

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1405/2004,
WITH
O.A. NO. 2743/2004
AND
O.A. NO. 1670/2004

New Delhi this the 15th day of March, 2005

Hon'ble Mr. V.K. Majotra, Vice Chairman (A)
Hon'ble Mrs. Meera Chhibber, Member (J)

Sudhir Kumar and other connected cases Applicants.


(By Advocates S/Shri B.S. Mainee and Sant Lal)

Versus

Union of India & Ors. Respondents.

(By Advocates S/Shri R.L. Dhawan and Rajender Khatter)

1. To be referred to the Reporters or not? *Yes*
2. To be circulated to other Benches of the Tribunal or not? *No*


(MRS. MEERA CHHIBBER)
MEMBER (J)


(V.K. MAJOTRA)
VICE CHAIRMAN (A)

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HON'BLE MR. V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

O.A. NO. 1405/2004

Shri Sudhir Kumar
S/o Shri Sarbachan Singh,
Head TTE
Northern Railway,
Saharanpur.

.... Applicant.

(By Advocates S/Shri B.S. Mainee and Sant Lal)

Versus

Union of India : Through

1. The Divisional Railway Manager,
Northern Railway,
Ambala Cantt.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.



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3. The Chief Ticket Inspector,
Northern Railway,
Saharanpur (UP) Respondents

(By Advocates S/Shri R. L. Dhawan and Rajender Khatter)

O.A. NO. 2743/2004

Shri Devinder Kumar Singh,
S/o Shri Chander Pal,
Parcel Clerk,
Railway Station
Delhi
Under Divisional Railway Manager's Office,
New Delhi.

.... Applicant.

(By Advocate S/Shri B.S. Mainee and Sant Lal)

Versus

Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi. Respondents

(By Advocates S/Shri R. L. Dhawan and Rajender Khatter)

O.A. NO. 1670/2004

Shri Ganesh Din,
Sr. Parcel Clerk,
Railway Station,
Jullundhur.

.... Applicant.

(By Advocate S/Shri B.S. Mainee and Sant Lal)

Versus



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Union of India : Through

1. The Secretary,
Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Ferozepur.
4. The Sr. Station Master,
Northern Railway,
Jullundhur.

.... Respondents

(By Advocates S/Shri R. L. Dhawan and Rajender Khatter)

ORDER

Hon'ble Mrs. Meera Chhibber, Member (J) :

In all the three O.As, applicants have challenged their inter-divisional transfer as also the vires of circular dated 2.11.1998. Particulars of each applicant are as follows.

2. In O.A. 1405/2004, applicant was transferred vide order dated 6.4.2003 from Ambala Division to Ferozepur Division. He had been served with a charge-sheet dated 16.1.2002, on the allegation that while working as Head TTE, he demanded and accepted Rs.100/- from decoy passenger as illegal gratification and created artificial shortage of Rs.10/-. He was also found having excess amount of Rs.100/- with him.

3. In O.A. 2743/2004, applicant was transferred vide order dated 20.9.2004 from Delhi Division to Moradabad Division. He was also served



with a charge-sheet on 17.04.2003 alleging demand and acceptance of excess amount from the decoy passenger and also some excess amount while working as Booking Clerk at Railway Station, Delhi.

4. In O.A. 1670/2004, applicant was transferred vide order dated 7.6.2004 from Ferozepur Division to Ambala Division. He was working as Parcel Clerk and DE was initiated on the ground that he had demanded and accepted a sum of Rs.20/- over and above the charge mentioned in the luggage ticket on 19.10.2003 for his personal monetary benefit with mala fide intention from a decoy passenger.

5. All the applicants challenged their transfer as well as circular dated 2.11.1998, on the ground that circular dated 2.11.1998 itself is bad in law as it is violative of principles of natural justice. It gives unbridled and unfettered powers to the authorities to transfer any person at the behest of vigilance. It is contrary to circular dated 30.10.1998 as according to that circular a person could be transferred from one Division to the other only if charge was substantiated and penalty imposed repeatedly whereas as per the circular dated 2.11.1998, a person can be punished even before holding the inquiry. It is thus punitive in nature. Inter-divisional transfer is not permissible under the Rules. To substantiate this, applicants' counsel relied on instructions dated 13.4.1967. It was further submitted by the counsel for applicants that merely on a complaint of vigilance officer, a person cannot be punished by transferring him from one Division to the other as it is not a case where they had repeatedly indulged in such type of cases.

6. There were number of judgments given by this Tribunal. In some of the judgments, Tribunal had taken the view that since this was a policy decision taken by the authorities at the highest level in order to curb the





tendency of indulging in corruption, such transfers did not require any interference while in some cases, it was held that such type of transfers would amount to punishment. As such, they would not be sustainable. Therefore, when all those judgments were placed before the Division Bench in OA 1670/2004, the Division Bench was of the view that the interpretation taken by the Division Bench in the matter of V.K. Gupta Vs. Union of India & Ors. (OA 1241/2002), is not rational and correct. In that case, it was held as under:-

"15. But while reading the instructions of the department that have been issued from time to time and reproduced above, it is obvious that the circulars of 13.4.1967 and 30.10.1998 do not provide that inter-divisional transfer would be conducted against persons who have repeatedly figured in vigilance cases but where penalty had been imposed. To say that the circular of 2.11.1998 flows from the same meeting and must have the same effect would not be correct. On basis of the said circular, an exception has been drawn. Ticket checking staff detected to be indulging in malpractices had been taken to be an exception and it was provided that in terms of the existing inspection, such staff is required to be invariably sent on inter-divisional/inter-railway transfer as a matter of policy. Expression 'invariably' sent on inter-divisional/inter-railway is the colour and strength of this circular. The words 'in terms of the existing instructions' seem to be redundant. Otherwise, there was no occasion for providing for invariable transfers on inter-divisional/inter-railway basis. The said circular necessarily has to be read so as to find out the true meaning of the same. It is obvious that what was provided was that so far as Ticket Checking staff detected to be indulging in malpractices is concerned, they could be transferred on inter-divisional/inter-railway basis. This becomes clear from paragraph 3 of the said circular which provides that existing policy of inter-divisional/inter-railway transfer of Ticket checking staff detected to be indulging in malpractices shall continue and other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter-divisional basis. Therefore, it is not necessary that in terms of the instructions of 30.10.1998 penalties must have been imposed before conducting the transfers. The view to the contrary, therefore, so taken cannot be said to be correct."

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The Division Bench in the present case of Ganesh Din, however, was of the view that the word 'also' used in last line of circular dated 2.11.1998 had to be interpreted to mean that the policy of transfer in respect of ticket checking staff has to apply to the other staff in mass contact areas mutates mutandis. It would imply that the cases of other staff in mass contact areas who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed could also be transferred on inter-divisional basis. In other words, when such staff had not been found to be repeatedly figuring in substantiated vigilance cases and where penalties have not been imposed, though they could be transferred within the same division, they could not be transferred from one Railway Division to another Railway/Division. The Division Bench thus placed the matter before Hon'ble Chairman with the following reference for being decided by the Full Bench:

"While in terms of R.B.E. No.250/1998 dated 30.10.1998, policy in regard to transfer of ticket checking staff figuring in substantiated vigilance cases and where penalties have been imposed is that such staff can be transferred on inter-divisional basis, vide R.B.E. No.251/1998 dated 2.11.1998 it has been decided that the existing policy of inter-divisional/inter-railway transfer of ticket checking staff detected to be indulging in malpractices shall continue and other staff in mass contact areas detected to be indulging in malpractices should "also" be transferred on inter-divisional basis -

Would the expression "also" used herein imply that other staff in mass contact areas should also be transferred on inter-divisional basis only if vigilance cases have been repeatedly substantiated against them and where penalties have been imposed?

OR

It would not be necessary for effecting inter-divisional transfer of such staff to have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, i.e., such staff could be transferred on inter-

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divisional basis on the basis of mere complaints which have not been substantiated.

7. The Full Bench vide its judgment dated 7.1.2005 have answered the reference as follows:

1. In terms of RBE No. 250/98, dated 30.10.1998 inter-divisional transfer can be effected of the staff of the Indian Railways. The said Circular is not confined to transfer of ticket checking staff figuring in substantiated vigilance cases alone.
2. RBE No. 251/98 dated 2.11.1998 permits inter-divisional transfer of the staff in mass contact areas also, in addition to ticket checking staff when they are detected to be indulging in malpractices.
3. The expression 'also' used in RBE 251/98 dated 2.11.1998 is not confined to cases where a person is repeatedly figuring in vigilance cases and where penalties have been imposed. In accordance with its plain grammatical meaning, it only extends the earlier instructions with respect to all the ticket checking staff and other staff in a mass contact areas.
4. The other question that staff could be transferred on inter-divisional basis on the basis of mere complaints does not arise in the facts of the case because a departmental inquiry has already been initiated against the present applicant, which is pending".

The matter was thereafter sent back to the Division Bench for passing appropriate orders in the O.As. It is in this background that all the three cases have been argued before us for final disposal. Since the main issue involved in all the three cases is the same, we are deciding all the three cases by a common order.

8. Counsel for the applicants submitted that the reference was given in their favour while counsel for respondents submitted that the reference given by the Full Bench was in their favour. Counsel for the applicants also relied on Railway Board's Circular dated 24.4.1995, SLJ 1989 (2) 41, ATR 1990 (1) CAT 378, SLJ 2004 (2) SC 160 and SLR 1974 (1) SC 435. Both were trying to read only such of the paragraphs which suited them



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but since we have to decide these cases on merits, we have seen the entire judgment given by the Full Bench.

9. The Full Bench had referred to various judgments on the point of transfer and quoted the extracts therefrom to show that the courts and tribunals are not appellate forums to decide the question of transfer of officers on administrative grounds. It was further stated therein that transfer can be interfered only if either it is issued due to mala fides or is contrary to any statutory rules. Thereafter, reference was made to Rule 226 of the Indian Railway Establishment Code (IREC) (Vol.1) which confers powers on the General Manager in regard to Group 'C' and 'D' Railway servants to transfer them from one division to another in exigency of service.

10. Reference was then made to various circulars in seriatim starting from Railway Board's letter dated 13.4.1967 wherein it was held that non-gazetted staff against whom disciplinary cases are pending should not normally be transferred from one railway division to another railway division till after finalisation of the departmental/criminal proceedings irrespective of whether the charges merit imposition of major or minor penalty. Thereafter, came the instructions dated 19.2.1986 wherein it was held as follows:

"4.7 Ticket checking staff, detected indulging in malpractices, should be sent on inter-Divisional transfer, as a matter of policy. They may be transferred to an adjoining Division on the same Railway. They may also be transferred to a Division on another Railway adjoining their parent Railway, if they make a request to that effect. The ticket checking staff, who have been so transferred out of the existing Division on complaints of corruption and later exonerated or awarded a penalty of censure should not be brought back to the parent Division, even if they so desire".

Then came the circular dated 30.10.1998 which reads as follows:



"Subject : Inter-divisional transfer of staff repeatedly figuring in vigilance cases.

(No. E (NG) I-98/TR/11, dated 30.10.98)

The question of effecting inter-divisional transfer of staff repeatedly figuring in vigilance cases and where penalties have been imposed, was discussed in the Conference on Malpractices and Corruption in mass contact areas organized by the Ministry of Railways on 10.7.98.

2. It has been decided that the cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transferred on inter-divisional basis".

Circular dated 2.11.1998 reads as under:

" In terms of existing instructions ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on inter-divisional inter-railway transfers as a matter of policy.

2. The question of feasibility of effecting inter-divisional transfer of staff in mass contact areas including ticket checking staff, was discussed in the conference on malpractices and corruption in mass contact areas organized by the Ministry of Railways on 10.7.98.
3. Pursuant to the above discussion, it has been decided that while the existing policy of inter-divisional/inter-railway transfer of ticket checking staff detected to be indulging in malpractices should also be transferred on inter-divisional basis.

Please acknowledge receipt.

Sd/-
Joint Director Estt (N),
Railway Board".

The last circular on the subject was circular No. 11 to master circular No. 24 which refers to the instructions of 19.2.1986, 30.10.1998 and 2.11.1998 and this reads as follows:

"4. The instructions for periodical transfer of Railway employees cover two broad categories of staff:-

- (i) (a) The first category includes staff of the Commercial Department (such as Commercial Supervisors, Enquiry-cum-Reservation Clerks/Booking Clerks Goods Clerks,



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Parcel Clerks, Ticket Checking Staff, etc.) and the staff of the Operating Department (SSs/SMs/ASMs etc.)

- (b) In order to avoid large scale dislocation in the case of this category of staff, periodical transfers may, as far as possible, be effected without involving a change of residence of the staff concerned, so long as the fundamental objectives of such transfers can be achieved by transferring such staff to a different location in the same station or to a different station in the same urban agglomeration.
- (c) However, the instructions regarding inter-divisional/inter-railway transfer of staff detected to be indulging in malpractices or substantiated vigilance cases shall continue to be strictly complied with".

After referring to all these instructions step by step, it was held by the Full Bench that circular dated 30.10.1998 does not refer to ticket checking staff or staff in mass contact. It refers to all the staff members, who figured in vigilance cases and where penalties have been imposed. Therefore, it is not correct to say that the circular dated 30.10.1998 could be applicable only in cases of ticket checking staff. As far as the circular of 2.11.1998 is concerned, it was held to be issued in continuation of instructions dated 19.2.1986 and it was specifically stated that circular dated 2.11.1998 does not draw its strength and colour from the instructions of 30.10.1998. It was held that the circular dated 2.11.1998 is based on public policy that ticket checking staff and other staff in mass contact areas could be transferred on inter-divisional basis where they are detected to be indulging in malpractices. The Full Bench distinguished various other judgments which were given by the different Benches of the Tribunal and held that some of the decisions given by the Tribunal were not correct in law. Ultimately, the Full Bench referred to the judgment given by the Hon'ble High Court of Delhi in the case of Shri Jagdish Singh Brar Vs. Union of India (CW No. 3642/99 & CM No. 7353/99) wherein it was held as under:

"The present writ petition is directed against the judgment/order dated 3rd June, 1999, passed by the Principal Bench, Central Administrative Tribunal, New Delhi, in O.A. No. 103/99. Counsel



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for the petitioner submits that while passing the aforesaid judgment/order, the Central Administrative Tribunal mis-appreciated the rules of the Indian Railway Establishment Code as also the various circulars issued by the Railway Board. In this connection, reference was made to the circular issued by the Railway Board dated 13th April, 1967 as also the circular dated 30th October, 1998.

We have carefully considered the submissions of the learned counsel appearing for the petitioner in the light of the record available with us. We are of the considered opinion that so far as Rule 226 of the Indian Railway Establishment Code is concerned, the same does not debar the Respondents from transferring non-gazetted staff from one division to another division inasmuch as the said rule does not categorically prohibit such transfers although, it provides that such transfers shall not ordinarily be made. Even otherwise, the circular issued by the Railway Board on 2nd November, 1998 provides that inter-railway transfer of ticket checking staff detected to be indulging in malpractices is also possible and permissible on inter-divisional basis. The petitioner has stated in paragraph 3.9 of the writ petition that the petitioner was performing the duties of Booking Clerk, Ticket Collector, Parcel Clerk, Goods Clerk as also the duties of train passing as a Station Superintendent.

In that view of the matter and in our considered opinion, the directions of the circular dated 2nd November, 1999 (sic: 2.11.1998) squarely apply to the petitioner".

It was in this background that the reference was returned as referred to above in paragraph 6 above.

11. From the perusal of above, it is clear that the circular dated 2.11.1998 was held to be in continuation of instructions dated 19.2.1986. The said circular made it clear that even if the ticket checking staff was detected to be indulging in malpractices, they should be sent on inter-divisional transfer as a matter of policy and it went to the extent of saying that later on if such of the employees were even exonerated or awarded only a penalty of censure, they should still not be brought back to the parent division even if they so desire. The instructions of 2.11.1998 only refer to the existing instructions of ticket checking staff detected to be indulging in malpractices which the Full Bench has held to be the instructions of 19.2.1986. Therefore, it is wrong on the part of the counsel for



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the applicants to suggest that instructions dated 2.11.1998 were only extension of instructions dated 30.10.1998. In fact, if the instructions dated 30.10.1998 are seen, it refers to the cases of those staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed. As such, those cases were directed to be reviewed at appropriate level and such staff transferred on inter-divisional basis, meaning thereby that this instruction was meant for those staff who had though figured repeatedly in vigilance cases but had still not been transferred out of the division. This circular by no stretch of imagination can be said to read as suggested by the counsel for applicants that the inter-divisional transfer can be made only in those circumstances where they have repeatedly been held guilty in the vigilance and penalties have been imposed against them.

12. In fact, in the last circular No. 11 to Master Circular No. 24, which has been referred to above, this aspect has been further clarified as in sub-para (i) (c) of para 4, where it has been clarified that the instructions regarding inter-divisional/inter railway transfer of staff detected to be indulging in malpractices or substantiated vigilance cases shall continue to be strictly complied with, meaning thereby that the cases of substantiated vigilance cases are a separate group while those who are detected to be indulging in malpractices are separate group. Even the second category were also to be transferred on inter-divisional basis. Therefore, the contention of counsel for the applicants that circular dated 2.11.1998 is bad in law because it is contrary to the circular dated 30.10.1998 is absolutely misplaced. The same is accordingly rejected. These two circulars are, in fact, independent on each other and deal with different situations. Since circular dated 2.11.1998 is in continuation of 19.2.1986 wherein it was already held that ticket checking staff detected to be indulging in malpractices should be sent on inter-divisional transfer as a matter of policy, the same policy was

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extended to the staff in mass contact areas also vide circular dated 2.11.1998. Therefore, it cannot be stated by the applicant that since he was not repeatedly found guilty in vigilance cases, therefore, he could not be transferred on inter-divisional basis by placing reliance on circular dated 30.10.1998.

13. It is further seen that the power is very much given to the General Manager as far as Group 'C' and Group 'D' employees are concerned to transfer them from one division to the other in exigency of service. When the power is already given under the rules which have statutory force, namely, IREC and the transfer has been issued pursuant to a policy decision taken by the authorities at the highest level to clean up the Augean stables and to present a clean image, to the public of Railways, it cannot be said that the said transfer orders are either arbitrary or discriminatory. After all the respondents have tried to classify those detected to be indulging in malpractices as a separate class and to deal them in a different way with a justifiable object in mind, namely, to remove the possibility of corruption at all levels where railway employees are dealing with public at large with a view to create a clean image of the Railways. It is well settled by now that though classification in general is not permissible under Articles 14 and 16 of the Constitution but reasonable classification is always permitted. It is only hostile discrimination which is prohibited. All that one has to see in judicial review in such matters is, whether it can be said to be a reasonable classification or not? The twin test to see whether the classification is reasonable or not is whether it is founded on intelligible differentia and whether the said differentia has reasonable nexus to the object sought to be achieved. If both these tests are found to be in the affirmative, then it cannot be said that unfettered or unlimited powers are given to the authorities. This view has already been held by the Hon'ble Supreme Court in the case of Pathumma Vs. State of Kerala, reported in 1978 SC 771. If the circular dated 2.11.1998 is



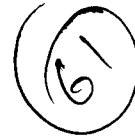
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tested by keeping the above principles of law in mind, we find that the persons who are detected to be indulging in mal practices are treated as a separate class with the object to remove the corruption which is a very valid reason. So long all the persons who are detected to be indulging in malpractices are being dealt with, in same manner, it cannot be said to be arbitrary or discriminatory especially when it is not the case of applicants that power is being used in an arbitrary/discriminatory manner. We have no doubt in our mind that judiciary should help the administration in its effort in eradicating the malpractices. We are thus satisfied that the circular dated 19.2.1986 followed by 2.11.1998 are issued with a justifiable object in mind and the classification is based on intelligible differentia. Therefore, even if circular dated 2.11.1998 is tested from this angle, we find no illegality in the circular dated 2.11.1998. The circular dated 2.11.1998 is, therefore, upheld.

14. Counsel for the applicant argued strenuously that they should at least have been given a notice as the transfer orders are punitive in nature. Transfer by no stretch of imagination can be said to be a punishment as they are only being posted from one Division to the other under the policy decision keeping in view the larger interest of the organisation. Therefore, the judgments relied upon by the counsel for applicants would have no application in the present set of facts.

15. Apart from it, it is seen that even the Hon'ble High Court while deciding the case of Jagdish Singh (supra) had held that the inter-divisional transfer order passed pursuant to instructions dated 2.11.1998 was very much permissible because Rule 226 of IREC does not debar the respondents from transferring non-gazetted staff from one division to another division. On the contrary, it gives the power to the General Manager to pass inter-divisional transfer orders in exigency of service.





16. In view of the above discussion, it is clear that power is very much available with the General Manager under para 226 of IREC and the circular dated 2.11.1998 is also valid, therefore, transfer orders issued in case of applicants do not call for any interference.

17. Apart from above discussion, we have been informed by the counsel for respondents during the course of arguments that as far as Sudhir Kumar and Shri Devinder Kumar Singh are concerned, both have already been given the punishment also after the departmental enquiries were completed. In case of Shri Sudhir Kumar he has been given the punishment of reduction in pay by two steps in the same scale for three years with cumulative effect vide order dated 3.3.2004. Shri Devender Kumar Singh has also been given the punishment of reduction in pay in the same time scale by two stages i.e. from Rs.3710/- to Rs.3540/- for two years with cumulative effect vide order dated 16.4.2004. Both the orders are taken on record. The order dated 16.4.2004 was served on Devender Singh on 17.5.2004 while he had filed the O.A. on 11.12.2004. As far as Shri Ganesh Din is concerned, his DE is still pending. Therefore, it cannot be said that their transfer has been done only on the basis of complaints made by the vigilance staff.

18. In view of the above discussion, we find no good ground to interfere in these cases. All the three O.As are accordingly dismissed. Interim orders are vacated. No order as to costs.

Let a copy of this order be placed in each of the cases.

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(MRS. MEERA CHHIBBER)
MEMBER (J)

(V.K. MAJOTRA)
VICE CHAIRMAN (A)

'SRD'