

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.467/95

Monday, this the 19th day of June, 1995

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

....

M Smile, Senior Gang Man,
Gang No.1, Karur,
under Permanent Way Inspector,
Palayam, Dindigal District.

....Applicant

By Advocate Shri TC Govinda Swamy.

vs.

1. The General Manager, Southern Railway,
Headquarters Office, Park Town PO,
Madras--3.
2. The Senior Divisional Engineer, (Coordination),
Southern Railway, Palghat Division, Palghat.
3. Assistant Engineer, Southern Railway,
Karur.
4. The Permanent Way Inspector, Southern Railway,
Palayam, Dindigal District.
5. Shri Muthusamy, Assistant Engineer,
Southern Railway, Karur.
6. Shri Dasarathy, Chief Motive Power Engineer (Diesel),
Southern Railway, Headquarters Office,
Park Town PO, Madras - 3.
7. Shri Seshadri, Permanent Way Inspector,
Southern Railway, Karur.
8. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town PO, Madras - 3.

....Respondents

R1 to 4 & 8 by Advocate Shri Thomas Mathew Nellimoottil.

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is a Senior Gangman under the Permanent
Way Inspector, Palayam, Karur, challenges orders A15 dated 29.3.95

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by which he has been transferred to work under the Permanent Way Inspector, Salem. Applicant approached this Tribunal in OA 1673/94 and this Tribunal permitted him to make a representation to the General Manager, Southern Railway, against the transfer and ordered that till the disposal of the representation, the order of transfer would be kept in abeyance. Applicant made a representation on 21.12.94. The General Manager, by order A14 dated 14.3.95, rejected the representation stating that applicant had been facing disciplinary proceedings right from 1993 for various charges, such as assaulting a co-worker and trolley man, threatening the supervisors, refusing to carry out the orders of supervisors etc. The General Manager also held that the allegation made by the applicant against the Permanent Way Inspector could not be sustained. Since the continued presence of applicant at the old station was detrimental to the smooth working of Gangmen as a whole in the Section jeopardising track maintenance and public safety, the General Manager was of the view that there was no reason to cancel the order of transfer. Applicant challenges this order A14 also.

2. Applicant alleges malafides. According to him, till the inspection by the Divisional Railway Manager on 7.6.94, he did not have any occasion to face a charge of unauthorised absence nor did he face any charges of tampering with the muster rolls. The inspection notes of Divisional Railway Manager (DRM), dated 12.7.94 contained allegations against applicant that he was behaving in an unruly manner and absenting himself very frequently and that he corrected the muster roll with impunity. It was further observed that "there was need to transfer applicant out of the place and removing him from service". Following this inspection note, charges A1, A2 and A4 were issued. According to applicant, 7th respondent was motivated by Union rivalry to take action against him.

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Respondents have denied these allegations and have stated that the transfer of applicant was ordered due to administrative reasons in the interest of public safety. In the view of the matter that we propose to take, there is no need to go into these contentions.

3. Applicant has stated that the order of transfer is illegal since transfer from one Sub Division to another Sub Division is not permissible under para 226 of the Indian Railway Establishment Code, Vol. I. Para 226 reads:

"..Ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated.

[Emphasis added]

It is not in dispute that the transfer order relates, as it does, to the transfer of a Gangman from one Railway establishment to another. According to para 226, such transfers may be ordered in the exigencies of service in respect of Group C and Group D railway servants by the General Manager or by a lower authority to whom the power may be re-delegated. Respondents state that Senior Divisional Engineer who issued the order of transfer based on which

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A15 was issued, has powers to transfer applicant to another Unit/Section which is in the same Department (Engineering Department). Respondents further state that such a transfer from one establishment to another is permissible under para 226 in administrative exigencies.

4. When the application came up for admission on 5.4.95, respondents were asked to answer the charge that applicant's transfer from one Sub Division to another was in contravention of rules. In reply, respondents stated that seniority of applicant would not be affected by the transfer. Since this was not a reply to the question posed by the Tribunal, further time was given to respondents, who were also asked on 10.4.95 to produce any orders by which the General Manager had re-delegated his power of transfer under para 226 of Indian Railway Establishment Code, Vol I, to the Senior Divisional Engineer. Despite further adjournments on 1.6.95 and 7.6.95, respondents have not produced any orders by which the General Manager had re-delegated the power of transfer of Group C and Group D railway servants from one railway establishment to another.

5. Learned counsel for applicant cited Dr Ramesh Chandra Tyagi vs. Union of India and Others, 1994 SCC (L&S) 562, to support his contention that the transfer order issued in this case is invalid. That is a case in which one Dr Tyagi had been transferred and the transfer order was challenged on the ground that it had been passed without jurisdiction. The Supreme Court stated:

"...Taking up the transfer order it is undisputed that the competent authority to transfer the appellant was the Secretary of the department

whereas the order was passed by the Director General. It was attempted to be defended by claiming that the power of transfer was delegated. But despite grant of time no order delegating the authority could be produced. The learned counsel appearing for Union of India had to concede that no order of delegation was on record. We are not prepared to infer delegation because there were orders on the record which indicated that subsequently the Secretary had delegated the powers. It is not delegation earlier or later which is material but whether any delegation existed on the date when the transfer order was passed. Further it is necessary to mention that the respondents having taken definite stand in the written statement that the transfer order was approved but did not produce the record in the trial court nor could they substantiate it even in this Court, there is no option but to hold that the order was not passed by the person who alone was competent to do so. The transfer order issued by the Director General, thus, being contrary to rules was non est in the eye of law."

[para 5]

6. Respondents would state that since the General Manager had by A14 approved the transfer, it must be deemed that the transfer orders were valid. The General Manager is stated to be not an appellate authority on transfer orders and he has only passed an order on a representation. Besides, the infirmity of want of jurisdiction, which goes to the root of the matter, cannot be rectified subsequently in order to breathe life into the order of transfer which was passed without jurisdiction and was ab initio void. It is no doubt true that the power of transfer can be delegated under para 226. This is the normal manner in which administrative power is exercised. We may recall what a Constitution Bench of the Supreme Court said in Pradyat Kumar Bose vs. The Hon'ble Chief Justice of

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Calcutta High Court, AIR 1956 SC 285 at page 291:

"...The first objection that has been urged is that even if the Chief Justice had the power to dismiss, he was not, in exercise of that power, competent to delegate to another Judge the enquiry into the charges but should have made the enquiry himself. This contention proceeds on a misapprehension of the nature of the power.

As pointed out in 'Barnard v. National Dock Labour Board', 1953-2 QB 18 at p 40 (B), it is true that "no judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary implication". But the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the fact that an opportunity to show cause and an enquiry simulating judicial standards have to precede the exercise thereof.

It is well-recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power."


Here the orders of transfer have been issued by a Permanent Way Inspector on the direction of a Senior Divisional Engineer, persons who are far below in the hierarchy and we cannot infer any

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delegation to them by implication, more so, when the Railways consider that the power of transfer from one establishment to another is to be exercised, in respect of Group C and Group D employees, only at a level as high as the General Manager. Though we adjourned the case and granted time, respondents could not produce any order delegating the power. In the absence of any order passed prior to the transfer order by the General Manager delegating the power of transfer under para 226 of Indian Railway Establishment Code, Vol I, to the Senior Divisional Engineer, Palakkad, in respect of transfer of Group C and Group D railway servants from one Railway establishment to another, the transfer order A15 cannot be sustained.

7. Application is allowed and orders A14 and A15 are quashed.
No costs.

Dated 19 th June, 1995.



PV VENKATĀKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN