

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T. A. No.

604

1991

DATE OF DECISION 26.9.91

K. Dhananjayan Applicant (s)

Mr. M M Abdul Aziz Advocate for the Applicant (s)

Versus

Chief Commercial Supdt., Respondent (s)
Southern Railway Madras and others

Mr. M. C. Cherian Advocate for the Respondent (s) 1-3

CORAM:

Mr. Mohan C. Menon for R-4

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is working as Catering Supervisor Grade-II in the Southern Railway. He has been transferred to Bangalore as per Annexure-II order. He is challenging this transfer order on the following grounds:

- i) According to him the impugned transfer order is a punishment and hence it is liable to be quashed.
- ii) The order is malafide for it was passed with the sole object of accommodating R-4, a similarly placed person who is working at Bangalore.

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iii) the transfer is against the rules and is liable to be quashed.

iv) the impugned order has been passed after deciding that the applicant has committed the irregularity alleged against him. The disciplinary proceedings have been initiated against him only after filing of this application.

2. The respondents 1 to 3 and the 4th respondent have filed separate reply statements denying all the allegations and averments in the application. In answer to the reply statements, the applicant has filed a rejoinder producing the reports and the preliminary enquiry results conducted in connection with the alleged incident which took place on 15.11.90.

3. The learned counsel, Sri M. M. Abdul Aziz, appearing for the applicant strenuously contended that the transfer in the instant case is a punishment because the applicant has not committed any irregularity and at the time when the transfer is effected there was no enquiry against him. He endeavoured to satisfy me with reference to Annexures-III and V produced along with the rejoinder that the present enquiry has been initiated without any basis and it is only to harass the applicant. In fact he has obtained orders for the supply of food ^{to him} by the Railway authorities on 15.11.90 in the running train, ^{and duly complied with the same.} The Vigilance inspection

could not find any irregularity excepting recovery of *an* unsigned voucher. However, these are all matters pertaining to the enquiry and it is premature for me to go into these matters and consider the issue. The applicant is challenging Annexure-II transfer order issued subsequent to the incident *and I need only consider its legality.*

4. The respondents have stated in the counter affidavit that this transfer has been effected in connection with the incident took place on 15.11.90 based on the recommendation of the Vigilance Unit who are conducting a fair and impartial enquiry.

5. I am satisfied that if there is an allegation against an employee it is just, proper and fair for him to leave the place if the authorities want to shift him from that place for the purpose of conducting an impartial enquiry. Presumably, by the transfer of the applicant they have only decided to shift the applicant from the place of occurrence of the incident. But this shifting from one division to another division appears to be very inconvenient ^{*nothing is*} and it is causing disadvantage to the applicant. He states that inter-divisional transfer is contrary to the rules. This aspect requires consideration.

But I am ^{not 4} inclined to go along with the learned counsel for the applicant in the view that the present transfer is a punishment. I hold that this transfer is not a punishment and this has been effected for conducting a fair enquiry ^{in connection with 4} of the disciplinary action which was initiated against the applicant after filing of this application.

6. The next contention urged by the learned counsel for the applicant is that the transfer is malafide in as much as he has been transferred to Bangalore only to accommodate the fourth respondent in whom the authorities are interested.

7. This allegation is denied by the respondents 1 to 3. They have stated that considering the request of the fourth respondent when they have decided to transfer the applicant the corresponding transfer of the fourth respondent to his place has been effected. It is only done in the exigency of service. Learned counsel, Sri Mohan C. Menon, appearing ^{on behalf of the 4th respondent} brought to my notice Annexures R-4 (a) to R-4 (e) and submitted that he ^{client 4} has a better claim to come to Trivandrum Division based on his original requests ^{dated 4} on 25.10.88, 18.3.89 and 23.4.90.

8. Having regard to the facts and circumstances of the case I am of the view that the plea of malafide is unfounded and cannot be sustained.

9. The next submission of the learned counsel of the applicant is that the present transfer of the applicant is against the relevant rules in the Manual. He brought to my notice the following provisions contained in the orders passed by the Railway Board in connection with transfer:

"Disciplinary action against the employee not under administrative control of the authority, procedurally wrong-1. cases have come to the notice of Ministry of Railways where staff, whose conduct was under investigation were transferred from one Railway to another which made it difficult to finalise departmental proceedings. The Ministry of Railway have therefore, decided that non-gazetted staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or a minor penalty.."

The learned counsel for the applicant submitted that the present transfer of the applicant from Trivandrum Division to Bangalore Division is contrary to this instruction and hence illegal. The applicant is a non-gazetted officer and the Railway has issued disciplinary proceedings.

Hence, the above instructions will apply to the case of particularly when the *applicant* did not give convincing explanation. *by* the applicant. So his contention is to be upheld.

10. The applicant submitted that there are vacancies within the Trivandrum Division itself to accommodate

the applicant if the respondents really wanted to shift him from Ernakulam due to the pendency of the disciplinary proceedings initiated against him. But the learned counsel appearing on behalf of the Railway is not in a position to either deny or to admit the statement.

However, having considered the contentions of the parties in this case I am of the view that a transfer of the applicant within the Trivandrum Division itself is possible, if the respondents really wanted to transfer him to conduct an enquiry in a fair and proper manner.

If the applicant is transferred to a distant place it will only cause inconvenience and difficulty to the employee in taking part in the enquiry and defend the

case. He will have to spend money and travel long^{distantly} for attending the postings of the enquiry. This can be avoided by giving a posting to the applicant in the same Division.

Hence, I am of the view that the transfer of the applicant to Bangalore is not after due application of mind and consideration of the relevant instructions issued by the Railway Board in connection with the transfer of Railway employees who are involved in disciplinary cases.

10. The learned counsel for the applicant also submitted that the impugned transfer of the applicant to a distant place has been issued even before finalising the disciplinary action against him and it is in fact pre-judging the issue and holding him guilty of the alleged irregularity. He is also relying on the following rule pertaining to transfer:

"A Railway servant shall not be transferred substantively except on his own request or as a disciplinary measure after having fulfilled the formalities of the procedure prescribed by the disciplinary rules.

6. Periodical transfers of staff in the category of Commercial Supervisors to different places may not be always be possible. But it should at least be ensured that the Commercial Supervisor is shifted to a different section or area on the same station provided he has put in 5 years on the specific seat."

11. The learned counsel for the Railways submitted this order will ~~xxx~~ apply only to general transfers and not to ^{transfers issued in this} the exigency of service on account of disciplinary proceedings. However, the instruction extracted in para 9 applies and the transfer of the applicant to another Division cannot be sustained. But I am of the view that the applicant should not be allowed to continue at Ernakulam because of the subsequent initiation of the disciplinary proceedings against him. But he is entitled to a transfer to a nearby place in Trivandrum or Palghat Division, ^{where} ~~where~~ ^{vacancies are existing.} ~~vacancies are existing.~~

12. In the result, having regard to the facts and circumstances of the case I think the interest of justice will be met in this case if I direct the first respondent to reconsider the posting of the applicant in any place in Trivandrum or Palghat Division after cancelling his present posting at Bangalore. I therefore, set aside the impugned transfer order Annexure-II in so far as it transfers the applicant to Bangalore and direct the first respondent to consider the posting of the applicant to a nearby place in Trivandrum or Palghat Division. Till such a posting is made the stay order issued in this case will continue. This shall be done within two weeks from the date of receipt of the copy of the judgment. The learned counsel for the fourth respondent submitted that his client may be permitted to join at Ernakulam as per the present order. This request cannot be granted in the view that I have taken in this case. But while reconsidering the transfer of the applicant as directed above the respondents^{1403 4} shall be free to consider the posting of the fourth respondent at Ernakulam ^{as already ordered as per Annex II 4} ~~if it is in the exigency of service~~ having

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regard to the request.

13. The application is allowed to the extent indicated above. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

26.12.91

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