a writ of Certiorarified Mandamus.

2. The petitioners were working as Technician Grade III with the respondent. They were appointed on 20.12.2001. They challenged the impugned order of transfer before the Central Administrative Tribunal, Chennai/6th respondent. By this transfer, they were sent from one division to the other on the ground of physical assault of co-workers, resulting in unpleasant situation at the work site and un-rest among co-workers.

3. There seems to be two unions in the Southern Railways, one is the Southern Railway Mazdoor Union [SRMU] and the other one is Southern Railway Employees Sangh [SRES]. The petitioners belong to the SRES union. According to them, some of the members of the other union, that is



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SRMU, met the members of the SRES union at the workplace. The intention of the meeting was not a social call but to prevent them from discharging their official duties. Taking note of this, the union members of SRES lodged police complaint in January of 2017 and the same is pending for investigation. It is alleged that the writ petitioners were threatened to withdraw the police complaint and on their refusal, the members of the other union lodged a complaint against the petitioners and their respective unions. The said incident said to have taken place on 20.06.2017 and on the same day, the writ petitioners were placed under suspension. The suspension lasted till 06.07.2017. The reason, being, the writ petitioners filed O.A.No.1098 of 2017 and the Central Administrative Tribunal *vide* order dated 14.07.2017 passed the following order:-

“In view of the limited direction sought by the learned counsel for applicants, the applicants are permitted to submit their representations by quoting the High Court judgment cited supra to the competent authority within a period of 7 days and the competent authority shall duly consider and dispose of the representations in accordance with the rules and pass reasoned and speaking orders within a period of two months from the date of receipt of a copy of this order. Status-quo with regard to the applicants shall be maintained till the disposal of their representations.”

4. Consequent to this order of the Tribunal, the petitioners made a



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representation on 21.07.2017. The said representation was disposed of by the

impugned order before the Central Administrative Tribunal, Chennai on

18.09.2017, the relevant portion of the order are extracted hereunder:-

“Though you have been given reasonable opportunity to defend your case and depose before the committee, you have avoided appearing before the committee. Hence this also establishes the fact that you were also responsible for a violent assault on colleague employees and representatives of employees. Also you have assaulted Shri J.Baskaran, SSE/WR Shop on 23.08.2012 for which a DAR case for major penalty is pending. It could be seen from the above, you are having the habit of assaulting others and thereby distributing the working atmosphere.”

5. The extract shows that the reason of transfer was the conclusion of the Chief Workshop Manager, Carriage and Wagon Works, Perambur, Chennai, that the writ petitioners had indulged in acts which caused damage to industrial peace, harmony and un-rest amongst the employees, resulting in damaging industrial safety as well as personal safety of individuals in the workshop. The authorities have given these reasons for transfer from Chennai to Tiruvandrum Division. Further the order also reveals that on 20.06.2017 one Rajendran belonging to SRMU union had given a complaint. It further proceeds to show a committee that has been constituted headed by the Junior Administrative Grade Officer and two other Officers belonging to electrical



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workshop and RPF department. The authorities have taken note of the fact that on 20.06.2017, an order of suspension had been passed and on 06.07.2017, the order of suspension was revoked and the order of transfer was passed.

6. Mr.R.Ramesh, Learned Counsel for the Writ Petitioners would submit that it is a case of punitive transfer and not a case of transfer on administrative grounds. He would submit that the order of transfer and the order of revocation of suspension were not served on the writ petitioners. He relied upon a judgment of this Court in ***P.Karunakaran Vs. Union of India and Ors.*** in W.P.No.12812 of 2013 dated 04.10.2013.

7. *Per Contra*, Mr.P.T.Ram Kumar, Learned Standing Counsel for the Respondents 1 to 5 would submit that the petitioners were transferred on administrative grounds and the jurisdiction of the Courts and Tribunals to interfere with respect to the transfer on administrative matters is very limited. He would further refer to the order of the respondents rejecting the representation set forth above and would seek to argue that transfer is an incidence of service for better and efficient administration and it cannot be faulted with. He would further state that the petitioners are continuing to be in Chennai and has not reported to the transferred post or at the original post.



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He would state that, it is true that neither the order of transfer nor the revocation of suspension was served on the writ petitioners but had been pasted on the notice board and therefore, the petitioners should be deemed to have knowledge of the revocation of suspension as well as their transfer. He stated that the reasons had been furnished in the order rejecting the plea of the writ petitioners and the same should not be interfered with. He would point out that on 20.06.2017, the incident had taken place while Member Rolling Stock, Railway Board, New Delhi had visited the workshop for periodical overhauling activities. The Member Railway Board has also interacted with the union members and during that time, three members of the SRMU union had sustained injuries and they had complained to the Member Railway Board that the persons who have caused the injuries were member of the SRES union. During the time of submission, the Learned Counsel had given an impression as if that the incident had taken place in the presence of Member Rolling Stock, New Delhi. However, the perusal of the counter affidavit shows that while the inspection was going on, 3 members belonging to the SRMU union had complained to the Member Railway Board that they had been attacked by the members of SRES Union and has sustained injuries.

8. It is further on record by way of a counter that the members of



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the SRMU Union demanded action against the members of the SRES Union.

Pursuant to this oral complaint made by the members of SRMU union, the Member Railway Board received a complaint from the members of the SRMU Union and had ordered a fact finding enquiry. Consequently a fact finding enquiry was conducted and the writ petitioners in all the three writ petitioners along with one Selvaraj were found to be responsible for the act.

9. Another person by name Bernard Selvaraj David, Technician Grade – I and welder was also held responsible for the alleged assault and placed under suspension. The Learned Counsel would submit that his suspension has not been revoked and hence he was not transferred. He would state that as the suspension of the petitioners had been revoked on 06.07.2017 & therefore, the administration could transfer the persons by its order dated 06.07.2017. Hence, he argued, the order of the Central Administrative Tribunal is correct and does not require interference at our hands.

10. We have carefully considered the arguments of the learned Counsel for the petitioners and the respondents. It is settled position that an order of transfer is an administrative one. It is also an incident of service and normally, a Court should not interfere with them, unless the order is tainted



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by *Mala fides*. The Supreme Court of India in ***Somesh Tiwari Vs. Union of India and Ors.*** reported in (2009) 2 SCC 592 has summarized the position in

paragraph No.16 as follows:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the 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 for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the 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.”

11. Further, a Division bench of this Court in Writ Appeal No.1138 of 2008 dated 24.04.2009 had gone on to hold that where an order of transfer had been passed on some adverse remarks and complaints against the person, the order of transfer has to be treated as one by way of punishment and that too without giving an opportunity to the person to prove that he was innocent. Both the decisions were relied by another Division bench of this Court in ***P.Karunakaran Vs. The Union of India*** in W.P.No.12812 of 2013 dated 04.10.2013. The Division bench was pleased to hold that an order of



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transfer, in lieu of the punishment, without conducting any enquiry cannot be sustained.

12. The order of the respondents dated 18.09.2017 is clear that the petitioners were being transferred on account of certain incidents which were alleged to have taken place on 20.06.2017. The incident, if attributable to the writ petitioners, is no doubt one which affects industrial peace. However, a transfer on the basis of the said incidents and that too, after an internal inquiry, without no further action has to be treated as punitive. This is on the basis of judgments referred to the above. We have to make it clear that while it is always open to the respondents to proceed with disciplinary proceedings and take appropriate action as against all those who are responsible for the ugly incident, if found responsible. However, to transfer a person on the basis of the the incident without proceeding to conduct an inquiry as required under The Railway Servants (Discipline & Appeal) Rules, 1968 is bad.

13. The Judgement cited by the Learned Counsel for the respondents in our view do not apply to the facts and circumstances of the present case but the judgment in *Somesh Tiwari (supra)* case and the judgment in *P.Karunakaran* directly apply to the facts of this case. It has to be pointed out that we reached this conclusion because as admitted by the Learned



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Counsel for the Respondents, the order of the revocation of suspension as well as the order of transfer was not personally served on the affected party.

Unless an order which is passed is communicated to the party, it remains to be an uncommunicated order. Such an order does not take effect at all. It is as good as an order which has not been signed . It is too much to expect a person to report to duty on the basis of an uncommunicated order.

14. The Supreme Court, on more than one occasion, has held that an uncommunicated order is no order at all. To state that the order had been pasted on the notice board and therefore, it is deemed to have been served, and does not answer the requirements of administrative law. An order to come into effect ought to have been served on the person concerned and that not having been done in the present case, we are not willing to accept the submission of the Learned Counsel for the respondents that the order of suspension dated 20.06.2017 was revoked by order dated 06.07.2017.

15. It would be fruitful here to refer to a judgment of the Division Bench of this Court in *(2016) SCC Online Madras 18532*. Following the judgment in *P.Karunakaran (supra)* case the Division Bench had held that since the suspension order was not served, the transfer was effected during suspension and therefore, has to be treated as punitive one. In this case, the



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suspension order also contemplated disciplinary proceedings and the writ petitioners were directed not to leave the headquarters without obtaining any permission from the authorities.

16. We take strength to the conclusion by referring to para 35 of the said judgment, which apply to the facts of the present case. As held by the Courts, it is one thing to say that the employer is entitled to pass an order of transfer due to administrative exigencies and totally another to say that the order of transfer is by way of or in lieu of punishment. As held in ***Somesh Tiwari's*** case, the order of transfer was passed only on the basis of a report by the committee. The report by the committee is also on the complaint of rival union member. This shows that all is not well with the order and has a punitive factor to it.

17. We would not like to apply the judgment in ***Union of India and Ors. Vs. Janardhan Debanath and Anr. reported in (2004) 4 SCC 245*** as it relates to a different fact situation and therefore, we are not applying the same. We are of the view that the judgments cited by Mr.Ramesh, learned counsel for the petitioners squarely applies and the transfer of the writ petitioners from one division to another on the basis of an uncommunicated revocation of suspension is punitive in nature.



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18. We have to point out that the petitioners are enjoying the benefit of an interim order from 06.06.2019. They have neither reported at the transferred post nor has till date the order of suspension been revoked and served on them to enable them to join duty at their original post. As they have not worked from 2019 till date, they will not be entitled to any pay during this period. We apply the principle of “no work, no pay” and the respondents can take into consideration this principle and refuse any financial benefit to the writ petitioners.

19. The present situation has been brought upon by the respondents is not serving the order of revocation of suspension on the petitioners. Consequently, rendering their order of transfer as punitive. The Learned Central Administrative Tribunal had looked at the matter as an ordinary case of transfer and not as punitive transfer. This is clear from the following portion of the order of the Tribunal of which relevant para is extracted hereunder:-

“ Transfer on administrative ground, in order to be free from punitive nature, should be such that the same does not entail any civil consequences or change in service conditions. The only aspect to be seen in this case is whether the seniority of the applicant would be affected. Answer to



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this question is available in the Rules as also in the Rules as also in the decided case. The Allahabad Bench of the Tribunal dealt with a case of inter divisional transfer on administrative ground. It has been held therein that in such cases of transfer, the Railway servants so transferred are given protection of seniority, causing hardship to the staff awaiting promotion in the unit to which they have been transferred. Therefore, such transfers should be ordered only when absolutely inescapable.”

20. It was nobody's case that the seniority of the writ petitioners would be affected. Taking that into consideration to uphold the order of transfer we feel is a perversity, which requires interference at our hands. Yet another important fact to interfere is that, the Tribunal came to a conclusion, a *prima facie* case had been established against the writ petitioners for being proceeded against any disciplinary enquiry. The administration, no doubt, has the power to institute a preliminary enquiry but that is the purpose of *prima facie* satisfying itself that the incident warrants a regular enquiry. Instead of proceeding against the writ petitioners by way of disciplinary proceeding, the respondents have resorted to inter-divisional transfer which in our view is punitive. It is open to the respondents to constitute a regular disciplinary enquiry into the allegations/complaints made against them.

21. It is pertinent to point out here that the writ petitioners had been treated differently from Mr. Selvaraj, who is also alleged to have been



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involved in the incident. While the petitioners order of suspension has been revoked and not communicated and on that basis, the petitioners have been transferred.

22. Mr.Selvaraj, continues to be under suspension and he is in the headquarters. To treat persons similarly situated dissimilarly, offends Article 14 of the Constitution of India. Article 14 not only states the equality before Law, but also equal protection of Law.

23. In fine, the writ petitions stand allowed, setting aside the order of the Tribunal/6th respondent dated 29.11.2018 passed in O.A.Nos.1606 & 1608 of 2017. The order of the transfer of the petitioners dated 06.07.2017 is set aside. The petitioners will not be entitled for pay from 06.07.2017 till date. It is open to the respondents to proceed against the petitioners as per the Railway Servants (Discipline & Appeal), Rules 1968, if they so desire with. Consequently connected miscellaneous petition is closed. No costs.

**(V.M.V.,J) (V.L.N.J.)
.03.2023**

Index :Yes/No
Speaking/Non speaking order
Neutral Citation Case :Yes/No
nst



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To,

- 1.Union of India
represented by the General Manager,
Southern Railways,
Chennai.
- 2.The Chief Personal Officer,
Personal Branch
Chennai.
- 3.The Executive Electrical Engineer [XEE]
O/o.Chief Electrical Workshop Manager,
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V.M.VELUMANI,J
and
V.LAKSHMINARAYANAN,J
nst

Pre-Delivery Order in
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and
W.M.P.No.13604 of 2019

.04.2023