

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 139 of 1986

DATE OF DECISION \_\_\_\_\_

J.K. Kapoor

Petitioner

Shri O.P. Gupta

Advocate for the Petitioner(s)

Versus

The General Manager, Northern Railway, Respondent  
New Delhi

Shri K.N.R. Pillay

Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. Justice G. Ramanujam, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(Order pronounced by the Hon'ble Justice  
Shri G. Ramanujam, Vice-Chairman)

In this application filed under Section 19 of the Administrative Tribunals Act., 1985 the applicant has challenged the validity of an order dated 25.9.1985 transferring the applicant from Delhi to Lucknow on the ground that the said order has been passed malafide in colourable exercise of power and that in any event it is punitive and is arbitrary. To appreciate the contentions advanced by the applicant in this application it is necessary to set out the facts leading to the impugned order of transfer briefly.

The applicant was originally appointed as Assistant Station Master in the grade of Rs.130-240(AS) on 19.9.1964 in Delhi Division. However, on medical grounds he was decategorised and posted as a Signaller in the grade of Rs. 110-200(AS) temporarily. Later at his own request he was permanently absorbed as Ticket Collector in the grade of Rs. 110-180(AS) on bottom seniority in February 1970. Thereafter he became Special Ticket Examiner in the grade of Rs. 330-560(RS). In the year 1982, while he was working as Senior Ticket Collector in New Delhi, he was transferred on administrative grounds to Jakhali. However on the ground that his wife requires constant medical attention he sought cancellation of the transfer order and it was accordingly

cancelled. Later on 25.5.1984 he was transferred to Jodhpur in the exigencies of service. The applicant again represented to the higher authorities for cancellation of the transfer based on the illness of his wife and of himself. The orders transferring him to Jodhpur was modified and he was transferred to the Headquarters Squad located in Delhi itself. However, again he was transferred to Jodhpur Division on administrative grounds by an order dated 7.8.1985. He again represented to the higher authorities against the said transfer order through a Member of Parliament. The Administration this time passed orders that the transfer which was ordered on 7.8.1985 on administrative grounds, may be changed to Lucknow Division instead of Jodhpur Division i.e., 25.9.1985. The applicant again filed representations to the higher authorities, <sup>and</sup> the Hon'ble Minister for Transport through one Shri Navin Chandra Ravani, M.P., but the same was rejected by letters dated 10.1.1986 and 10.2.1986. Thereafter the applicant has filed this application challenging the validity of the order of transfer, dated 25.9.1985. The validity of the said order has been impugned in this application on the grounds that

(i) the order of transfer is against law and the Railway Rules.

(ii) it is punitive in character.

(iii) the educational career of the applicant's children would be ruined if the applicant were to be transferred to Lucknow Division.

(iv) the order transferring from Delhi Division to Lucknow Division which has a separate Unit would adversely affect his seniority and his chances of promotion.

(v) the order of transfer is contrary to the policy laid down by the Railway Board which prevents a transfer being effected before an official completes five years that at a particular place and the applicant has not completed five years in Delhi.

(vi) the order of transfer will amount to an order of demotion and in that the applicant who stood promoted to the post of Head Ticket Collector on a scale of Rs. 425-640 from 22.12.1984 has been transferred to Lucknow Division in the pay-scale of Rs. 330-560 and as such it is bad in law.

The application is being resisted by the respondent, the General Manager, Northern Railway and a counter-affidavit has been filed on his behalf wherein it is

stated as follows:-

The applicant who was working as Special Travelling Ticket Examiner in the grade of Rs. 330-560 in New Delhi was transferred on administrative grounds. On the applicant's representation made to the higher authorities through the Member of Parliament the transfer order was cancelled. However, due to exigencies of service he was transferred to Jodhpur Division by an order dated 7.8.1985. As against this order the applicant again made representations and in the light of the said representations the Chief Commercial Superintendent <sup>The impugned</sup> passed orders that the transfer which was ordered in the interest of Administration to Jodhpur Division may be changed to Lucknow Division by ~~the impugned order~~.

As against the impugned order the applicant again made representation through Shri Navin Chandra Ravani, Member of Parliament to the Transport Minister. The Transport Minister called for a report and by a letter dated 15.10.1985, addressed by the General Manager, Northern Railway to the Secretary, Railway Board, the <sup>has been set out and the</sup> background for the impugned transfer <sup>which</sup> has been marked as Annexure R-I and filed along with the counter-affidavit. Further a letter dated 10.1.1986 was sent by the Northern Railway to the Ministry of Transport in this connection and the same has been

marked as Annexure R-II. A note indicating the circumstances under which the impugned order of transfer was passed has also been set out in Annexure R-IIA annexed to the counter-affidavit. It is also stated in the counter-affidavit that it is open to the President to transfer a Railway servant to any other department of Railway or project in or out of India and that therefore the impugned order of transfer transferring the applicant from Delhi Division to Lucknow Division is quite valid. Note (b) to the D.O letter dated 12.10.1977 of the Chief Personnel Officer (CPO) clearly says "Those who do not have good reputations should not be allowed to remain continuously at the same station and selective transfer of such staff may be made in the public interest."

In addition the Railway Board by its letter  
dated 27.4.1979 had decided as follows:-

"a) i) Periodical transfers of staff in the category of Commercial Supervisors to different places may not always be possible but it should at least be ensured that the Commercial Supervisor is shifted to a different Section or area in the same station provided he has put in 5 years on the specific seat.

ii) Periodical transfers in respect of ASMs, Commercial staff and others should be ordered on a selective basis based on complaints or general reputation of such staff as available on record of Railway administration.

b) The above principles should also govern shifting of staff working against sensitive jobs in the Pay Bill section, Stores Office, Accounts Office, etc."

The facts in the applicant's case warranted a transfer and when transfer orders were passed the applicant had been avoiding the transfer on one ground or the other namely medical treatment of his wife, medical treatment of himself and the education of his children.

The counter-affidavit further states that transfer is an unavoidable incidence of service in the Railways and while efforts are made to accommodate personal convenience to the extent possible, it is not possible to exempt any one altogether from such transfers and the applicant has been bringing in political pressure to avoid transfer which is the normal incidence of service. The impugned order of transfer passed is neither arbitrary nor discriminatory nor punitive and the applicant has been shown maximum consideration possible within the Rules. Now we will proceed to consider the tenability of the grounds urged by the applicant which has been set out above. The applicant has filed written arguments wherein the following decisions have been referred to as supporting the applicant's stand:-

(1) Ram Sharan Vs. The Dy. Inspector General of Police, Ajmer & Others  
(1964 SC 1559) - wherein the Supreme Court has held

that whenever allegation of malafide is made, the Court has got a right to go into the question of transfer and strike down the same if the power of transfer has been abused or the same has been passed malafide.

(2) K.K. Jindal Vs. General Manager, Northern Railway and Others (ATR 1986 (1) 304 rendered by the Delhi Bench of the Central Administrative Tribunal) - wherein it has been held that transfers when effected by way of punishment, though on the face of it may bear insignia of innocence, are to be quashed.

(3) P.Pushpakanan Vs. The Chairman, Coir Board, Cochin and Another (1979 (1) SLR 309) - wherein it has been held that orders of transfer passed more as punishment rather than as administrative necessity are to be quashed.

(4) Dr.(Sm) Pushpika Chatterjee Vs. State of West Bengal and Others (1972 SLR 911) - holding that the order of transfer which is malafide and passed for collateral purpose has to be set aside.

From the perusal of the above decisions it is clear that the transfer is an exigency of service and may be ordered for administrative reasons. At the same time,

like every other administrative order, an order of transfer must conform to rules, if any, framed and policy, if any, enunciated by the Government.

Even if there are none, an order of transfer cannot

be arbitrary or discriminatory and for that a

constitutional requirement which every order must

satisfy. The question is whether the impugned order

of transfer has been passed malafide or in colourable

exercise of power or whether it is arbitrary or

discriminatory or punitive in character. We will

first deal with the question as to whether the order

of transfer impugned here has been passed malafide

or for some ulterior purpose as alleged by the

applicant. As regards the allegation that the power

of transfer has been exercised malafide, we find

that the applicant, except making an allegation of

malafide, has not set out any material from which

the malafide could be inferred. There is no

allegation in the application or in the reply-

affidavit filed by him, in answer to the counter-

affidavit that against any particular superior officer

who had any motive or bias against him and who were or was

actuated by malafides, He has not attributed any

motive to any of the higher officials who were

responsible for issue of the order of transfer.

is  
It is well known that allegation of malafides was freely  
made but ~~as~~ <sup>IS</sup> sufficient or proper evidence is adduced  
in support of the allegation. An allegation of  
malafides could be taken to be proved only if there  
is sufficient or proper evidence in support of the  
same. In this case, as already stated, the applicant  
has not attributed any motive to the authorities who  
were instrumental in passing the order of transfer and  
there is also no material placed before us as to why  
the respondent should act malafide as against the  
applicant. We have to therefore hold the materials  
available before us that the allegation of malafides  
has not at all been established.

Coming to the question of the alleged colourable  
exercise of power, we find that the order of transfer  
has not been passed for some other ulterior purpose  
and only when the power of transfer has been exercised  
for an oblique purpose it can be said that there is  
colourable exercise of power. From the facts set out  
above it will be clear that the respondent has been  
attempting to transfer him on administrative grounds ~~from~~ 1982  
but that attempt is being stalled by the applicant by  
approaching the Minister for Transport through a  
Member of Parliament. Taking all the events that  
happened before, the impugned order of transfer

cannot in any sense be taken to have been passed for an oblique or ulterior purpose like punishing an employee or victimising him for his trade union activities. Here there is no question of the applicant being involved in trade union activities and it is only to put him out of those activities the transfer could be taken to have been made. In this case admittedly the respondent passed orders earlier transferring the applicant from Delhi. Similarly the impugned order of transfer was passed transferring him to a different place. We do not see how on these materials, particularly in the context of the earlier order of transfer, the present order of transfer could be taken to have been passed for any oblique or ulterior purpose. The object of passing the impugned order is clearly to transfer him and to achieve any other ulterior or oblique purpose.

Coming to the next question as to whether the impugned order has been passed arbitrarily and as a punitive measure we find from Annexure R-I attached to the counter-affidavit that one of the reasons for ordering the transfer is Confidential communication addressed by the General Manager, Northern Railway, to the Secretary (Establishment), Ministry of Railways, New Delhi to the Board's letter dated 13.9.1985 in reply seeking explanation or clarification for transferring the applicant from Delhi Division to Jodhpur Division.

That Confidential communication sets out the reasons for transferring the applicant from Delhi Division to Jodhpur Division which are as follows:-

"In a complaint received from one Shri K.K. Govindan (a passenger), it was alleged that he was harassed and humiliated on arrival at New Delhi station by Kerala Express on 1.6.83 by plain cloth person (Sh J.K. Kapoor, TTE/New Delhi) unnecessarily while checking his luggage, which was actually well within the authorised limit. He was detained for about two hours and was only allowed to leave the railway premises after extorting Rs. 150/- as illegal gratification. The matter was investigated and the complainant was confronted with a group of 10 persons (TTEs and TCs) in plain cbthes and the complainant recognised Shri J.K. Kapoor against whom he lodged the complaint. The complainant also stated that he had never seen Shri Kapoor earlier nor there is any grudge/rivalry against him before this happening. Obviously, the allegation against the above noted employee cannot be ruled out. This case was discussed with GM and it has been suggested that Shri J.K. Kapoor, TTE, New Delhi, should be transferred out of Delhi Division on administrative grounds.

It may also be pointed out that a number of TTEs of Delhi and New Delhi operated in plain clothes with open programme. This practice is all the more disturbing and leads to serious malpractices. Shri Kapoor, TTE is one of these persons. It is only on account of co-operation extended by the complainant who recognised Shri Kapoor as a result of which the activities of the accused employee could be brought out on the record. Otherwise everybody must have doubted the integrity of the TCs on duty at New Delhi station. It is suggested that the approval at the level of Dy. HOD may be considered before assigning such relaxation to the Ticket Checking staff, who will look at the integrity/conduct before allowing them to operate in plain clothes/with open programme."

17

One more circumstance leading to the transfer of the applicant from Delhi to Jodhpur Division is set out at pages 19 to 21 of the File No. Vig/CT/1142/83 and which is attached as Annexure R-IIA to the counter-affidavit, which is as follows:-

"The notings at PPs. 9-12 bring out the synopsis of this case. The conduct of Shri J.K. Kapoor, TTE/NDLS, presently attached with TTEs HQ Squad, has not shown any improvement even now. On Friday the 28th June, 1985, while I was returning with my vigilance team for a check on Gomti Express from LKO to NDLS it was brought to my notice after departure of the train from Aligarh that Shri Kapoor was sleeping in AC I Class compartment which was vacant. I immediately directed ACO/LKO Shri Saxena to find out the facts. Shri Saxena told me that Sh Kapoor had pain in his back. When I questioned Shri Kapur, first of all he denied having taken rest in Ist ACC. He further stated that he had entrained from Aligarh and was working with HQ Squad. When I wanted to know where the other members of the Squad were, he could not spot anyone and then admitted that he was alone travelling with the permission of Shri Bhatia, an officer of Rly Board under training on Northern Railway. Sh Kapur also mentioned that Sh Bhatia had given him permission on the ground that his sister was sick at Aligarh where Sh Kapur had dropped earlier from the CCS's Squad and was returning to HQ alone by Gomti Express.

The conduct of Shri Kapur in this case has once again established that he is one of those TTEs who cannot be allowed to work independently. Shri Bhatia who had permitted Shri Kapur to travel along, has in an earlier case recorded that Shri Kapur should not be allowed to work independently. Despite his own assessment, why Shri Bhatia gave permission to Shri Kapur to travel along is not understood.

Since Vigilance Team was travelling, Shri Kapur had no chance to indulge in undesirable activities and, therefore, went to take rest in AC 1st class."

The above note also indicates that the Addl. CVO had suggested on 1.7.1985 that to prevent him from any undesirable activities such as those brought out in the notings above, though the earlier order of transfer to Jodhpur has been cancelled by the Railway Board, the question of transfer out of Delhi may be reconsidered by the General Manager with reference to the above note.

The reason set out above which was the basis for the impugned transfer order will clearly indicate that the impugned order was not passed arbitrarily without any material. It is not a mere allegation on the basis of which the respondent proceeded to pass the impugned order of transfer. So far as the earlier incident which took place on 1.6.1983 in which the applicant while working as TTE, New Delhi detained a passenger unnecessarily for about two hours and was allowed to go only after extorting Rs. 150/- as illegal gratification, it is seen that the matter was investigated and the passenger who was the complainant was confronted with the group of 10 persons (TTEs and TCs) in plain clothes and the complainant recognised the applicant against whom he lodged a complaint and the complainant was also questioned before the applicant

and the complainant stated that he had never seen the applicant and that there was no grudge or rivalry against him before the happening. It is also seen from the Confidential letter dated 15.10.1985 written to the Railway Board by the first respondent that a number of TTEs of Delhi and New Delhi operated in plain clothes with open programme and that this is more disturbing and leads to serious malpractices and the applicant being one of the said gang, as a preventive measure the transfer of the applicant from New Delhi has been thought of. The second incident of the applicant sleeping in AC 1st Class compartment of Gomti Express on 28.6.1985, though originally denied by the applicant, has been admitted by him later that he travelled in the 1st Class with the permission of one Shri Bhatia, an officer of the Railway Board under training in Northern Railway and the reason given by him for travelling in that train has not been accepted. The Chief Vigilance Officer after verification stated that the applicant travelled in that train not to perform the official duties but for some other purpose. Even Bhatia, who is said to have permitted him to travel in the AC 1st Class compartment, had himself recorded earlier that the applicant should not be allowed to work independently.

Having regard to these two incidents which were investigated instead of taking the disciplinary proceedings against the applicant, he was transferred from Delhi to Lucknow Division so as to prevent him from continuing his activities which is the subject matter of the first incident of teasing and extracting money from passengers and the applicant being a party to a gang and to see that other similar staff in the Department getting bad name or being corrupt by the activities of the applicant. It cannot be disputed that the interest of Administration lies in keeping giving a clear service to the public and that preventing the other applicant and similar staff from carrying on their activities in harassing and extracting money from passengers, transfer can be resorted to. In such a case the transfer order cannot be taken to be punitive but, on the other hand, it has to be taken as preventive. In case of such transfers they can clearly be taken to be in the interest of Administration. In this case it cannot be said that the applicant is being transferred merely on the basis of an allegation made behind the back of the applicant. As regards the first incident of teasing of passengers and extracting money from them, it is seen that the complainant has identified the applicant as the person who teased and extracted the

money and the Administration is entitled to take that remedial or preventive action into account to save the travelling public from the activities of the applicant and also to see that even in respect of the second incident of the applicant sleeping in the AC 1st Class compartment when he was ~~not~~ <sup>on</sup> off duty, At the time of investigation, though the applicant denied the incident, later he admitted and explained that he had taken the permission of the official of the Railway Board. Here also the <sup>to</sup> investigation was done ~~with~~ <sup>to</sup> the knowledge of the applicant. It is no doubt true that in relation to these incidents disciplinary proceedings could have been initiated against the applicant. The fact that <sup>and</sup> no disciplinary proceedings had been initiated, the Administration wanted to merely transfer him cannot be taken as the basis for challenging the transfer <sup>as</sup> order punitive. It is not as if the Administration can transfer the staff from one place to another only after framing a charge and after finding him guilty. Under the Service Rules the order of transfer has not been shown as a punishment and, therefore, it cannot be insisted that before transferring an officer there should be a fullfledged <sup>which</sup> enquiry in <sup>which</sup> the applicant has been given all <sup>and in which he is found guilty</sup> opportunities to defend. In this case there is prima-facie material to show that the applicant was

involved in the two incidents referred to above and the Administration is entitled to transfer the applicant as a preventive measure. The power of transfer on the facts of this case cannot be said to have been exercised arbitrarily. In our view the power to transfer has been exercised by the respondent for bonafide reasons.

The applicant's complaint that the order of transfer amounts to demotion as he had been promoted to the higher cadre earlier but in the transfer order he has been transferred to a lower post. It is seen that based on the seniority of the applicant in the Delhi Division the applicant for was considered/promotion as a Ticket Collector in the grade of Rs. 425-640 and he was held suitable for promotion subject to there being no vigilance/disciplinary proceedings against him and the Headquarters Office clearing him on the basis of Confidential Reports. However, no promotion was, in fact, effected because he has not been cleared by the Vigilance. Therefore, so long as there is no actual promotion and he continues to be as a Senior Ticket Collector in the grade of Rs. 330-560, his transfer to Lucknow in the same grade cannot in any sense be a demotion. The applicant's contention in this regard has no merit.

The other contention relating to hardship caused by the order of transfer cannot be accepted so long as the service is a transferable one. Every transfer order will result in some hardship but on that ground, the transfer cannot be said to be bad in Law.

The further contention that he had not completed five years in Delhi is untenable as he had, in fact, been in Delhi for more than five years. Even otherwise, that rule is not an absolute one and if circumstances exist warranting a transfer, the normal rule of five years will not stand in the way of the respondent exercising the power of transfer. We are not in a position to, therefore, interfere with the transfer order passed in this case. The application is, therefore, dismissed.

✓ 26/6/87  
(BIRBAL NATH)  
Administrative Member  
26.6.1987

✓ 26/6/87  
(G. RAMANUJAM)  
Vice-Chairman  
26.6.1987

INDEX: Yes.

kcb.