

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-1484/2004

New Delhi this the Ist day of September, 2004.

Hon'ble Shri Shanker Raju, Member(J)

Chottee Lal S/o Sh. Lila Ram,  
Working as JIT(Line),  
At Northern Railway Station,  
Delhi Jn.

..... Applicant

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through  
the General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Divl. Railway Manager,  
Northern Railway,  
DRM Office, Near New Delhi Railway Station,  
New Delhi.
3. The Divl. Commerical Manager(G),  
Northern Railway, DRM Office,  
Near New Delhi Railway Station,  
New Delhi.
4. The Chief Inspector Ticket(L),  
Northern Railway, Delhi Jn.

..... Respondents

(through Sh. R.C. Malhotra, Advocate)

**O R D E R**

**Hon'ble Shri Shanker Raju, Member(J)**

Applicant impugns respondents' order dated 14.5.2004 whereby applicant was grounded for train duty and recovery of Rs. 1550/- has been levied.

2. Applicant has approached this Tribunal during vacation where status quo was maintained on 8.6.2004. Subsequently, when it transpired that by a letter dated 21.5.2004 applicant has been withdrawn from sleeper link, status quo was withdrawn on 22.6.2004.

3. Applicant, who was working as Junior Inspector Tickets (Conductor) [hereinafter referred as JIT], was served with a major penalty charge-sheet SF-5 on 14.5.2004 alleging that he carried a regular passenger in a non-entitled class and excess cash was found in his possession. Simultaneously, an order passed on 14.5.2004 grounding him from train duty and accordingly he was put at Lobby duty, which is assailed herein in this OA.

4. Learned counsel of the applicant states that in the light of decision of the Hon'ble High Court of Kerala at Ernakulam in H.V. Phaneendran Vs. U.O.I. (OP-4469 of 1981) where posting a Sr. TIE to work as Sr. T.C. was found to be illegal without prior notice.

5. Learned counsel states that applicant has been put to work on a lower post amounting to demotion, which cannot be resorted to without holding the enquiry under the Railway Servants (Discipline & Appeal) Rules.

6. Applicant alleges that the order is punitive in nature and is violative of principles of natural justice.

7. Learned counsel states that the enquiry ordered has been withdrawn vide order dated 26.8.2004 as the issuing authority was incompetent and on the same analogy it is stated that the posting order issued by the authority lacks jurisdiction.

8. On the other hand, respondents' counsel contends that in the event the penalty amounts to demotion, the alternative remedy available is by way of Rule 18 of the Rules ibid. As per Rule 4, any act/order which varies the condition of service and has an affect of reverting the applicant to lower service without filing an appeal, OA is barred under Section 20 of the Administrative Tribunals Act, 1985.

9. Learned counsel further states that the applicant has not been reduced in rank as his pay scale remained the same. There is only change of duty by the competent authority i.e. CIT on administrative grounds and the same, being a policy decision, cannot be interfered.

10. In rejoinder, applicant relies upon the decision of the Apex Court in P.K. Chinaswamy Vs. U.O.I. (AIR 1988 SC 78) to buttress his plea.

11. We have carefully considered the rival contentions of the parties and perused the material placed on record.

12. The Apex Court in V.J. Rao & Ors. Vs. State of A.P. & Ors. (JT 2001(9)SC 463) observed as under:-

“It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is made to a post higher than what a government servant is holding. In other words, it is generally a lateral and not vertical movement within the employers organization.”

13. The Apex Court also in U.O.I. Vs. Janardhan Debanath (2004(1) SC SLJ 353) held that a transfer on account of miscarried, there is no requirement of holding an enquiry to ascertain the conduct whether unbecoming or not.

14. The decision of Kerala High Court is distinguishable that only exception to a posting to the same grade is that once a person is not found fit for administrative reasons.

15. It is trite law that the government/executive has the prerogative to assign duties or to post a person in the same cadre if pay scale is not changed. It would not amount to demotion. It is also in the <sup>interest of</sup> ~~administration~~ to post a person within his cadre to ensure running of efficient administration.

16. Applicant, while on train duty, was proceeded against for a misconduct of carrying passenger unauthorizedly, which certainly amounts to misconduct. He has not been transferred on inter-divisional basis or placed under suspension but he has been grounded off the train duty to ensure, in administrative interest, that the aforesaid misconduct cannot be perpetuated.

a

17. What has been done in the present case is by way of posting the applicant to the lobby, the cadre of the applicant has not changed but from train duty he has been, on the same pay scale, asked to perform duties in the lobby at platform. This, to my considered view, is neither a transfer nor demotion.

18. No prejudice has been caused to the applicant by way of this posting. The insistence of the applicant to ask for the train duties is certainly motivated. If one is asked to perform duties in the same cadre and on the same pay and allowance, he has no right to ask for a particular posting.

19. As regards withdrawal of the chargesheet, the same lacks competence as the issuing authority has withdrawn the same to issue another chargesheet. This does not impliedly amounts to waiver of the charge or exoneration of the applicant.

20. In this view of the matter, I do not find any infirmity in the posting order. OA, being bereft of merit, is dismissed. No costs.

  
(Shanker Raju)  
Member(J)

/vv/