

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~ 571 of 1992.

DATE OF DECISION 04.9.92

K.N. Ambalagan

Applicant (s)

Mr.P.Sivan Pillai

Advocate for the Applicant (s)

Versus

Union of India represented
by General Manager, Southern
Railway, Madras and others Respondent (s)

Mr. M.C.Cherian for R1to3.
Mr. Majnu Komath (R. 4&5) Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

~~XXXXXX~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 20th April, 1992 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Travelling Inspector of Accounts in the Southern Railway has challenged the (Annexure A-2) impugned order dated 7.4.92 transferring him from Kannur to Katpadi and transferring respondent No.4 from Katpadi to Palghat and Respondent No.5 from Palghat to Kannur in the applicant's place. By the interim order dated 21.4.92 status quo was directed to be maintained and by a further order dated 1.5.92 the impugned order at Annexure A.2 was directed to be kept in abeyance and the posting order at Annexure A.1 in so far as the applicant and respondents 4 and 5 are concerned was allowed to stand. By

that order the applicant continues to be at Kannur, respondent No.4 remains posted at Katpadi from where he has gone on leave and respondent No.5 remains posted at Palghat.

2. The brief facts of the case are as follows. The applicant was transferred to Madras on request in 1987 and promoted as Grade I Clerk and then as Travelling Inspector of Accounts. On 27.3.89 he was transferred to Trivandrum and on abolition of the post he was holding, he was transferred to Quilon on 20.3.90. He had hardly completed two years of service at Quilon when by the order dated 27.3.92 (Annexure A-1) the applicant was transferred from Quilon to Kannur, respondent No.4 from Palghat to Katpadi and Respondent No.5 from Ernakulam to Palghat. Shortly thereafter it appears that in order to accommodate the request of respondent No.5 for transfer to Palghat and that of Respondent No.4 to stay temporarily at Palghat to look after his ailing father, with the consent of Respondent No.5, Respondent No.4 who had been transferred to Katpadi by Annexure A.1 order was transferred to Palghat where he was posted earlier and Respondent No.5 was transferred from Palghat to Kannur to accommodate Respondent No.4 at Palghat. In order to accommodate the Respondent No.5 at Kannur the applicant had to be transferred from Kannur to Katpadi. It is the second set of transfer by the impugned order dated 7.4.92 at Annexure A.2 that has been challenged by the applicant. The applicant has

argued that by the first order dated 27.3.92 at Annexure A.1 he joined at Kannur from Quilon on 11.4.92. Immediately thereafter he received a Memo requiring him to report at Madras. He went to Madras on 13/14-4-92 and met the Deputy Chief Accounts Officer who gave him a copy of the impugned order dated 7.4.92 (Annex A-2) transferring him from Kannur to Katpadi. By the same order respondent No.4 who had been transferred to Katpadi by the order dated 27.3.92 was posted to Palghat, respondent No.4 who had been posted to Palghat was posted to the applicant's place at Kannur. The applicant has challenged the order on the ground that he was transferred frequently much to inconvenience and dislocation of his family life. He should not have been picked-up for transfer from Quilon to Kannur when he had not completed even three years of normal tenure at Quilon. Even before ^{his} taking over the charge at Kannur, orders had already been passed behind his back transferring him to Katpadi in order to accommodate Respondents 4 and 5 and he came to know about the impugned order after he had taken over at Kannur.

3. In the counter affidavit dated 27th April, 1992 filed by the third respondent it has been stated that the Travelling Inspector of Accounts on transfer can get themselves relieved from one section to another section to which they are posted on the basis of the weekly diary maintained by them and that they draw their salary and allowances etc. He has conceded that such transfers of TIA are made on completion of three years in one section and if there are no compelling reasons they can be retained for even three to four years. The applicant was transferred to Trivandrum

on 1.4.89 at his own request and when that post was abolished with effect from 1.4.90 he was shifted to Quilon. The applicant did not give any preferential choice for his next posting while the 5th respondent had requested for transfer to Palghat Section. It is on that basis that transfer of the 5th respondent was made by the Annexure.A.1 order dated 27.3.92 transferring him from Ernakulam to Palghat. In order to accommodate Respondent No.5 at Palghat, Respondent No.4 who had been continuing at Palghat for a number of years had to be shifted to Katpadi by the same order at Annexure.A.1 but at this stage Respondent No.4 came over to Madras and requested that he may be retained at Palghat for one year more due to the illness of his father and other family problems. On this Respondent No.5 was consulted and he agreed to concede to the request of the 4th respondent. Thus by the impugned order at Annexure A.2 dated 7.4.92 Respondent No.4 was restored to Palghat from Katpadi, Respondent No.5 was accommodated at Kannur instead of Palghat and in that process the applicant had to be transferred from Kannur to Katpadi. Since the applicant had not been transferred to Kannur at his own request nor did he request for being retained at Quilon, he could be shifted to Katpadi in order to accommodate Respondents 4 and 5. In order to avoid inconvenience being caused to the applicant, a telegram was sent to the applicant at his Quilon address on 8.4.92 (Exbt.R.1) intimating him that he was posted at Katpadi instead of at Kannur and asking him to come to Madras

for collecting his duty card pass for joining at Katpadi station. He has denied having sent ~~any~~ ^{any} other instructions to the applicant to come to Madras. The applicant according to the third respondent came to Madras on the basis of Exbt.R.1 collected the duty card pass to go to Katpadi as also Annexure.A.2 order but later a communication dated 13.4.92 (Exbt.R.2) was received at Madras that the applicant ^{had already} joined duty at Kannur on 11.4.92. The respondent ^{is} _h has intrigued as to why the applicant did not send the communication on 11.4.92 when he had taken over on 11.4.92. His coming to Madras also in absence of any other instructions ^{except} ~~on receipt of~~ the telegram shows that he was fully informed about the telegram of 8.4.92 at Exbt.R.1 and he still went to Kannur and took over there disobeying the orders at Annexure.R.1. It is also reported that Respondent No.5 also took over at Kannur and has been working there along with the applicant. Thus there is no one to look after at Katpadi while two officers are working against one post at Kannur. The third respondent has stated that it has full authority to modify the first posting order at Annexure.A.1 for administrative exigencies to accommodate the staff in their genuine difficulties. The applicant has no vested right to be posted at Kannur or to any other place. He has not yet shifted his family to Kannur and thus there can be no inconvenience to join at Katpadi.

4. In his statement dated 30th April, 1992 respondent No.3 has further cast doubts on the conduct

of the applicant in as much as from the weekly diary it is seen that instead of taking full joining time of ten days he had abruptly cut short his joining time and proceeded to Kannur on 10.4.92. The respondent has strongly denied having sent any telegraphic message to the applicant at Kannur asking him to report to Madras. The applicant has filed an affidavit dated 6th May, 1992 stating that Exbt.P.1 message dated 9.4.92 asking him at his Kannur address to report to Madras was received by one Shri Poyyal acting Train Clerk, Kannur through the Railway control phone. Shri Poyyal has given a declaration to that effect at Exbt.P.2. In the affidavit the applicant further states that he did not receive any telegraphic message on 8.4.92 at Exbt.R.1 prior to his leaving Quilon. He has also stated in the affidavit that he verified at the Parcel Office, Quilon and at Trivandrum about the Telegraphic message at Exbt. R.1 and found no such message had been received. He has given statements of the concerned officials to that effect with the affidavit.

5. In the counter affidavit dated 25th May, 1992 filed by Respondents 1 to 3 ^{it has} _{the} ^{Railway} _{servant} has stated that the applicant like other/employees is liable to be transferred anywhere in the Southern Railway and ^{The Railways} _{to can} modify or cancel the transfer orders. They have quoted Rule 1112 of the Railway Establishment Code laying down that when transfer orders are modified the Railway servant in transit on transfer can be directed to proceed to a place different from that indicated in the initial transfer order with fresh

spell of joining time from the date of receipt of the revised order. They have stated that the original transfer order at Annexure.A.1 had to be modified in due consideration of the representation of Respondent No.4 who wanted to stay at Palghat for his personal reasons for one year more and Respondent No.5 who was to go to Palghat at his request had agreed to the same. In order to cause minimum dislocation and hardship to any employee the applicant who was still availing of the joining time without going and joining at Kannur was transferred to Katpadi in modification of his previous transfer order. Accordingly the revised transfer order at Annexure.A.2 was issued on 7.4.92 and telex message at Exbt.R.1 was issued on 8.4.92 from Madras to Quilon through the Railway Telex Officer at Ernakulam. Enquiry revealed that Exbt.R.1 message was received at Ernakulam and despatched on 9.4.92 to Quilon through Courier service. This courier service is generally through Train No.6526 which reaches Quilon at 1.25pm and the letters and messages addressed to TIAs like the applicant are placed in the pigeon-hole specifically demarcated for the TIAs in the parcel office and no acknowledgment is taken on receipt of the service of letters and messages unless they are in sealed covers. Exbt.R.1 message dated 8.4.92 after decoding would read as follows:

"Posted to KPD (Katpadi) Attend this office at first means and obtain DCP (Duty Card pass) Acknowledge receipt by wire."

The respondents have argued that the aforesaid message must have been received by the applicant at Quilon by 2.00pm on 9.4.92 that is why in order to avoid the

transfer order he hurriedly cut short the joining time of ten days which he was availaing and proceeded to Kannur on the morning of 10.5.92 as is evident from the applicant's diary at Exbt.R.7. He reached Kannur on the evening of 10.4.92 which is strange because normally he should have travelled by the evening train to reach Kannur in the morning of the following day. This shows that the applicant hurriedly proceeded to Kannur by the first available train after coming to know of Exbt.R.1 message on 9.4.92 itself. They have also stated that according to his own admission, the applicant received the message at Exbt.P1 asking him to report to Madras in the evening of 10.4.92 but he defied and disobeyed the same, took over at Kannur, started his work from 11.4.92 to 13.4.92 and then leisurely went to Madras on the evening of 13.4.92 to enjoy a holiday thereon 14.4.92 and attended the Madras office on 15.4.92 and 16.4.92 as per the diary entries at Exbt.R.8. According to the respondents on reaching Madras the applicant collected the Duty Card Pass to join at Katpadi and left for Kannur assuring that he will immediately go and join at Katpadi but he neither returned the Duty Card Pass nor did he join at Katpadi. The respondents have disowned the Exbt.P.1 message itself ^{being} not an official message and its authenticity is said to be doubtful. It was not in coded language either. The respondents argued that the applicant has not approached the Tribunal with clean hands but has suppressed the real facts and distorted them. They have doubted the statements at Exbts.P3 and P.4 about non receipt of the message.

6. In the counter affidavit respondent No.4 has stated that originally he was transferred from Palghat to Katpadi but was retained at Palghat and respondent No.5 who was transferred to Palghat on request was transferred to Kannur. Respondent No.4 was allowed to continue at Palghat not because of any favouritism by the second respondent. He has an 87 year old father who is a chronic diabetic patient and had one of his legs imputated. He was under prolonged treatment at the Railway hospital at Palghat and is still under treatment there. He had been staying with the fourth respondent as there is nobody to look after him. His daughter is studying at Kendriya Vidyalaya, Palghat ^{facility} which ~~facility~~ is not available at Katpadi. Accordingly after the Annexure.A.1 order was passed transferring him to Katpadi, he had called on the second respondent at Madras and requested him to permit ^{him} to remain at Palghat for one year more for the aforesaid reasons. It is on that basis the Railway administration passed the impugned order at Annexure.A.2.

7. In the rejoinder the applicant has drawn attention to the admission by the respondents that normally TIAs are transferred after a period of three years and in some cases they may be allowed to continue beyond three or four years. It is therefore, not understood why the applicant was disturbed from Quilon ^{two} within ~~two~~ year of his posting and if he had not made any request for choice station as such a request would have been premature, there is no reason to shunt him from one place to another. The modification of the transfer order at Annexure.A.2 was issued by an

PL

authority different from the one who had issued the Annexure.A.1 order. He has stated that the impugned order at Annexure.A.2 is not a modification of the transfer order at Annexure.A.1 but a fresh transfer order, as of Annexure.A.2 he has transferred not from Quilon his original posting to Katpadi but from Kannur to Katpadi. He had been posted to Kannur by the order at Annexure.A.1. If Annexure A.2 is a modification of Annexure-A.1 he should have been shown as posted in Quilon instead of at Kannur. The applicant should not have been allowed to make to suffer in order to favour another man i.e., the 4th respondent. He has stated that one of the best hospitals in India is at Vellore which is near Katpadi and the father-in-law of the 4th respondent is also employed there. Accordingly Katpadi is best suited for the treatment of the father of respondent No.4. The applicant has challenged the competence of the Assistant Accounts Officer to issue the impugned transfer order. Even if the respondents have the power to transfer officials, that power cannot be exercised in an arbitrary manner in violation of the fixed tenure. To accommodate the 4th respondent, the 5th respondent who was transferred to Palghat might have agreed to his transfer to Kannur under threat, and he remains in Kerala but his agreement to be posted at Kannur should not have been accepted at the cost of the applicant who was already posted there. He has denied that he intended to avail of the ten days joining time at Quilon because there is nothing in the diary to that effect. He has denied having received Exbt.R.1 message before leaving Quilon on

10.4.92 by 7.45 am. He has produced Annexure A.4 to show that the courier to whom Exbt.R.1 was handed over on 9.4.92 can reach Quilon ^{only} on 10.4.92. He has stated that the question of his getting ~~short~~ the ^{shortened} joining time does not arise as the joining time can be availed off even after reaching the new station, finding out accommodation and go back to bring the family by availaing of the joining time. He has stated that the telephonic message at Exbt.P.1 could not be coded. He has stated that he is a native of a village near Trivandrum and Katpadi is more than 800 kms. away whereas from Palghat it is only 400 kms away. He has produced a statement by the Station Superintendent, Quilon stating that no telegraphic message addressed to the applicant had been received between 8.4.92 and 10.4.92.

8. I have heard the detailed arguments of the learned counsel for all the parties and gone through the documents carefully. The core of the matter simply is like this. By the order dated 27.3.92 at Annexure A.1 the respondents had issued the general transfer order transferring 33 officials including the applicant, Respondents 4 and 5. This order was passed in administrative exigencies ^{obviously} in keeping in view the request transfers made by the officials. Respondent No.5 who had requested for transfer to Palghat had thus been transferred from Ernakulam to Palghat by that order. The applicant who had completed just two years of tenure at Quilon, however, was ^{brutally} transferred to Kannur. Respondent No.4 was transferred from Palghat to Katpadi in order to accommodate the request transfer of the Respondent No.5. It appears that

Respondent No.4 had some family problems especially of his diabetic octogenarian father whose one leg had been amputated. Respondent No.4 went to Madras and requested for postponing his transfer from Palghat to Katpadi for about a year. In order to accommodate the Respondent No.4, the Railway authorities consulted Respondent No.5 who was to take over from him at Palghat and Respondent No.5 had agreed to be posted at Kannur in order to accommodate Respondent No.4 at Palghat. In order to accommodate Respondent No.5 at Kannur, the applicant was transferred to Katpadi by the impugned order at Annexure.A.2. It will thus be clear that the applicant has been made the sacrificial goat in order to accommodate Respondents 4 and 5. While Respondent No.5 was consulted for changing his posting from Palghat to Kannur, the applicant who had been transferred to Kannur not at his request but by the Railway authorities themselves were never consulted before being sent to Katpadi. If Respondent No.5 was willing to be charitable to Respondent No.4 so that the latter could be accommodated temporarily at Palghat to look after his ailing father, Respondent No.5 should have been transferred to Katpadi where Respondent No.4 had been posted and not to Kannur which had nothing to do with Respondents 4 and 5. It therefore, appears that both the Railway administration and Respondent No.5 have chosen to be charitable to Respondent No.4 at the cost of the applicant and the applicant who had been posted to Kannur in public interest and administrative exigency by the general transfer order at Annexure.A.1, was shifted from Kannur to Katpadi

by the impugned order at Annexure.A.2 for no other reason except to accommodate Respondent No.5. A more or less similar case came up before the Hon'ble High Court of Calcutta in Dr. (Smt) Pushpika Chatterjee Vs. State of West Bengal and others, (1972 SLR 910). In that case the petitioner Dr. Chatterjee was first transferred to Siliguri to relieve one Dr. Mukherjee who was transferred to another hospital. The later did not hand over the charge and there were two incumbents at the same hospital at Siliguri. This continued till 6.11.70 when the first order transferring the petitioner to Siliguri was cancelled and she was posted to act as Medical Officer in the Suri Birbhum Sub Divisional Hospital and Dr. Mukherjee was transferred to Baloghat Sadar Hospital and his transfer to Suri hospital was cancelled. Yet another order was passed on 27.11.70 transferring the petitioner to Kurseong and Dr. Mukherjee's transfer order from Siliguri hospital to Baloghat Sadar hospital was cancelled. The Calcutta High Court held that Dr. Chatterjee's transfer to Kurseong was not in the public interest but merely to accommodate Dr. Mukherjee at the Siliguri hospital. The order of transfer, therefore, for ^{being} collateral purpose and is ^{was} malafide cannot be sustained. The following observations in the judgment will be relevant:

"Considering all this it appears to me that the order transferring the petitioner to Kurseong with which we are concerned here, was not for public interest as stated in the affidavit-in-opposition nor it was for administrative purposes as has been submitted. It is patently for the purpose of retaining Dr. Mukherjee at the Siliguri Hospital. The order, therefore, is for collateral purpose and is malafide and cannot be sustained. I am of the opinion that this is a fit case where the order of transfer should be interferred with even though no civil or evil consequences would follow from such order."

9. Still in another similar case in Ramanek Choudhary Vs. State of Bihar and others, 1975(2) SLR 67, cancellation of posting order of the petitioner in order to accommodate another person as a Teacher in ^{the} Middle School at Chahuta in District Muzafarpur of Bihar was set aside by the Patna High Court on the ground of being arbitrary and made for collateral purpose. It was held that the impugned order therein had been passed in colourable exercise of power and hence malafide. The following pertinent observations of the Patna High Court are relevant to the case before us also:

"In view of the guiding principles laid down in the cases referred to above, it is abundantly clear that the Court would not hesitate to interfere with an executive or administrative order which has been passed in violation of any law or of any statutory rules or in the colourable exercise of power or malafide. It is well settled that such an order as is based on entirely irrelevant considerations or not based on considerations which the authority bound to have regard to, is ultra vires. If the order is passed for a collateral purpose in the garb of a legal purpose, it is a colourable exercise of power."

X X X X X X

"As stated earlier, the basic principle of good administration is that even administrative actions must be just and fair. If the order is allowed to stand it would amount to allowing an unjust, unfair and an ultra vires order to continue to have effect. It is true that the Administrator was the sole judgment of the exigencies of public service and connected matters for the purpose of making an order of transfer. It is, however, equally true that he was bound to take into consideration relevant matters and decide for himself. The basic principle of our democracy is the rule of law. A duty has been cast upon the Court in this behalf. This Court cannot, therefore, refuse to set aside an order such as the present one."

10. In Kamlesh Trivedi Vs. Indian Council of Agriculture Research and others, ^a another Full Bench of this Tribunal in the judgment dated 27.4.86 ("Full Bench Judgments of C.A.T.-1986-89" Vol.I published by Bahri Brothers Delhi, page 80) held that any order of transfer must (1) be in public interest and in the exigency of service on administrative grounds, (2) it must not be in colourable or malafide exercise of power, (3) ^{and} it should not be arbitrary, (4) ^{it} must be made by a competent authority in accordance with the rules and the instructions, if any, governing the transfer policy.

11. In the light of what has been stated above I am fully convinced that the transfer of the applicant from Kannur to Katpadi in supersession of the previous general order at Annexure A.1 is not in the public interest but for the collateral purpose of accommodating Respondents 4 and 5 at his cost. The fact that the applicant had not completed the minimum period of three years of tenure at Quilon where he was posted on 20.3.90, and was transferred by the order dated 27.3.92 at Annexure A.1 to Kannur shows that his transfer was in exigencies of administration and therefore in public interest. He had not made any request for transfer to Kannur. The impugned order, ^{dated 7.4.92 (A-2)} however, by which he was transferred from Kannur to Katpadi cannot be deemed to be in public interest as this order was passed on 7.4.92 within less than a fortnight from the date of passing of the general transfer order at Annexure A.1. The only conclusion is that the impugned

order was passed in the private interest of respondents 4 and 5. If as stated earlier Respondent No.5 wanted to help Respondent No.4 there could have been a mutual transfer between them and Respondent No.5 should have agreed to go to Katpadi temporarily yielding his posting at Palghat to Respondent No.4 for a year. The applicant should not have been transferred from Kannur to Katpadi on that account.

12. Respondents 1 to 3 have made much of the conduct of the applicant between 9.4.92 and 15.4.92. Their case is that the applicant had been alerted by the message at Exbt.R.1 dated 8.4.92 which according to the respondents themselves had reached Quilon by 2.00 pm on 9.4.92. They have argued that in order to avoid receiving this message the applicant left for Kannur by the morning train on 10.4.92 hurriedly instead of going by the more convenient night train on 10.4.92 so as to start the work at Kannur on 11.4.92. This to me appears to be an unconvincing argument. If the applicant had really been in a hurry to avoid the receiving of the message on 9.4.92 at Quilon and if that message from the respondents had reached Quilon by 2.00pm on 9.4.92, the applicant should have left by the night train on 9.4.92 itself and not on the morning of 10.4.92. The respondents have not given any evidence whatsoever to indicate that the message at Exbt.R.1 was delivered to the applicant before he left for Quilon. On the other hand the applicant has produced a statement of the Station Superintendent, Quilon dated 30.4.92 at Annexure.A.3 that no such

message addressed to the applicant had been received ^{from} ~~him~~ between 8.4.92 and 10.4.92. If the applicant had really wanted to avoid receiving the order posting him to Katpadi before taking over at Kannur he would not have on his own produced the telephonic message at Exbt.P.2 dated 9.4.92 asking him to report immediately to Madras without joining at Kannur. The respondents denied having any ^{sent} such message and are depending on Exbt.R.1 communication of which the delivery of the same ^{to} ~~from~~ the applicant has not been established by them. In the circumstances I feel ^{straight} that the applicant has been entirely ~~straight~~ forward in his voluntarily producing Exbt.P.2 message and denying receiving Exbt.R.1 message.

13. The contention of the respondents that the applicant cut short his joining time by hurriedly leaving Quilon for Kannur on 10.4.92 has also dismissed on the same grounds.

14. I also accept the contention of the applicant that the impugned order at Annexure.A.2 cannot be held to be a modification of the general order of transfer at Annexure.A. 1 because the applicant and Respondents 4 and 5 are shown to have been transferred to Katpadi, Palghat and Kannur not from their original places of posting but from their places of new postings ordered by the general order at Annexure.A.1. This shows that the impugned order at Annexure.A.2 ^{in Annexure A.2} ^{was purported} to be carried out on the presumption that the first order at Annexure.A.1 has been implemented. In that light the contention of the respondents about the strange behaviour of the applicant is unwarranted.

15. In the conspectus of facts and circumstances, I allow the application, set aside the impugned order dated 7.4.92 in so far as the applicant is concerned and direct that the applicant shall remain posted at Kannur in accordance with the order dated 27.3.92 at Annexure.A.1. This, however, will not preclude the Railway administration from arranging the postings of Respondents 4 and 5 in accordance with the order at Annexure.A.2 or Annexure.A.I or in any other manner as they deem fit without disturbing the applicant from Kannur. There will be no order as to costs.

Sukh 4.9.92
(S.P.Mukerji)
Vice Chairman
4th September, 1992.

ks2992.