

Central Administrative Tribunal  
Principal Bench

O.A.No.1915/2002

22

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 28th day of May, 2003

Sh. Baljinder Singh  
s/o Shri G. Singh  
Sr. Travelling Ticket Examiner  
Railway Station  
Ludhiana. ... Applicant

(By Advocate: Sh. B.S.Mainee)

Vs.

1. Union of India through  
The General Manager(P)  
Northern Railway  
Baroda House  
New Delhi.
2. The Chief Commercial Manager  
Northern Railway  
Baroda House  
New Delhi.
3. The Divisional Railway Manager  
Northern Railway  
Ferozepur Cantt. ... Respondents

(By Advocate: Sh. R.L.Dhawan)

O R D E R

By Shri Shanker Raju, M(J):

Applicant impugns respondents' notice dated 7.6.2002 whereby he has been transferred along with post from Firozepur Division to Bikaner Division. He has sought quashment of this order.

2. Applicant was promoted as Senior Ticket Collector on 8.8.2000 and while working in Sleeper Class coaches of Train No.3060 Dn. on 15.12.1999 he was detected to have committed some serious irregularities, a charge sheet was served upon him on the following allegations:

"Statement of articles of Charges on the basis of which major penalty D&AR action is proposed to be initiated against Sh. Baljinder Singh STE/LDH.

Shri Baljinder Singh-STE/LDH while working, S-5 and S-4, coaches of 3060 DN dt. 15.12.1999 between JUC-LDH was subjected to a vigilance check during which he was detected to have committed the following serious irregularities:-

1. That he demanded & accepted Rs.100/- illegally from the decoy for providing two berths on II M/E tickets Nos.08672 & 08673 Ex. Kartarpur to SPN.
2. Rs.230/- being found short in his Govt. cash.
3. That he manipulated his Govt. cash to hide his misdeeds.
4. That he did not co-operate with vigilance during the check.
5. He used other TTE's EFT book for his ulterior motive of earning the illegal money.
6. He created an artificial shortage in Govt. cash to hide his illegally earned money.

By the above act of omissions and commissions Shri Baljinder Singh-STE/LDH failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Rly Servant, thereby contravened the provisions of rule No.3.1(i)(ii) & (iii) of Rly service conduct rules 1966."

3. After completion of the disciplinary proceedings, the following conclusion has been drawn by the inquiry officer:

**"CONCLUSION & FINDINGS:-**

3.1 In view of oral, documentary, circumstantial evidence available on record & considering the defence submitted by the CO the findings are as under:-

- i) Charge No.1 not proved.
- ii) Charge No.2 not proved.
- iii) Charge No.3 proved.
- iv) Charge No.4 proved.
- v) Charge No.5 not proved.
- vi) Charge No.6 covered under Charge No.2."

4. Disciplinary authority by an order dated 21.12.2000, imposed upon the applicant, penalty of reduction in same scale by one step for one year with cumulative effect with the following observations:



"Sh. Baljinder Singh STE/LDH was issued chargesheet for demanding and accepting for receiving illegal gratification from decoy passenger, creating artificial shortage, non-cooperation attitude with vigilance team and using other TTEs EFT book, while working 3050 Dn. on 15-12-1999.

Detailed D&AR enquiry enquiry led to proving of charges pertaining to manipulation of his Govt. cash to hide his misdeeds, and non-cooperative attitude with vigilance during the check.

The charge of accepting Rs.100/- extra from decoy could not be proved as none of the PWs confirmed recovery of decoy money from CO. The charge of artificial shortage also could not be proved due to lack of some positive evidence.

As it quite clear from the documentary evidence placed on record pertaining to cash on hand, that CO first showed his Govt. cash as Rs.1160/- and on second instant he modified it as Rs.1290/- as to match with cash to be available with him as per EFT book. So it is quite clear that while declaring Govt. cash details, the guilt was at the back of his mind and he was aware that cash is not going to match.

The proving of this charge only gives clear indication that money was withdrawn prior to check and acceptance of decoy money may be seen as an effort to recoup the money, though the charge of accepting illegal money from decoy could not be proved, due to some other reasons.

Two different cash details prepared by CO, clearly indicates non-cooperation attitude exhibited by CO during check.

The defence to enquiry officer's findings, submitted by CO, also failed to bring out any thing new, apart from refuting the charges.

Hence taking a serious view of the charges, as indicated above, I am of the opinion that a punishment of Reduction in same scale by one step for one year with cumulative effect, may be sufficient to meet the ends of justice."

5. On appeal, with the following observations, punishment has been reduced to reduction to six months with cumulative effect.

"The appeal has been gone through carefully as also the entire case of Sh. Baljinder Singh S/TCR. On his appeal, the CO has admitted to have been accepted Rs.100/- from the decoy passenger. The money taken by C.O i.e. Rs.100/- was due fare of difference between ordinary class to sleeper class and not illegal gratification as alleged by the prosecution. The C.O. has also pleaded that as soon as he accepted the money from decoy passenger the Vig team present in the coach and no time left with the C.O to prepare EFT for the

said amount. Therefore I, feel, that benefit of doubt can be the C.O and punishment reduce to Six months reduction with cumulative effect being the charges partly proved against the C.O."

6. Applicant by the impugned notice has been transferred along with post.

7. By an interim order dated 24.7.2002, respondents have been directed to maintain status-quo which has been continued till date.

8. Learned counsel for applicant, Shri B.S.Mainee, contended that the transfer is resorted to is in violation of guidelines issued by the Railway Board dated 2.11.1998 as inter-divisional transfer of ticket checking staff is permissible only when they are detected to be found indulging in malpractices.

9. By referring to the charge levelled and proved, it is contended that the allegations of demand and acceptance of Rs.100/- as well as being found short of Rs.230/- in Govt. cash and using ulterior motive and creating artificial shortage have not been proved. What has been established is that manipulation in Government cash to hide his misdeeds and he did not co-operate with vigilance during the check.

10. However, it is contended that the contention put forth by the applicant in his statement has not been considered by the disciplinary authority who on presumption and surmises imposed upon him a punishment whereas the manipulation has been overruled as cash was with vigilance and the documents

exhibited at Annexure-3A and 3B were prepared on the dictate of the vigilance staff. No witness has deposed against the applicant.

11. By referring to the appellate authority, it is contended that as the allegations were not substantiated benefit of doubt was given and punishment was reduced. As no vigilance angle has been found, to be involved and no malpractices established, applicant's transfer is punitive against the policy guidelines, cannot be countenanced.

12. Sh. Mainee strongly relies upon the decision of co-ordinate bench in OA 206/98, Shri Bhupenendra Kumar v. General Manager, NR, as well as the decision in OA 1587/2002 (Smt. Santosh Meena v. Union of India & Another) to contend that as no malpractices have been established, transfer is neither in public interest nor in administrative exigency and has been made for collateral purposes to punish the applicant.

13. Moreover, it is further contended by the learned counsel for applicant that being a model employer though there is an ample power to punish the applicant with any specified penalties, but they should not be insensitive towards the hardship faced by the employees and as the charges are not proved, the purpose should have been achieved by transferring the applicant within the Division.

14. It is further stated that mala fides of the respondents are apparent from the fact that the applicant has been transferred to new division along with post, despite any demand or need, and transfer beyond the division is stigmatic.

15. On the other hand, respondents counsel Shri R.L.Dhawan, by resorting to Rule 226 of the Indian Railway Establishment Code, Vol.1, contended that it is open for the President to transfer the Railway servant to any other department or division, and the powers are delegated to GM in this regard.

16. It is further stated that in terms of Board's instructions dated 2.11.1998, as from the inquiry, the disciplinary authority had found the applicant guilty of grave misconduct of non-cooperation with the vigilance and the guilt has laid in the back of the mind which certainly involved vigilance angle and the applicant was detected to be indulged in malpractices, inter divisional transfer is permissible in law and is as per the guidelines.

17. Learned counsel for respondents places reliance on decision in Babu Ram v. Union of India & Others, OA 2517/2002 decided on 17.3.2003 to contend that the case of the applicant, in all fours, is covered.

18. It is further stated that as per the inquiry report, two charges have been proved which fully proved involvement of the applicant in vigilance angle as to mala fides and in judicial review, against

the transfer, this Court cannot act as an appellate authority over the findings recorded by the departmental authorities.

19. In the rejoinder, applicant reiterated his contentions and placed reliance on Railway Board's letter dated 30.10.1998, which states that where the staff has been indulged repeatedly in substantiated vigilance cases where penalties have been imposed should be reviewed at appropriate level and such staff transfer on inter-divisional basis which does not apply in the case of the applicant.

20. I have carefully considered the rival contentions of the parties and perused the material on record.

21. During the course of hearing learned counsel for applicant apprised me that the aforesaid punishment is under challenge before the Chandigarh Bench of this Tribunal.

22. As per the Board's letter dated 2.11.1998, which has been followed to transfer the applicant, on inter-divisional basis, clearly stipulates that if the Ticket Checking Staff detected to be indulged in malpractices, they are liable to be transferred on inter divisional basis.

23. The vires of the aforesaid circular has been upheld by a Division Bench in OA 1241/2002, decided on 8.11.2002 in V.K.Gupta v. Union of India & Others.

24. However, in Santosh Meenas's case supra, malpractice as reflected in Board's letter dated 2.11.1998 has been clearly defined as under:

"16. Needless to say that the staff who has been found indulging in malpractice is to be transferred on inter-divisional basis. Before proceeding further it is important to know the definition of malpractice in legal cell. As per the Law Dictionary by Wesley Gilmer, Jr., 6th Edition, mal has been defined as a pre-fix meaning bad, wrong or fraudulent. Malpractice has been defined as "the negligent, or otherwise improper, performance by a physician, attorney, or other professional person, of the duties which are devolved and incumbent upon him on account of his professional relations with his patient or client." As per Aiyer's Judicial Dictionary, 11th Edition, mal is defined a prefix meaning bad, malfeasance, malpractice. Malfeasance is further defined as doing of some evil or unlawful act. As per Oxford Dictionary malpractice has been defined as improper or negligent professional treatment, especially by a medical practitioner or criminal wrongdoing or misconduct. Chambers 20th Century Dictionary, New Edition, 1983, defines malpractice as evil or improper practice: professional misconduct: treatment falling short of reasonable skill or care: illegal attempt of a person in position of trust to benefit himself at others' cost."

25. However, each case depends on its facts and circumstances and a thumb rule cannot be made which could have universal application. In Santosh Meena's case supra, as there has been a finding of the disciplinary authority as to non-involvement of vigilance angle and the punishment imposed was on negligence. In that conspectus transfer was found in contravention of the Board's letter/guidelines on transfer. However, the same would not apply in the present case and would be distinguishable.

26. Applicant admittedly has been found guilty in the inquiry for manipulating Government cash to hide his misdeeds, non-cooperation with the vigilance during the check. In this conspectus, the disciplinary authority imposed upon him a major

(25)

-9-

punishment by holding that a variance in presentation of cash in the relevant books clearly shows that this has been done to recoup the money which has also demonstrated his non-cooperation attitude.

27. In appeal, appellate authority has not recorded any specific finding as to non-involvement of vigilance angle or malpractices rather the contention put forth by the applicant has been highlighted on the benefit of doubt has been given to reduce the punishment indicates that the charges are proved partly. The aforesaid order cannot be taken to have completely exonerated the applicant from the charges of malpractices which stood established in the inquiry and reflected in the order passed by the disciplinary authority.

28. While dealing with the illegality of the transfer as a Single Bench it does not lie within my jurisdiction to sit over the findings of the appellate authority or to reappraise the evidence or to comment upon the finding arrived at in the disciplinary proceedings.

29. Board's letter dated 2.11.1998 talks of detection of malpractices, which has been amply proved and established in the present case.

30. Accordingly, the transfer to my considered view is in accordance with rules and instructions and guidelines on the subject, and in this view of mine, I am fortified by the decision of this Court in Babu Ram's case supra.

31. The resort of the applicant on the decision in Bhupenendra Kumar's case, where the following observations have been made:

"11. In the present cases under discussion, it is an admitted position that vigilance checks were conducted against the applicants. Further the respondents themselves say that prima-facie cases have been established against the applicants. However, there is no whisper of any further action against the applicants except the impugned order of transfer. There is thus no allegation implied or otherwise that the continuation of the applicants at the present places of posting is likely to affect adversely the course of justice in that the applicants may try to win over the witnesses or in any other manner therefore with the enquiry. When the transfers are so unusual as to be against the current practice of continuing them within the Division the punitive nature of such transfers become even more highlighted and in such cases the transfer becomes a stigma. Admittedly the scope of interference in the matter of transfers is limited and ordinarily no interference should be made. However where arbitrariness or malafide is writ large on the face of the order the courts can step to ensure that justice is done."

32. If one has regard to the aforesaid ratio, I do not find any arbitrariness or mala fides writ large on the face of the order passed by the respondents.

33. Moreover, recently Apex Court in National Hydro Electric Power Corporation v. Shri Bhagawant, 2001(8) SCC 574 held as follows:

"Nature of, and scope of judicial review of such transfer -- Transfer of employee, held, is not only an incident but a condition of service -- Unless shown to be an outcome of mala fide exercise of power or violative of any statutory provision, held, not subject to judicial interference as a matter of routine -- Courts or tribunals cannot substitute their own decision in the matter of transfer for that of the management -- Hence, transfer of employee from corporate office of the employer Corporation to its project with protection of his seniority, held, quite valid -- More so when the project was a new one not involving any risk all of any adverse effect on the transferees' seniority."

34. If one has regard to the aforesaid, being condition of service and as an incident of it, I am precluded from stalling the wheels of the administration which should be allowed to run smoothly and in the light of Rule 226 of the IREM supra, inter-divisional transfer is permissible.

35. However, having regard to the pendency of the OA subjudice before the Chandigarh Bench regarding punishment imposed upon applicant and on further regard of Railway Board's circulars dated 29.6.1995 and 5.5.1994 where it is held that Ticket Checking Staff, who had been transferred on suspected malpractices on full exoneration, their cases are reviewed by the General Manager, on finality of the case pending at Chandigarh Bench, law shall take its own course.

36. In the result, finding no infirmity in the transfer order, OA is dismissed. No costs. I.R. is vacated.

S. Raju  
(Shanker Raju)  
Member(J)

/rao/