

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.469/2003.

Monday this the 17th day of November 2003.

CORAM:

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Rathinam,
Travelling Ticket Examiner, Sleeper/Coimbatore,
Railways, Residing at: No.54, Maruthi Illam,
Bharath Nagar, Poddanur,
Coimbatore Dt. Applicant

(By Advocate Shri.T.C.Govindaswamy)

Vs.

1. Union of India represented by the
General Manager,
Southern Railway, Park Town P.O.,
Chennai-3.
2. The Chief Personnel Officer,
Southern Railway, Park Town P.O.,
Chennai-3.
3. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Chief Commercial Manager,
Southern Railway, Park Town P.O.,
Chennai-3. Respondents

(By Advocate Shri P.Haridas)

The application having been heard on 17th November 2003, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

In this O.A. the applicant, a Train Ticket Examiner, who was based at Coimbatore under Palghat Division, is aggrieved by A-1 order dated 26.2.2003 whereby, on the basis of vigilance check conducted, he was transferred on administrative grounds from Palghat Division to Thiruchirappally Division in the same pay scale. He has also challenged A-7 order dated 23.5.03 passed by the 2nd respondent in purported compliance of

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the directions contained in the Tribunal's order in O.A.274/03 (A6). The applicant prays for an order from this Tribunal quashing the impugned A-1 and A-7 orders.

2. The applicant's case is that the action on the part of the respondents in transferring him from one division to another on the basis of the alleged irregularities found as a result of vigilance check conducted on 30.10.02 in Train No.1013 was unsustainable since, as a matter of fact, the applicant was not involved in any malpractice. According to him, the allegation that the applicant allowed four passengers to travel by unauthorised upper class (Sleeper class) was not proved and the entire foundation of inter-departmental transfer being untenable, such transfer could not be legally sustained.

3. The respondents have filed a detailed reply statement stating that since the applicant had permitted four passengers to travel by unauthorised class and since that fact was detected by the vigilance party on its surprise check, there was a clear case of serious irregularity against the applicant and that as per the relevant rules and orders the inter-divisional transfer in this case was perfectly in order. The respondents in this respect would place reliance on instructions in R-1 dated 27.6.01, R-2 dated 2.11.98 and R-4 dated 13.4.89.

4. The applicant has filed a rejoinder stating that interdivisional transfers could not be justified merely on the assumption that the transfer is an incident of service, that the applicant, burdened with the responsibility of looking after different coaches, could not prevent the entry of certain

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persons into the Sleeper Coaches and that, as a normal rule, since the cadre is maintained on divisional basis, transfers should have been ordered only within that division.

5. I have heard Shri T.C.Govindaswamy, learned counsel for the applicant and Shri P.Haridas learned counsel for the respondents. I have also gone through the pleadings on record.

6. According to Shri Govindaswamy, the transfer was based only on an allegation of some irregularities said to be detected on vigilance check. When the impugned order A-1 was issued, the applicant had not been served with any charge memo communicating the alleged offence committed by him. In spite of specific directions by this Tribunal to the respondents to consider the facts highlighted by the applicant in A-5 representation, the respondents have not considered those facts judiciously. According to the learned counsel for the applicant, since the ostensible ground for transfer was the alleged irregularity reported by the vigilance party, the transfer order should have been referable to some proven misconduct. The counsel invited my attention to Rule 226 of the IREC and would state that, in the ordinary course, a railway servant was to be retained in the establishment to which he is posted first on appointment and that he can be transferred only on exigencies of service. Counsel would point out that the charge memo for minor penalty in the prescribed proforma(A8) was issued in this case only on 16.5.03, only a few days before the impugned order A-7 was passed in pursuance of this Tribunal's directions. Thus A-1 and A-7 orders did not contain any material that would justify the inter divisional transfer as, in the applicant's case, it was founded on a mere allegation. Referring to the Railway Board's instructions

dated 13.4.89 relied on by the respondents, learned counsel would state that these orders and instructions contain sufficient safeguards for preventing any arbitrary action. In R-1, for instance, it was specifically stated that unless the staff are detected to have indulged in malpractices and they have repeatedly figured in vigilance cases involving imposition of penalties, inter divisional transfer was not required to be resorted to. Although under the existing instructions the authorities are enjoined to review certain inter divisional transfers later on on the basis of the employees being exonerated, very often no effective review takes place and the transferees get permanently stuck in the places to which they are transferred, learned counsel would point out. Learned counsel would rely on Principal Bench's decision reported in Shri Jasbir Singh Vs. Union of India and Ors. (2003(1) ATJ 267) wherein it has been clearly stated that even the Railway Board itself has accepted the position that non-Gazetted staff against whom the disciplinary proceedings are pending or are about to start, should not normally be transferred from one division to another till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or minor penalty. In that case, it is stated, the Principal Bench has set aside the impugned transfer orders permitting the respondents to take suitable action towards transferring employee after the conclusion of the departmental proceedings if the administrative exigencies so required. Inviting my attention to the decision of this Bench of the Tribunal in O.A.379/2000 dated 10.4.2002 on which the respondents have placed reliance, learned counsel would state that the facts in that case are different inasmuch as the disciplinary proceedings had been concluded and major penalty had been imposed and it was on that

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basis that the challenged transfer order was passed. Learned counsel would conclude his argument by stating that the findings of the Principal Bench in the order cited above read with the order of this Bench of CAT in O.A.379/00 dated 10.4.2002 would clearly indicate that the action on the part of the respondents in transferring the applicant on inter-divisional basis on a mere allegation of irregularity said to have been found by the vigilance check was wholly unwarranted.

7. Shri P.Haridas, learned counsel of the respondents would contend that when the vigilance party entered the train they detected four unauthorised passengers which was ample proof to show that the applicant had committed a grave irregularity by allowing these persons to travel by the sleeper class. It is stated that some of the passengers confirmed that they entered the train with the applicant's permission. Learned counsel would also urge that the applicant had endeavoured to destroy the evidence which was in existence against him in order that he might escape the clutches of law. It is further submitted by the learned counsel for the respondents that at the time when A-1 order dated 26.2.03 was issued, it was not possible for the respondents to deal with the reasons for the transfer on administrative grounds in an exhaustive fashion. In any case, the facts mentioned by the applicant in A-4 representation were considered in detail in A-7 order and the respondents came to the clear conclusion that the applicant committed the irregularity which justified his inter divisional transfer. Learned counsel for the respondents would therefore, strongly state that there was no ground for interference with A-1 and A-7 orders.

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8. I have gone through the records and have considered carefully the contentions raised on either side. I find that the applicant has been transferred specifically on the basis of certain findings of the vigilance party who conducted check on 29/30-10-2002. If that was not so, there was no need to refer to the vigilance check at all in the impugned A-1 and A-7 orders. Once it is stated that the transfer is attributable to the result of vigilance check, before ordering an inter divisional transfer, the respondents ought to have stated whether the findings of the vigilance party stood proved. I notice that A-8 charge memo has been issued just ten days before A-7 order in purported compliance with the directions of this Tribunal in O.A.274/03 was passed. Thus the impugned order is sought to be justified in A-7 order itself on the basis of an article of charge for minor penalty contained in A-8 communication dated 16.5.2003. In my considered opinion, therefore, the respondents have certainly proceeded hastily without finding that the applicant had in fact committed any alleged irregularity much less any malpractice. The Railway Board's instructions which are apparently relied on by the respondents themselves would indicate however, that an inter-divisional transfer could be ordered on the basis of proven malpractices only. Hasty transfers before proving such malpractices is specifically discouraged in Annexure R-1 order dated 27.6.2001. I have no hesitation in disagreeing with the impugned interdivisional transfer order (A1) dated 26.2.03, and the subsequent order (A-7) dated 23.5.03 are unsustainable and are therefore, liable to be quashed. A similar factual situation has been dealt with by the Principal Bench of the CAT in Jasbir Singh Vs. Union of India (2003(1) ATJ 267) wherein the Tribunal has clarified the scope of the Railway Board's Circulars on the matter of inter divisional transfer in

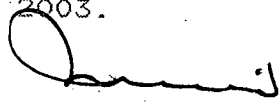
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pursuance of adverse vigilance findings and have underscored the principle that the non-Gazetted staff against whom disciplinary proceedings are pending or are about to start should not normally be transferred from one Railway division to another till after the finalisation of the departmental proceedings or criminal proceedings irrespective of whether the charge merits imposition of a major or minor penalty. The situation in this case is one of minor penalty as is evident from A-8. The charge is yet to be proved. Therefore, the transfer that has been ordered on the basis of such a charge of irregularity or malpractice cannot be sustained.

9. On the facts and in the circumstances of the case, the impugned orders A1 and A7 are quashed. The applicant is permitted to work in the same station where he was working before the impugned transfer order took place, leaving the respondents free to take appropriate action in respect of the alleged irregularity taken notice of as per A-8 to its logical conclusion.

10. O.A. is disposed of as above. No costs.

Dated the 17th November, 2003.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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