

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.578/2013

Wednesday this the 3rd day of *June*, 2015

C O R A M :

**HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

A.Divakaran,
S/o.K.Anandhan,
Chief Commercial Clerk,
O/o.Chief Booking Supervisor, Ernakulam south,
Trivandrum Division, Southern Railway.
Residing at Door No.63/74, St.Mary's Hill,
Ooty, Niliagiri – 640 001.

...Applicant

(By Advocate Mr.Martin G Thottan)

V e r s u s

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai – 3.
2. The Divisional Personal Officer,
Southern Railway, Salem Division,
Salem – 05.
3. The Divisional Personal Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. Senior Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.

...Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 19th May 2015 this
Tribunal on *3rd June*, 2015 delivered the following :



ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicant has filed the Original Application praying the following reliefs :

1. To declare that the applicant is entitled for a transfer back to Salem Division on his original seniority and direct the respondents accordingly.

2. Award costs of and incidental to this application.

3. Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.

2. Applicant is working as Chief Commercial Clerk at Ernakulam South Booking Office which comes under the Trivandrum Division of Southern Railway. Original Application is filed seeking repatriation/transfer of applicant to his parent department ie. the Salem Division of Southern Railway where his lien is being maintained.

3. A complaint was lodged against the applicant by the vigilance while working as Senior Commercial Clerk at Udagamandalam (Ooty) Booking Office in Palakkad Division of Southern Railway over allegation of some irregularity found in the course of inspection. On the basis of the vigilance complaint the applicant was transferred to Trivandrum Division. The order, according to applicant, temporarily



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transferred him to Trivandrum Division without severing the lien. His lien is maintained at Palakkad Division and he is only placed under the administrative control in another division. Disciplinary proceedings were also initiated against the applicant based on the allegation of irregularities said to have been detected by the vigilance. The said disciplinary proceedings finally culminated with an imposition of penalty of reduction to the post of Luggage Porter at the pay of Rs.2500/- in scale of Rs.2550-3200/- for a period of 24 months with cumulative effect. The applicant suffered the punishment and he was restored back to the post of Commercial Clerk after the currency of the punishment. Thereafter the applicant was promoted as Head Commercial Clerk by an order dated 14.2.2012. 11 years have passed since the issuance of Annexure A-1 temporary transfer order and the respondents ought to have considered taking into account unblemished service of the applicant for a transfer back to his parent department. The request of the applicant is not acceded to by the respondents. The applicant made representation to the first respondent requesting him to transfer him to his parent division.

4. The respondents point out that the applicant was selected for appointment in Group D post in Traffic Department against sports quota and was appointed as temporary Luggage Porter in scale Rs.750-940/- (IV PC) on Rs.884/- per month and posted at Coonoor in the erstwhile Palghat



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Division of Southern Railway. He joined at Coonoor on 13.10.1988. He was promoted to scale Rs.975-1540 on out of turn basis on sports account and was posted as Relieving Clerk at Udhagamandalam on 27.9.1991. He was further promoted as Senior Relieving Clerk/Udhagamandalam in scale Rs.1200-2040 with effect from 1.12.1993.

5. He was suspended from pay and duty with effect from 21.1.1997 and the suspension was revoked with effect from 29.1.1997. He was imposed with penalty of withholding of increment from Rs.1260/- to Rs.1290/- in grade Rs.1200-2040/- normally due on 1.12.1996 for a period of 3 months (Non-recurring) for the reason that he was found with an excess of Rs.10/- in railway cash during his duty hours. Moreover, he was in the habit of demanding and accepting extra money while issuing reservation to passengers. He was awarded a penalty of withholding of increment from Rs.4400/- to Rs.4500/- in grade Rs.4000-6000/- (V PC) due on 1.12.2000 for 24 months (Non-recurring), for the reason of delayed remittance of railway cash of Rs.36/- on 30.6.1998 instead of on 4.6.1998 (PTO Ticket No.03668 Ex.UAM - CBE issued on 4.6.1998) and also for the reason that he pocketed railway cash of Rs.500/- on 20.2.1999 (BPT No.589076 issued on 20.2.1999). He was imposed with penalty of reduction to lower grade Rs.3200-4900/- on pay Rs.4220/- from the grade Rs.4000-6000 for a period of 24 months with effect from 20.10.2000 without the effect of postponing future increment and seniority, for the reason that he was found to have an

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excess of Rs.1344/- in his private cash while on duty on 20.11.1997 during the vigilance check. He was awarded the penalty of withholding of increment from Rs.4600/- to Rs.4700/- in grade Rs.4000-6000 due on 1.12.2002 for a period of 6 months with the effect of postponing future increments, for the reason that a shortage of Rs.165/- in railway cash was found in his duty during the preventive check by vigilance at Booking Office/Ughagamandalam. During a departmental check conducted while the applicant was working as Senior Commercial Clerk at Ughagamandalam, the following irregularities were noticed in the working of the applicant :

1. He had not cancelled Two I-RT Tickets bearing No.05246 and 05247 by Train No.6606 of 15.9.2002 ex.UAM - MAS which were tendered for cancellation on 15.9.2002.
2. He demanded and accepted Rs.69/- extra over and above the Railway dues of Rs.981/- for issue of one II AC Ticket ex.MTP - MAS bearing No.17287 by Train No.6606 dated 18.9.2002.
3. He had an excess of Rs.69/- in Railway cash.



6. As the above irregularities are misconducts in violation of Rule 3.1 (i) (ii) & (iii) of Railway Services (Conduct) Rules, 1966, he was issued with charged memorandum under Railway Servants (Discipline & Appeal) Rules, 1968. The applicant was transferred to Trivandrum Division on the same pay and scale on administrative grounds, keeping his lien in Palghat Division for all purposes by Office Order No.J/C 54/2002 dated 18.11.2002 pursuant to Southern Railway Headquarters Office Order No.128/2002 dated 8.11.2002.

7. In the DAR enquiry, the charges were proved. Hence, Disciplinary Authority imposed the penalty of compulsory retirement from service with effect from 20.8.2005, which was confirmed by Appellate Authority on appeal. Thereafter, the Revising Authority, Chief Commercial Manager, Southern Railway, Chennai, considering the revision petition dated 26.9.2006 of the applicant, modified the penalty of compulsory retirement as reduction to the post of Luggage Porter on pay Rs.2550/- in grade Rs.2550-3200/- for a period of 38 months with cumulative effect. However, in compliance with the directions of this Hon'ble Tribunal in the earlier O.A.No.445/2008, the penalty of compulsory retirement from service with effect from 20.8.2005 imposed by the Disciplinary Authority was modified by the Appellate Authority to that of reduction to lower grade as Luggage Porter in scale Rs.2550-3200 (V PC) fixing pay at Rs.2550/- for a period of 24 months with recurring effect. This will have the effect of



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postponing his future increments in the higher grade of Rs.4000-6000. On completion of one year qualifying service, he is eligible to draw increment. The intervening period between the date of compulsory retirement and date of reinstatement is treated as non-duty.

8. There is a public policy for transfer on Inter-Divisional basis ticket checking staff and other staff in mass contact areas when they are detected to be indulging in malpractices. The instructions on this subject have been issued by Railway Board from time to time. These instructions were again reiterated in Railway Board's letter No.E(NG)I/80/TR/28 dated 19.2.1986 as follow :

" Instructions also exist, in terms of which, Ticket checking staff detected to be indulging in malpractices are required to be sent on Inter-divisional transfer as a matter of policy. Such Ticket checking staff may however be transferred to an adjoining Division on the same Railway or to a Division on some other Railway adjoining that Railway from which they are transferred, if the employees concerned make a request to that effect.

.....

The ticket checking staff who have been transferred out of the Division on complaints of corruption and who were later exonerated or awarded a penalty of censure may not be brought back to the parent Division, even if they so desire.

9. Railway Board issued another letter No.E(NG) I-98/TR/11 dated 30.10.1998 which reads as follow :



1. The question of effecting Inter-Divisional transfer of staff repeatedly figuring in vigilance cases and where penalties have been imposed, was discussed in the Conference on Malpractices and Corruption in mass contact areas organized by the Ministry of Railways on 10.7.1998.

2. It has been decided that the cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should be reviewed at appropriate level and such staff transferred on Inter-Divisional basis.

10. On the question of Inter-Divisional transfer of staff in mass contact areas including ticket checking staff indulging in malpractices another instruction was issued by Railway Board in letter No.E(NG) I-98/TR/11 dated 2.11.1998 as follows :

1. In terms of existing instructions ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on Inter-Divisional/Inter-Railway transfers as a matter of policy.

2. The question of feasibility of effecting Inter-Divisional transfer of staff in mass contact areas including ticket checking staff, was discussed in the conference on malpractices and corruption in mass contact areas organized by the Ministry of Railways on 10.7.1998.

3. Pursuant to the above discussion, it has been decided that while the existing policy of Inter-Divisional/Inter Railway transfer of ticket checking staff detected to be indulging in malpractices shall continue, other staff in mass contact areas detected to be indulging in malpractices should also be transferred on inter divisional basis.



11. The employees who are awarded a penalty higher than "censure" on finalization of disciplinary proceedings are not entitled to come back to parent Division as stipulated in Railway Board's letter No.E(NG) I-2002/TR/35 dated 19.2.2003. In Shri.Jagdish Singh Brar v. UOI (CW No.3642/1999), Hon'ble High Court of Delhi has held as under :

"the circular issued by the Railway Board on 2nd November 1998 provides that inter-railway transfer of ticket checking staff detected to be indulging in malpractices is also possible and permissible on inter-divisional basis."

12. Railway Board issued another letter No.E(NG) I/2000/TR/17 dated 26.6.2000 relevant portion of which reads as follow :

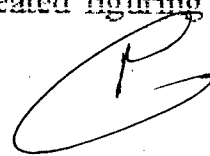
"that Ticket Checking staff as also other staff in mass contact areas, detected to be indulging in malpractices should be sent on inter-divisional transfers as a matter of policy....."

.....the instructions regarding inter-divisional/inter railway transfer of staff detected to be indulging in malpractices or substantiated vigilance cases shall continue to be strictly complied with.

....."

13. The issue under consideration here is whether the applicant's temporary transfer to Trivandrum Division as a consequence of a vigilance complaint results in restoring the applicant's unsevered lien in Palakkad Division. The applicant is banking on the fact that he has been punished for his vigilance misdemeanor by suspension, penalty of withholding of increment and reduction to lower grade as Luggage Porter etc. Hence he should be repatriated to his parent Palakkad Division.

14. The respondents points out that it follows a policy of inter-divisional transfer for Ticket Checking and other mass contact area staff indulging in malpractice. The Ticket Checking staff who have been transferred out of the Division on complaints of corruption and who were exonerated or awarded a penalty of censure may not be brought back to the parent Division even if they so desire. Hence, if awarded a punishment, as in the case under consideration, the staff may not be brought back. The Railway Board order of 30.10.1998 also reiterates that staff who repeatedly figure in substantiated vigilance cases where penalties have been imposed should be reviewed at an appropriate level and should be transferred on inter divisional basis. Thus the Railway Board has repeated in its various orders, in an attempt to control malpractices, particularly among Ticket Checking staff, has recommended inter-divisional transfer to control the tendency. Railway Board order of 19.2.1986 also reiterates that Ticket Checking staff transferred out of the Division on complaint of corruption, even if exonerated/censured subsequently be not brought back to the parent division. As per policy of Railways the applicant, though his lien with the parent division had not been severed, is covered by the Railway Board orders which recommend transfer out of the parent division/non-transfer to parent division even if exonerated. In the case under consideration, the applicant has on four occasions indulged in incidents which required vigilance intervention followed by penalties. In view of the Railway Board policy and orders of preventive vigilance and repeated figuring in vigilance



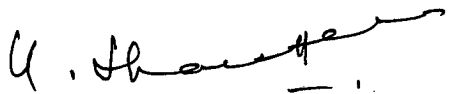
cases followed by penalties, the applicant has been kept out of his parent division. The Hon'ble Supreme Court has held that Courts/Tribunal should not interfere in matters of transfer which should be left to the administrative authorities. Further, this inter divisional transfer has no adverse consequences on the service or career prospects of the applicant and is intended to enforce discipline in public service. The inter divisional transfer is a result of the policy formulated and followed by the Railways and the applicant has not been singled out for the implementation of transfer policy which has been effected as a preventive vigilance measure in view of repeated commission of irregularities, the last one being in 2006.

15. The Original Application is dismissed. No order as to costs.

(Dated this the 3rd day of June 2015)



P. GOPINATH
ADMINISTRATIVE MEMBER



U. SARATHCHANDRAN
JUDICIAL MEMBER

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