

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 26
T.A. No.

198 6.

DATE OF DECISION 25th March, 1986.

Shri K.K. Jindal Petitioner

Shri G.D. Gupta, Advocate for the Petitioner(s)

Versus

General Manager, Northern Respondent
Railway and others

Sh.K.N.R. Pillay, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice K. Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or ~~not~~ ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*
4. Whether to be circulated to all Benches ? *yes*

K. Madhava Reddy
(K. Madhava Reddy)
Chairman 25.3.86.

Kaushal Kumar
(Kaushal Kumar)
Member 25.3.86.

CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI.

REGN. NO. OA 26/86

Shri K.K. Jindal

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Petitioner

Versus

General Manager, Norther
Railway and others

...

Respondents

CORAM

Shri Justice K. Madhava Reddy, Chairman

Shri Kaushal Kumar, Member.

For petitioner

...

Shri G.D. Gupta,
Counsel.

For respondents

...

Shri K.N.R. Pillay,
Counsel.

(Judgement of the Bench delivered by
Shri Justice K. Madhava Reddy, Chairman)

In this petition under Section 19 of the Administrative Tribunals Act, 1985, the petitioner, a Chief Parcel Supervisor in Delhi Division of Northern Railway posted at Hazarat Nizamuddin Station(Delhi Area) calls in question his transfer to Bhatindain the same grade and capacity against the existing vacancy ordered in Notice No. 941-E/570/P.2 dated 2.1.1986 of the Divisional Office, Northern Railway, New Delhi. The main ground of attack on this order of transfer is that it is arbitrary, discriminatory and mala fide and thus violative of Articles 14 and 16 of the Constitution.

2. The facts which need to be taken note of to dispose of these contentions lie within a short campus. The petitioner though initially appointed in 1973 as a Coaching Clerk, after graduating from Delhi University in English(Hons.) underwent Commercial Apprentice Training Course for two years at the Zonal Training School, Chandausi and secured 1st rank. On that basis, he was posted as a Chief Parcel Clerk in the Grade of Rs 455-700 in Delhi Division in July, 1978. He joined his duties on 2.8.1978. The petitioner's father Shri K.B. Jindal and one Shri Ram Saran Dass are Presidents of the two rival Railway

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Trade Unions and are bitterly opposed to each other. Shri Ram Saran Dass opposed the appointment of the applicant and even staged a Dharna outside the office of the Station Superintendent, New Delhi on 2.8.78. Within two days of his joining the post as a Chief Parcel Clerk at New Delhi, the petitioner was relieved of his duties on 3.8.78 and posted as Commercial Inspector in Section Delhi to Bhatinda. He accordingly took charge as Commercial Inspector on 4.8.78. When he was told that he had no lien either in the post of Chief Parcel Clerk or in the post of Commercial Inspector, he made a representation to the Railway authorities. Realising the mistake committed, they ordered his reposting as Chief Parcel Clerk at Nizamuddin. Once again there was agitation by the very same group of persons led by Shri Ram Saran Dass but this time the General Manager did not yield to their pressure. In view of his wholly unblemished and meritorious record, he was promoted on 23.9.81 to the higher grade of Rs 550 - 750 which was later revised w.e.f. 1.6.79. He was given further promotion to the next higher grade of Rs 700-900 w.e.f. 4.4.1983. During his service, he received several merit certificates and cash rewards in appreciation of his work. In the auction of some coal and rocky coal wagons on 28.1.80, he could secure Rs 13,000/- for each wagon as against Rs 6,000/- to Rs 6,500/- per wagon and in recognition of his services, he was given merit certificate and a cash reward of Rs 500/- by the General Manager. In appreciation of his work, at the 25th Railway Week celebrated in April, 1980, he was awarded a prize. For exceptional services during the year 1982-83 he was also given a certificate by the Divisional Manager, Delhi Division, Northern Railway. With the help of his subordinate colleague, Shri N.L. Gupta and his father Shri K.B. Jindal, the petitioner also exposed the fraud in the matter of deliveries and claims of lemon consignments which resulted in recovery of Rs 1,12,000/- from the merchants. That was followed by black-listing of the main clearing agents and withdrawal of facility of delivery on general Indemnity Bond

K. B. Jindal

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without immediate surrender of railway receipts. Facilities of seven such firms doing whole-sale business in lemon were withdrawn by the Divisional Office of Northern Railway, Delhi by letter dated 17.7.84. At his instance, value of 431 bags of lemons was ordered to be recovered from some of the firms vide orders of DRM, New Delhi dated 25.9.84. This order was challenged by the merchants in the Delhi High Court but without any success. It is the case of the petitioner that stung by the exposure of their fraud and withdrawal of their facilities, these merchants and Shri Ram Saran Dass of the rival trade union, made common cause and brought pressure on the Railway Authorities to transfer the petitioner from Nizamuddin Railway Station, so that they may resume their activities.

3. When the impugned order was made, the petitioner was Vice-President, T.K.D. Line Branch No.2. The Divisional Office, Northern Railway, New Delhi proposing the transfer of the petitioner from Nizamuddin, addressed a letter No. 115-P/Cond1/10/85 dated 4.12.85 to the Divisional Secretary, Uttar Railway Mazoor Union (URMU) Divisional CEG Room, DRM Office, New Delhi with a copy to SWLI (Union Cell) DRM Office, New Delhi. In reply, the Divisional Secretary of the Union in his letter dated 31.12.85 conveyed that the Union could not agree to the picking up of staff with shorter stay of four years for transfer while retaining several persons with more than six years' stay. He also requested that he may satisfy himself from records as to which Parcel Depot is the best in the entire Delhi Division. The Union also pointed out that the petitioner had an unblemished record and among all the parcel clerks he was rewarded the maximum number of times and requested that the proposal for transfer be dropped. The Union also represented that some members of the rival union were after the blood of the office bearers of their Union and were levelling false complaints and requested that such complaints be ignored. The General Secretary of the Union addressed another letter to the General Manager, Northern Railway on 9.12.1985 to drop the proposal for petitioner's transfer from Nizamuddin as it would hamper the

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functioning of their union. He pleaded that apart from being an honest, devoted and loyal worker who had earned General Manager's awards, 2 ASD awards and one DRM award with citation for noticeable performance within a short span of three years while working at Nizamuddin, he was a very reliable and outstanding Union official whom they could ill afford to lose. Notwithstanding the above representation, the impugned transfer was ordered. Protesting against this transfer order as a discriminatory and an anti-trade union action, the General Secretary of the Union wrote to the General Manager the very same day bringing to his notice that staff with more than 10 years was retained while a high office bearer of their Union was transferred in spite of his unblemished record. He also attacked it as being contrary to the transfer policy of the railway enunciated by the Railway Ministry and communicated in letter No. E-435/O-VII dated 12.10.77, by the Headquarters, Northern Railway to all the Divisional Superintendents and Personnel Officers. He pointed out that among all transferred on 6.6.85 on account of long stay the petitioner alone was picked up for transfer from Delhi to Bhatinda; all others were posted within Delhi Area.

4. In the counter affidavit filed by Shri B.R. Nigam, Senior Divisional Personnel Officer, Delhi Division, Northern Railway, New Delhi, it is stated that in case of railway staff who have "public dealings", periodic transfer is the rule, the period of stay permitted being four years. These periodic transfers are now held in abeyance. Instead selective transfers are made in the public interest. In particular, staff who do not have good reputation are not allowed to remain continuously at the same station. This transfer policy is recorded in D.O. letter dated 12.10.1977.



As part of the drive to clean up the administration and remove from sensitive posts with public dealings, sterner measures were taken against officials with bad reputation. In cases like that of the applicant, it is considered that by merely transferring them sufficiently away from the existing stations their links get broken and that would serve the purpose. Others whose activities were not considered so objectionable were being transferred, though not necessarily to far away places, to ensure that they do not develop links of an undesirable type. While the allegation that the transfer order is arbitrary, mala fide or violative of the Articles 14 and 16 are denied, the facts stated by the petitioner in paragraphs 1, 2, 4, 5, 6 and 6.1 to 6.9 are not controverted. Even the averments of the petitioner regarding the rivalry between the two Unions are not denied; they were termed as irrelevant. While denying the allegations made in para 6.11, it was asserted that the administration had not succumbed to any pressure by the rival union. It was, however, averred that "the applicant was ordered to be transferred from Nizamuddin as he was indulging in undesirable activities. As he was not having a good reputation, it was not in the public interest to allow him to continue at Nizamuddin". The letters addressed to and replied by UPMR were admitted but it was claimed that the transfer was "in the exigency of service". It was pleaded that "since the transfer is on the ground of integrity and bad reputation, it was not necessary to discuss the matter with the union". It was admitted that transfer of certain office bearers of both the recognised unions were pending till 31.3.86. It was pleaded that the impugned transfer was not contrary to the instructions contained in the transfer policy letter dated 12.10.1977.

5. Having regard to the allegations made in the counter affidavit, the petitioner in his rejoinder assailed the transfer order also on the ground that it was punitive and the

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allegations made therein were malicious and defamatory and if allowed to go on record, they were bound to damage his future career prospects. The petitioner pointed out that employees who were punished several times and are in Delhi now for over 15 years were not transferred. The allegation that the petitioner was indulging in objectionable activities and that his integrity is doubtful is made for the first time in the counter and was never communicated to him earlier. He was also not told as to on what specific allegations against him the respondents had drawn those conclusions.

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6. ~~It cannot be gainsaid~~ that transfer is an exigency of service and may be ordered for administrative reasons and the employer is the best judge in this regard. At the same time, an order of transfer as observed by V. Khalid J (as he then was) in P. Pushpakaran v. Chairman, Coir Board (Kerala)¹ "can uproot a family, cause irreparable harm to an employee and drive him into desperation. It is on account of this, that transfers when effected by way of punishment, though on the face of it may bear the insignia of innocence, are quashed by courts". That is the human aspect of the matter. However, exigencies of administration and public interest must take precedence over individual inconvenience or hardship. A welfare state, governed by Rule of Law has therefore attempted to ensure fairness and equality of treatment and eliminate arbitrary action even in the matter of transfers by enunciating a policy. Though the state was not bound to enunciate a policy in this regard, in which case each individual transfer when question^{ed}/would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie be unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also 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, for that is a Constitutional requirement which every order must satisfy.

7. Lord Denning Master of Rolls in Laker Airways Ltd. vs. Department of Trade² declared:

"Seeing that the prerogative is a discretionary power to be exercised for the public good, it follows that its exercise can be examined by the courts just as any other discretionary power which is vested in the executive".

8. In General Assembly of Free Church etc. vs. Overtoun,³ the House of Lords said:

"I take it to be clear that there is a condition implied in this as well as in other instruments which create powers, namely, that the power shall be used bona fide for the purposes for which they are conferred".

9. The Supreme Court in the Management of Syndicate Bank vs. The Workmen⁴ specifically considering when an order of transfer may be interfered with by Courts and Tribunals, declared:

"If an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds."

2. 1977(2) W.L.R. 237

3. 1904 A.C. 515 at 695

4. 1966 AIR SC 1283

10. In Lachman Dass vs. Shiveshwarkar and others,⁵ Shri H.R. Khanna, J.(as his lordship then was) observed:

"When a transfer is made in violation of any legal provision or is otherwise mala fide can be quashed by the court, is now well settled."

11. It is also necessary to keep in view the observations of the Supreme Court in Municipality of Bhiwandi and Nizampur vs. M/s Kailash Zizzing Works⁶ when an action can be held to be mala fide. The Supreme Court declared:

"An authority is not acting honestly where an authority has a suspicion that there is something wrong and does not make further enquiries".

We may now examine the impugned order of transfer in the light of the above dicta of the Supreme Court.

12. From the averments of the parties, it is clear that until the impugned order of transfer was made the petitioner had an unblemished record. His integrity was above reproach and his service was exemplary and it received due recognition of the railway authorities themselves in the shape of cash rewards and merit certificates. It is also established that he is the Vice-President of the Workers Union and is engaged in legitimate trade union activities. It is stated in the counter affidavit that his transfer from Nizamuddin to Bhatinda was ordered "as he was indulging in undesirable activities as he was not having a good reputation and it was not in the public interest to allow him to continue at Nizamuddin transfer is on the ground of integrity and bad reputation" This was stated to be "as a part of the drive to clean up the administration and remove from sensitive posts with public dealings officials with a bad reputation In some cases like the applicants, it is considered that the purpose would be served by transferring them sufficiently away from the existing stations so that their links get broken."

5. AIR 1967 Punjab 76

6. 1975 AIR SC 529

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13. Before we consider the legal consequences flowing from the above admissions in the counter affidavit, let us examine the factual position with regard to transfers and especially in the Parcel Section of this Division of Northern Railway. Annexure 'D' is a list of persons with longer stay than the applicant at Delhi. We find from that list that in the Parcel Section itself there are 16 persons, among whom 12 are Chief Parcel Clerks and Chief Parcel Supervisor who have been in New Delhi now for over 8 years and some for the last 26 years. Each one of them has at least two punishments to his credit and some have 8 to 10. As per that list, more than ~~more~~ 50% of the employees have been staying for 8 years and more at one station in Delhi area while the petitioner has been there for just four years. The petitioner's stay at Nizamuddin is possibly the shortest among those working in the Parcel Office. Just as the petitioner, those 16 persons mentioned in the Annexure 'D' too are occupying sensitive posts with public dealings. While they have been visited with ^a/number of punishments, the petitioner's record is above board. In fact, it has been recognised as meritorious. While they have not been touched, the petitioner is shifted. If at all transfers of Chief Parcel Clerks or Supervisors who have public dealings were necessary in the ordinary course of administration, in furtherance of enunciated policy, they would have transferred all those who had stayed for a longer period than the petitioner. Periodic transfers having been kept in abeyance, those with bad reputation may have to be transferred. Such persons may have to be picked up in public interest for transfer and those with good reputation may have to be retained. In such a case, one would expect persons with abnormally long stay in Delhi with admittedly mixed records and some with several punishments to be transferred before persons like the petitioner with shorter stay and better record are disturbed. This is discriminatory and arbitrary. Such discriminatory transfers would not subserve public interest. The Supreme Court in E.P. Royappa vs. State of Tamil Nadu⁷, Justice Bhagwati, J (as he then was) speaking for the majority held:

"Articles 14 and 16 strike at the arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant

principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action as distinguished from motive inducing from the ante chamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16."

14. However, this transfer is sought to be justified on the averment in the counter affidavit that he has been indulging in undesirable activities and he does not have a good reputation. Except in the counter, never before such an imputation was made against the petitioner. No such record has been placed before us. On what specific instance these allegations are based, it is neither spelt out in the counter affidavit nor substantiated by any record. The Delhi High Court in Prem Parveen vs. Union of India and others applied the dicta laid down by the Supreme Court in Barium Chemicals Ltd. and others v. Company Law Board and others⁸ to the case of a transfer. The Supreme Court said:

"It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to a conclusion of certain definiteness."

The Court held that "the argument that it is not incumbent on the government to place full materials before the court when a challenge is made to a transfer as being mala fide" must be rejected. The only record placed before us in this behalf is file No. 115P/Confdl/10/85 of the Office of DRM Office (Security Cell), New Delhi. It contains a single letter dated 1.1.1986 addressed by the Additional Divisional Manager, Northern Railway to Shri S.S. Bali, OSD(I/R) Northern Railway Headquarters stating "that it is not desirable to keep Shri K.K. Jindal at Nizamuddin due to various confidential complaints against him". What those complaints are, who has made them, what is the undesirable activity the petitioner has indulged in and what acts or omissions of the petitioner

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cast a cloud on his integrity, are not evident either from the file or from what is averred in the counter affidavit. Even the nature of the complaints received is not stated. Thus the allegation that the petitioner has indulged in undesirable activities and there is a cloud on his integrity remains unsubstantiated. In fact, it is further clear from the record placed before us that the authority which ordered the petitioner's transfer had not at all applied its own mind. If the petitioner's past conduct and his service record is any index, it could not have suddenly slumped to such an extent as to call for his abrupt transfer for administrative reasons. Though there is no evidence that the authorities have succumbed to the pressure of any rival Railway Union or of the merchants whose ring was broken and who had lost the facility of taking delivery of consignments on the strength of general indemnity bond, the impugned order is in violation of general policy of transferring persons with longer stay and of not transferring office bearers of the union. Except the statement in the counter affidavit that the transfer is ordered in public interest and is intended to break the links of the petitioner, what those links were, is not spelt out. One thing is obvious from the above that this transfer is not a routine administrative transfer.

15. In P. Pushpakaran v. The Chairman, Coir Board, Cochin and others,⁹ Justice V. Khalid of the Kerala High (as he was then held:

"The right to transfer an employee is a powerful weapon in the hands of the employer. Sometimes it is more dangerous than other punishments. Recent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence

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may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer. This Court can and should, in cases where it is satisfied that the real object of transfer is not what is apparent, examine what exactly was behind the transfer."

16. So far as this case is concerned, though the order of transfer is innocuous, the respondents have relieved the Tribunal of the task of tearing the veil to find out what the "operative reason" for the transfer was. They have themselves stated in the counter affidavit that the transfer is ordered because the petitioner was indulging in "undesirable activities" and because "there is a cloud on his integrity". It is a transfer for the specific reasons mentioned in the counter affidavit referred to above. The transfer is not merely on complaints but on certain conclusions arrived at by the respondents with regard to the conduct of the petitioner, that he was indulging in undesirable activities. These conclusions drawn behind the back of the petitioner upon the complaints made, cast a stigma on the petitioner and positively mar his future prospects. Since the petitioner was occupying a sensitive post with public dealings, the respondents could perhaps have legitimately transferred him on administrative grounds on receipt of complaints. But the transfer made upon reaching a conclusion that he is indulging in undesirable activities goes a step further inasmuch as it finds him guilty of a conduct not expected of a public servant. Any action taken on that basis apart from attaching a stigma to the petitioner certainly impairs his future career as a public servant. The transfer is punitive. A routine transfer ordered merely on administrative expediency cannot have such penal consequences.

17. In C. Ramanathan Vs. Acting Zonal Manager, Food Corporation of India, Mount¹⁰, the High Court of Madras considered the scope and extent of the judicial review in matters of transfer and declared that:

order of "Courts are chary to interfere with an order of transfer made for administrative reasons. An innocuous transfer, which not only on the face of it appears to be one made in order to further the administrative interest of an organisation, but which even on a deeper scrutiny does not pose any irregular or mala fide exercise of power by the concerned authority is generally upheld by civil courts, as courts cannot substitute their own opinion and interfere with ordinary orders of transfer of employees of established organisations. But, if in a given case, an order of transfer appears to be a deliberate attempt to bypass all disciplinary machinery and offend the well-known principle of audi alteram partem if ex-facie it is clear that the order of transfer was not made for administrative reasons, but was made to achieve a collateral purpose, then it is open to the court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the real purpose behind the order of transfer. No doubt, a normal order of transfer can, under no circumstances be misunderstood as punitive measure. But, in the circumstances surrounding, such an order leads to a reasonable inference by a well instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant consideration, then the arms of the court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design and motive of circumventing disciplinary action

and, particularly when a Civil servant is involved, to avoid the stringent but mandatory procedure prescribed in Article 311(2) of the Constitution of India".

The Court then referred to the averments in the counter affidavit and concluded -

"The confession made by the first respondent strongly suggests that because of various reports levelled against this employee about his modus operandi in threatening other officers by sending petitions, that the order of transfer has been made though it is said that it was in the interests of the administration. The first respondent has given a certificate that the appellant has proved to be a most undesirable character in the service of the Corporation and in order of force and maintain discipline, the transfer was effected. On that basis, the court held that the power of transfer in the instant case was adopted as an alternative for punishment which punishment cannot be inflicted without going through the process as prescribed under Article 311 of the Constitution of India."

18. The circumstances in which the petitioner was transferred have been stated by him. The respondents in their counter have themselves come up with a specific allegation that he was indulging in "undesirable activities" and that he was not enjoying a "good reputation". It is thus clear that, but for these conclusions reached by the respondents in regard to the Petitioner's conduct, they would not have transferred him. It is thus incontrovertible that the petitioner's transfer was not a routine administrative transfer to meet the exigencies of service. When the respondents themselves state that the petitioner was transferred because he was indulging in undesirable activities, that amounts to arriving at a

positive conclusion as regards his conduct. Transfer ordered upon reaching such a conclusion cannot be one made mere because of bad reputation but one based on a finding as to the conduct of the petitioner which conclusion is not based on any inquiry conforming to Art. 311(2) and the provisions governing disciplinary proceedings. Such a conclusion cannot be reached behind the back of the petitioner. Though transfer per se does not constitute a punishment, in certain circumstances it may be punitive. It would be so if ordered on reaching a conclusion that the person concerned is indulging in undesirable activities.

19. The petitioner contends that ^{the} impugned order is also vitiated by mala fides. In answer to that it is argued by Shri Pillai, learned counsel for respondents that the petitioner has not named the person who has acted mala fide and he has also not impleaded him. He has not stated any particulars in this regard; hence the order cannot be quashed as vitiated by mala fides

20. Shri G.D. Gupta, learned counsel for the petitioner urges in reply that no mala fides are attributed against any particular individual but the order is vitiated by legal mala fides and is a colourable exercise of power. He contends that it is not an innocuous and routine administrative transfer but is intended to be punitive. The respondents find the petitioner to be indulging in undesirable activities and hold that he does not have good reputation. If the respondents were convinced about the petitioner's undesirable activities, they should have initiated disciplinary proceedings. Since that would have necessitated complying with the provisions of Article 311(2) and the procedure laid down in the Service Rules, they have resorted to achieve the same purpose by ordering the petitioner's transfer. This he contends is legal mala fides.

21. In Prakash Chandra Saxena vs. State of Madhya Pradesh and others,¹¹ a single judge of the Madhya Pradesh quashed an order of transfer on the ground that it was not bona fide when it was ordered on suspicion that there is something wrong and fails to make further enquiry.

22. In N.N.Singh and others vs. General Manager, Chitranjan Locomotive Works and others,¹² a single judge of the Calcutta High Court held that:-

"The transfers of railway employees are provided in Rule 146 of the Establishment Code Vol.I, and such transfers relate to management and control of establishment and offices of the railway as matter of administration. The authorities in charge are the sole judges about the propriety, necessity or the desirability of such transfers. Such orders cannot also be interfered with if they are found to be not in excess of powers ~~under~~ under the law and the authorities passing the orders are competent in law to pass such orders. Such orders again are not challengable if they do not involve any penal consequences in employees in respect of their emoluments, prospects in service and the like. Unless there is in the impugned orders any violation of the provision of the Constitution or statute or rules founded on them having the force of law or such orders are in excess of powers of the issuing authority under the law, the court cannot probe into the orders to enquire their propriety or necessity and question the order to substitute its judgement in place and stead of the decision taken by the said authorities who are the best judges of the situation and legally competent to pass such orders

At the same time it may be obvious or apparent on the facts evident, admitted or established, that

11. 1980(1) SLR 788

12. 1973(1) SLR 1153

the orders of the authorities, though otherwise legal and valid have not been issued for the professed purposes as in this case in public or administrative interest or in the exigencies of service but they are only passed for other purposes in the garb of ostensible purposes. The court of law in such cases has thought it fit and competent for itself to probe in and scrutinise such orders to see if they have been passed for other purposes under colourable exercise of powers or if such orders are accordingly malafide..

The administrative orders, not otherwise justiciable, thus come under Court's scrutiny if there are allegations of malafides or colourable exercise of powers behind such orders, even though they are free from violation of any constitutional or statutory provisions. Such orders again are liable to be interfered with if the allegations noted above are established or evident on materials on record in absence of any rebuttable evidence".

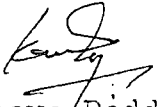
22. A single judge of Kerala High Court in Dr. E.T. Kuriakose vs. Government of Kerala and others¹³ reviewing the case ~~xx~~ law on the subject held that there cannot be any doubt about the courts' powers in appropriate cases where the transfer order has been passed on extraneous considerations.

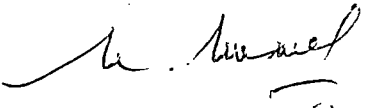
23. From the above discussion it is clear that the impugned transfer is thus for reasons other than merely administrative. That is only the ostensible reason. The basis for the order of transfer is the suspicion as regards his conduct. Without any further enquiry they have convinced themselves that he is indulging in undesirable activities and proceed to act on that conclusion. That being the real reason, transfer ordered to bypass the enquiry needed to translate the

suspicion to a positive conclusion, to our mind constitutes a colourable exercise of power. If the transfer was not sought to be justified on the grounds mentioned in the counter affidavit, perhaps it would have been unexceptional. But since the respondents themselves categorically assert that the petitioner was transferred because he was indulging in undesirable activities, it must be held to be punitive as well as the result of a colourable exercise of power. It is also discriminatory and arbitrary.

24. The impugned order is, therefore, quashed. Anything said herein, however, would not prevent the respondents, if the circumstances so warrant, from making an inquiry into the allegations of misconduct or from clearing the petitioner of the allegations made in the counter affidavit and if the exigencies of administration require, transfer him thereafter. Equally, it would then be open to the petitioner to seek such remedies as he is entitled to in law against any order that may be passed against him.

25. In the result, this petition is allowed subject to the observations made above but with no order as to costs.


(K. Madhava Reddy)
Chairman 25.3.86


(Kaushal Kumar)
Member 25.3.86