

O.A. NO. 435 OF 2008

CORAM:

S.Thankaraj
Chief Commercial Clerk Gr.I, Parcel Office
Southern Railway, Ernakulam Town
Residing at Veliparambil House
No.46/274, Pushaka Road
Vaduthala, Kochi - 682 023

... Applicant

versus

- (By Advocate Ms.P.K.Nandini.)

The application having been heard on 25.03.2009, the Tribunal on ~~1-4-09~~ delivered the following:

ORDER

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

The applicant has challenged Annexure A-1 order dated 15.07.2008 whereby he stood transferred **on administrative grounds** from Parcel Office, Ernakulam Town to ERN/S (IPN). In his place Respondent No.5 had been transferred at his request.

2. At the time of initial admission hearing, as the counsel for applicant argued that the impugned order is violative of the general guidelines (Annexure A-2) and further that the applicant is a patient of paralysis and undertaking treatment from Lissie Hospital, Ernakulam. Status quo in regard to the transfer of the applicant was ordered, vide order dated 01.08.2008. Thus, the applicant continuous in the said post at Ernakulam Town Station. The grounds for challenge include that the normal tenure in sensitive posts is four years whereas the applicant has not completed the said tenure at the present duty place. It has also been alleged that the transfer of the applicant is mainly to accommodate respondent No.5. Further it has been stated that the applicant has submitted that, there is no administrative exigencies to shift him. And, he has filed Annexures A-4 & A-5 representations to the 3rd and 2nd respondent respectively which remained unanswered.

3. Respondents have contested the OA. According to them, the applicant had to be transferred on administrative grounds as he had committed serious lapse in as much as he failed to ensure in his


capacity as a Supervisor, unloading of consignments of 111 parcels despatched by Train No.2623 of MAS-TVC Express at Ernakulam Town on 07-07-2008, which resulted in over carriage of all the said 111 parcels to TVC. In his rejoinder, the applicant has stated that in fact 111 parcels were booked for Ernakulam Junction and not Ernakulam Town and Train No. 2623 does not touch Ernakulam Junction. It has also been stated that Supervisor has 24 hours duty and it may not be possible to supervise around the clock as certain amount of faith has to be imposed upon the parcel clerks working under the supervisor, who are expected to loading / unloading. In the instant case, in fact the particular parcel clerk was proceeded with Annexure A-6 order to which he has replied vide Annexure A-7. The applicant in his rejoinder has further elaborated the part to hammer home his point that the parcels were kept in the front portion of the train and one portion was sealed, to be opened only at Kottayam and the other at Quilon. It is also contented that the parcel office at Ernakulam Town would not be aware of the existence of any parcel unless so informed by the Guard /Assistant Guard. Thus, according to the applicant, the transfer of the applicant is without any foundation and hence the impugned order is liable to be quashed and set aside.

4. In the additional reply the respondents have stated as under :-

"111 parcels were booked under Parcel Way Bill No.467518 dated 05.07.2008 ex-Madras to Ernakulam Junction and dispatched in the Front SLR of Train No.2623 Madras-Trivandrum Express that runs via Ernakulam Town. 6041 Madras-Alleppey Express is the




only train from Madras that stops at Ernakulam Junction. Since the space available in 6041 Express alone is insufficient to meet the demand, a portion of the SLRs attached to Train No.2623 is also regularly utilized to transport parcels due to Ernakulam Junction. As per rules, parcels due to Ernakulam Junction / Ernakulam Town can be uploaded in either of the stations. Instructions have been issued to Chief Parcel Supervisors, Ernakulam Junction / Ernakulam Town to grant delivery of parcels due to any of these stations, duly maintaining separate 'Delivery Books'. Hence the duty staff at Ernakulam Town is to unload parcels due to Ernakulam Junction also at Ernakulam Town, if the train does not pass via / stop at Ernakulam Junction. This provision applies equally to Ernakulam Junction in respect of trains that do not stop at Ernakulam Town. The provision applies equally to Ernakulam Junction in respect of trains that do not stop at Ernakulam Town. In the instant case, 111 numbers of parcels due to Ernakulam Junction that were dispatched from Madras in 2623 Express of 05.07.08 were not attended to when the train reached Ernakulam Town on 06.07.08. As a result, all the 111 items got over-carried to Trivandrum Central. Thereafter, arrangements had to be effected at Trivandrum Central to unload all these parcels from 2623 Express and reload the same in the Sleeper of Trivandrum Ernakulam Intercity Express and finally delivery could be granted to the party only on 09.07.08. It is further submitted that a person holding a supervisory post has the responsibility to ensure that day-to-day working of his office is carried out through the staff under his command, as mandated under the rules. As such the applicant is required to be thorough with the rules and procedures, exercise diligent supervision and conduct himself in a befitting manner for subordinate staff to



emulate. In the event of lapses on the working of the system, it becomes necessary to initiate disciplinary action not only against the staff who had erred, but also against the duly appointed supervisory official, the applicant herein, as per the merits of the case."

5. Counsel for applicant argued that the entire action on the part of the respondents is to accommodate the 5th respondent and as such, the entire action is illegal. He has taken this Court through the averment made in the OA and rejoinder and also through some of the portions of additional reply. The counsel emphasized that there is no scope for the applicant to know about the parcels meant for Ernakulam Junction to be loaded at Ernakulam Town. It is only when an information is given to the applicant as to the requirement and yet that requirement has not been fulfilled, that the respondents could take action against the applicant and there is no foundation; that the impugned transfer order becomes illegal.

6. Counsel for respondents submitted that the transfer of the applicant was decided independent of the request of 5th respondent for a transfer out of his present duty station. Counsel further elaborated the system of unloading at Ernakulam Town even of consignments meant for Ernakulam Junction and vice versa and separate registers are maintained for this purpose and the applicant is in full knowledge about the same. According to the counsel this is a clear case of negligence and lack of devotion to duty and the applicant holding supervisory post having not performed his duties, on administrative grounds he has been rightly transferred, for which



provision does exist. Counsel for respondents made available the relevant records as well for perusal. The decision to shift the applicant from the present place of posting was taken much earlier than the decision to post 5th respondent (private respondent) in the place of the applicant. It has therefore been contended by the counsel for respondents that this OA is liable to be dismissed.

7. Counsel for respondents relied upon the decision by the Apex Court in the case of **Union of India vs. Janardhana Debanath (2004) 4 SCC 245**, and invited attention to Para 12 to 14 thereof.

8. Counsel for applicant in his oral rejoinder submitted that he does not press the ground that the transfer of the applicant has been effected with a view to accommodating the 5th respondent. He reiterated the history, facts and contentions and submitted that the applicant's hesitation to move to Irumpanam is on account of the fact that the same is not connected by passenger train or by road. He being a paralytic patient, is not in a position to walk a distance of 3 kms. along side of the railway track. He has also submitted that earlier, when he met the DRM the applicant was given to understand that his case would be considered sympathetically in case representation is made. However, though representations were given Vide Annexures A-4 & A-5, the transfer order was not cancelled.

9. Arguments were heard and documents perused. Administrative ground has been held to be the reason for transfer. Failure in performing the supervisory duty in respect of unloading of



111 parcels at Ernakulam Town, is stated to be the said administrative ground. However, according to the counsel for applicant this ground has no base and consequently the transfer order is liable to be quashed and set aside. On the other hand, as per counsel for respondents, in order to maintain discipline and efficiency of an organization, transfer could be possible as long as the same is not vitiated by malafides. Para 12 to 14 of the decision of the Apex Court in the case of *Union of India vs. Janardhana Debanath* (supra) relied upon by the counsel for the respondents, reads as under :-

12. That brings us to the other question as to whether the use of the expression "undesirable" warranted an enquiry before the transfer. Strong reliance was placed by learned counsel for the respondents on a decision of this Court in Jagdish Mitter v. Union of India² (AIR p. 456, para 21) to contend that whenever there is a use of the word "undesirable" it casts a stigma and it cannot be done without holding a regular enquiry. The submission is clearly without substance. The said case relates to use of the expression "undesirable" in an order affecting the continuance in service by way of discharge. The decision has therefore no application to the facts of the present case. The manner, nature and extent of exercise to be undertaken by courts/tribunals in a case to adjudge whether it casts a stigma or constitutes one by way of punishment would also very much depend upon the consequences flowing from the order and as to whether it adversely affected any service conditions — status, service prospects financially — and the same yardstick, norms or standards cannot be applied to all categories of cases. Transfers unless they involve any such adverse impact or visit the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

13. Additionally, it was pointed out by learned counsel for the Union of India that as indicated in the special leave petition itself there was no question of any loss of seniority or promotional prospects. These are the aspects

which can be gone into in an appropriate proceeding, if at all there is any adverse order in the matter of seniority or promotion. It was also submitted that transfer was within the same circle i.e. the North-Eastern Circle and, therefore, the question of any seniority getting affected by the transfer prima facie does not arise.

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserve to be dismissed which we direct. The appeals are allowed with no order as to costs.

10. In addition to the above, vide *Union of India vs. S.L. Abbas*, 1993) 4 SCC 357 the Apex Court has held as under :-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right.

11. A combined reading of the above two decisions would go to show that power to effect transfer of an employee is the prerogative

of the employer and unless it is tainted with violation of professed norms or is vitiated by malafides, judicial interference cannot be exercised. In the instant case on perusal of the file it is found that the respondents have held the applicant responsible for the failure to unload 111 parcels at Ernakulam Town. Of course, the records do not reflect any enquiry having been made in this regard. The decision to shift the applicant has taken place on 09.07.2008 itself and transfer order issued on 15.07.2008. The applicant's representations do not appear to have been considered by the DRM.

12. The Apex Court has held in the case of **S.C. Saxena v. Union of India, (2006) 9 SCC 583**, the Apex Court has held as under:-

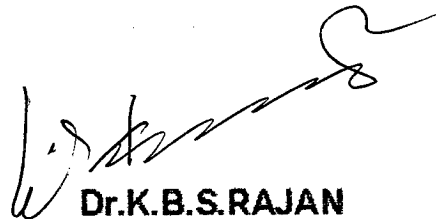
In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed.

13. In the instant case, because of the stay granted, the applicant continues in the old duty station. Keeping in view the above decisions of the apex court and the fact that the competent authority, viz., The Divisional Railway Manager has not so far decided the representation, the said authority is directed to consider the representation (Annexure A-5) stated to be pending and decide accordingly. This decision may be taken within four weeks from the date of communication of this order. However, as the applicant's new duty station is nearby Ernakulam only, the applicant shall move to the new station immediately (within a week) and his move shall be treated



on provisional basis. If the decision of the DRM is in favour of the applicant, the applicant be brought back and if not, the applicant should continue in the new duty station. **OA is disposed of accordingly. No costs.**

Dated, the 1st ^{April} March, 2009.



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

VS