

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 434 OF 2008

Monday, this the 24th day of November, 2008.

CORAM:

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

A.K.Pramod
Working as Chief Goods Supervisor
Southern Railway, Thrissur
Residing at Bhavani Bhavan
Puthan Kara, Alenthole P.O
Thrissur ... Applicant

(By Advocate Mr. C.S.Manilal)

versus

1. Union of India represented by the
General manager
Southern Railway,
Chennai
2. The Assistant Personnel Officer
Divisional Office, Personnel Branch
Southern Railway,
Thiruvananthapuram
3. The Divisional Commercial Manager,
Southern Railways
Chennai ... Respondents


(By Advocate Mr.Thomas Mathew Nellimoottil)

The application having been heard on 19.11.2008, the
Tribunal on 24.11.2008 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Challenge in this case is a transfer order, vide Annexure A-5,
whereby the applicant, functioning as Chief Commercial Clerk at
TCR/Goods stood transferred as Dy. Station Manager(C), TVC on
administrative grounds.



2. The 'administrative ground' could be traced to the alleged fact that the applicant was found having excess cash at the time of preventive check which he refused to remit.

3. The applicant is at present working as Chief Goods Supervisor at Thrissur since 09.03.2005 onwards. On 24.01.2008 a routine inspection by the Inspection Wing was carried out. The applicant was asked to disclose his private cash and accordingly he placed a sum of Rs.40 available in his pocket and the same was entered in the cash book. There was no transaction on the day. However, before the inspection team left, the applicant himself volunteered to show the bag containing lunch box wherein a sum of Rs.500/- was found. According to the applicant, this amount was kept by his wife to pay to a tailor for stitching a particular dress for his son who was to stage a performance in his school on 26.01.2008 in connection with republic day celebration. According to the applicant the Inspection team was convinced about the above explanation. However, later on the applicant was served with Annexure A-1 charge sheet which reads as under :-

" Statement of charges :

Shri A.K.Pramod CGS/TCR while working as such has found responsible for the following irregularities noticed during preventive check conducted at Goodshed/TCR on 24.01.08 :

(a) He subsequently produced Rs.500/- from his hand bag which was concealed while giving the first cash, statement.

(b) He refused to remit the above excess cash to the railways.



(c) *He permitted two staff to go early without any reason.*

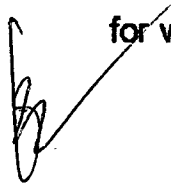
Shri A.K.Pramod, CGS/TCR has thus failed to show absolute integrity, devotion to duty and acted in a manner quite unbecoming of a Railway servant violating Rule 3.1 (i), (ii) and (iii) of Railway Services Conduct Rule 1966. "

4. The applicant furnished his explanation vide Annexure A-2 communication. However, the respondents chose to transfer the applicant from Thrissur to Trivandrum to the post of Deputy Station Manager (C). The applicant represented against the same vide Annexure A-6 communication dated 17.07.2008. Since there was no response, he approached this tribunal challenging the Annexure A-5 transfer order.

5. As the applicant was found to have a prima facie case, by interim order on 01-08-2008, the impugned order at Annexure A-5 was stayed in so far it related to the case of the applicant.

6. The respondents have contested the OA. According to them the submission of the applicant that the amount was kept by his wife for the purpose of payment as stitching charge is an after thought. They have also contended that there is only little scope for judicial interference in matters of transfer as per the catena of decisions by the Apex Court.

7. Counsel for the applicant argued that the applicant's son was to participate in the school Republic Day function on 26th January 2008 for which some dress was to be got stitched. Advance Bill for Rs 300/-



was issued by the tailor and the applicant was informed by his wife that the Bill with cash of Rs 500/- for the same had been kept in the bag containing the lunch box. At the time of disclosure of his private cash the applicant could disclose only Rs 40/- kept in his shirt pocket, totally having forgotten about the cash of Rs 500/- placed by his wife in the bag containing the lunch box as stated above. In fact, even at the time of preventive check the applicant could not remember this aspect. but before the team left, the applicant himself volunteered to show the bag containing the lunch box. Had he remembered above the placement by his wife of Rs 500/- he would have certainly disclosed the same when he disclosed Rs 40/- as his private money. Had he wanted to conceal the same, he would not have volunteered to show the bag to the preventive check. It is not the case of the respondents that it is the preventive check which could locate the bag and took out from inside the bag the amount of Rs 500/-. Thus, it was a clear act of forgetfulness of the applicant inasmuch as he could not remember as to the fact of the amount having been kept by his wife in the meals bag. Thus, the human innate nature of forgetfulness should not be taken as a misconduct.

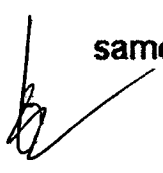
8. As regards the permission granted to the staff to go early, the applicant's explanation was that the same was sought for a very short period of half an hour and for reasons, as already given in his explanation.

9. Counsel for the respondents argued that while the contention of the applicant's counsel could be one possibility, the other possibility

is that the applicant had deliberately failed to reflect his private cash to the extent of Rs 500/-. It is for this reason that the respondents have transferred him to a place where cash transaction is the minimum. Again, the counsel argued that transfer is an exigency of service and judicial interference has limited scope as spelt out by the Apex Court in various judgments as indicated in the reply.

10. Arguments were heard and documents perused. There is absolutely no doubt as to the settled law that judicial interference is limited in matters of transfer. Here the transfer is on administrative grounds. The ground is, as stated above, the so-called misconduct of the applicant. Thus the transfer order is in lieu of penalty that could have been imposed upon if the charge was found proved. For proving the charge, standard of proof is preponderance of probability. In the instant case, if there could be such a preponderance of probability, then the transfer could well be justified and the applicant may have no case to challenge the same. The question is whether there is any such preponderance of probability.

11. The applicant has clearly stated in his explanation at Annexure A-II that there was no transaction on 24th January 2008. He had Rs 40/- in his pocket which he disclosed. About Rs 500/- though the same was available in the meals bag, he was totally forgetful of the same. Hence he did not disclose the same. Had he wanted to conceal the same, he would not have volunteered to the Preventive Staff in showing the meals bag, even when they did not ask for the same. The fact that there was no transaction on that day has not been



denied by the respondents. There was also no mention about any transaction in the statement of charge. When there was no transaction, the probability of any one offering or the applicant's accepting any money that too to the extent of Rs 500/- is the least. Again, the purpose for which the said amount was carried has also been spelt out with proof. The applicant did get the clothes stitched for his son to participate in the Republic Day celebration and thus, the contention of the respondents that the same is an afterthought has no base. The innocence of the applicant is thus clearly evident. Thus, balance of probability tilts more towards the narration of the applicant as to the incident.

12. Transfer on administrative ground may be on various grounds but more often than not it is only when integrity of an official is under cloud that such transfers take place. Thus, when an individual is transferred on administrative grounds, the general tendency is to believe that the transfer is due to doubtful integrity. This casts a stigma upon the individuals transferred. In the instant case, the probability of the applicant committing the misconduct being less, his transfer if allowed to remain would fasten upon him the said stigma.

13. The alleged incident took place as early as on 24th January, 2008. The academic sessions commence in May every year. If the exigencies warranted, the respondents would have shifted the applicant much earlier, immediately after the alleged occurrence of the aforesaid event. And, had the respondents shifted the applicant before the commencement of academic session, perhaps, the applicant would



have even moved. The authorities took four months to issue charge sheet and two more months to pass the impugned order, by which time the academic session started. Such a transfer at the middle of the academic session, when the service exigencies did not warrant is not appropriate. In the case of **Director of School Education v. O. Karuppa Thevan**, 1994 Supp (2) SCC 666, the Apex Court has held as under:-

2. However, the learned counsel for the respondent, contended that in view of the fact that respondent's children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year"

14. In view of the above, the OA is allowed. The impugned Annexure A-5 order is quashed and set aside in so far as it related to the case of the applicant.

15. Under the circumstances, there shall be no orders as to cost.

Dated, the 24th November, 2008.


Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS