

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 102 of 2008

Tuesday, this the 8th day of July, 2008

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE DR. K S SUGATHAN, ADMINISTRATIVE MEMBER**

Shobha Mary Alexander,
W/o. Joseph George,
Chief Commercial Clerk III,
Southern Railway, Kottayam R.S.,
Chathukulam, Permpaikadu Post,
Kottayam District.

...

Applicant.

(By Advocate Mr. T.C. Govindaswamy)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.
3. The Senior Divisional Commercial Manager,
Southern Railway, Trivandrum Division,
Trivandrum - 14.
4. The Chief Commercial Manager (PS),
Southern Railway, Headquarters Office,
Park Town P.O., Chennai - 3.
5. The Divisional Railway Manager (Personnel),
Southern Railway, Trivandrum Division,
Trivandrum - 14.



6. The Chief Commercial Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3. ... Respondents.

(By Advocate Mrs. Sumathi Dandapani with Mr. Varghese John for
Mr. Thomas Mathew Nellimoottil)

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant has challenged Annexure A-1 order, whereby she has been subjected to an Inter-Divisional Transfer on administrative Grounds. The grounds of attack include, competence of the authority in passing this transfer order and on merit.

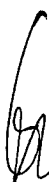
2. Brief Facts: The applicant has been functioning as Chief Commercial Clerk at Kottayam Railway Station of Trivandrum Division of Southern Railways, and on 21-11-2007 when she was on duty at about 22.15 hours, officials of vigilance department had entered the counter and it was alleged that the applicant had retained a few tickets surrendered for cancellation, without cancelling the same and the applicant was kept under suspension from 22-11-2007. The respondents have issued the impugned transfer order dated 13-02-2008, transferring the applicant from Trivandrum Division to Palghat Division on administrative grounds. The applicant has challenged the same before this Tribunal on the following grounds: -

- (a) The transfer order infringes upon the fundamental right of the applicant under Art. 14 and 16 of the Constitution.



- (b) There is no exigency of service to transfer the applicant from Trivandrum to Palghat Division and as such, the transfer order is ultra vires of Rule 226 of the Indian Railway Establishment Code.
- (c) Transfer is by an authority who is not competent to pass the order of transfer. The Chief Commercial Manager (P.S) is not the Head of the Department or the authority to whom powers have been delegated.
- (d) Consequence of the inter-divisional transfer would be change of seniority, which is within the competence of only the Head of the Department and not the officer who has issued the transfer order and hence, the transfer order is illegal.
- (e) Disciplinary proceedings have been initiated against the applicant and as such, as per Annexure A-5 Railway Board notification, transfer when proceedings are pending is not permissible.
- (f) The transfer is against the general transfer policy which provides that transfers should not be effected during the middle of the academic session and that where both husband and wife are employed, posting should be invariably in the same station.
- (g) Annexure A-1 is not as a result of bonafide exercise of power and the same has been issued by the influence of vigilance department.

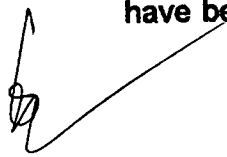
3. Initially, on the basis of Railway Board instructions that non-gazetted staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway Division till after the finalisation of the departmental proceedings, this



Tribunal had granted an interim stay vide order dated 20-02-2008. The applicant continues in the same place on the strength of this interim order.

4. Meanwhile, respondents have revoked the order of suspension vide order dated 14-02-2008 (copy produced at the time of hearing) and as per the counter, the revocation took place as on 19-02-2008, i.e. a day prior to the above order was passed.

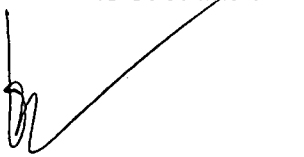
5. Respondents have filed their counter. They have stated that inter-divisional transfer, on administrative grounds, of ticket checking staff was already existing and by order dated 25-01-1998, such a provision of inter-divisional transfer was extended in respect of other staff in mass contact areas, if detected to be indulging in malpractices, vide Annexure R-1. According to Rule 263 of the commercial manual, cancellation of ticket should be by marking 'non issued' on the ticket surrendered duly initialled and dated and this should be done 'immediately after such a ticket is returned to the booking office'. As regards powers under delegation, the PHOD/HOD have been given full powers, vide Annexure R-3 and the C.C.M(PS) being one of the Heads of Departments, he has full authority and power to pass the impugned order, as he has been afforded to look after establishment and stores matters, vide Annexure R-4. Provisions of general transfer are not applicable to transfers effected on administrative ground. Other grounds have been denied.



6. Counsel for the applicant argued that power to effect inter-divisional transfer is held only with the General Manager and the Chief Commercial Manager, while Annexure A-1 has not been issued by any of the above authority. As such, the very transfer order is illegal and non-est. Again, in so far as the alleged retention of ticket without effecting cancellation, according to the counsel, no such ticket has been returned for cancellation at all and all those which have been returned for cancellation which account for as many as 18 tickets, have all been duly cancelled. Inter-Divisional Transfers have serious consequences affecting the seniority of the person transferred and as such, such powers, even if available, should only be sparingly issued. The applicant's family life would be thoroughly disturbed by virtue of this transfer. The alleged incident does not call for such a drastic action, especially when the department has earlier kept the applicant under suspension. The consequence of loss of cancelled ticket is that the individual has to shell out as much as Rs 1,500 and in the case of the applicant, such an occasion arose. The applicant has relied upon the following decisions in support of his case:-

- (a) 1994 SCC (L & S) 562.
- (b) 2005(2) ATJ 125
- (c) 2004(1) ATJ 134
- (d) 2004(1) ATJ 328
- (e) 2004(1) ATJ 477
- (f) 2004 (3) ATJ 97

7. Senior Counsel for the respondents submitted that none of the grounds is sustainable. The incident did happen and it is on account of such detection



of malpractice that the applicant has been transferred. The CCM(PS) has adequate powers to transfer the applicant on administrative grounds.

8. Arguments were heard and documents considered. Though the counsel for the applicant submitted that such an incident of return of ticket for cancellation had not occurred at all, in her representation dated 24-02-2008 vide Annexure A-10/2, the applicant herself has stated "ticket numbers 67 and 68 were surrendered for cancellation." Thus, the contention of the counsel that no ticket had been surrendered for cancellation has to be summarily rejected.

9. As regards delegation of powers, reliance is placed by the counsel for the applicant to the following decision of the Apex Court, in which the Apex Court has held as under:-

Ramesh Chandra Tyagi (Dr) v. Union of India, (1994) 2 SCC 416, at page 418 :

" Two basic questions arise, one, whether the basic transfer order passed against the appellant was valid and in accordance with law and the other if the dismissal order suffers from any infirmity. 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 in 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."

10. In the instant case, full powers have been conferred upon the Heads of Department, vide Annexure A-3 and Chief Commercial Superintendents have been specified as one of the Heads of the Departments. The appellation Chief Commercial Superintendent has since been modified to read as Chief Commercial Manager. In addition to Chief Commercial Manager, according to the respondents, there are four other Chief Commercial Managers including Chief Commercial Manager (P.S) who controls the entire establishment and store matters as per Annexure R-4. The responsibilities afforded to the Chief Commercial Manager (PS), axiomatically, accompany corresponding powers to be exercised in accomplishing the task assigned to him. In any event, the powers having been delegated to the Principal Head of Department (PHOD) as well as Head of the Department, and Chief Commercial Manager (PS) being the Head of the Department of Passenger Service, in our considered view, he has adequate power to effect the transfer of the applicant. The power exercised by the Chief Commercial Manager (PS) does fall within the ambit of the provisions of Rule 226 of the Establishment Code and this power being available with the Chief Commercial Manager (PS) on the date of issue of the transfer order, the above decision cited by the applicant's counsel does not apply to the facts of this case. Thus, the contention of the applicant that




there is no adequate power with the Chief Commercial Manager (PS) has to be rejected. The other authorities cited are also not applicable to the facts of this case.

11. The respondents are right when they contended that the guidelines of normal routine transfer are not applicable to a transfer on administrative grounds.

12. The counsel for the applicant also raised the issue of transfer being violative of Annexure A-5 notification of the Railways. It is seen from the sequence of events that though the authorities have suspended the applicant w.e.f. 22-11-2007, they had issued the revocation order of suspension dated 14-12-2007 and as per the respondents, on 19-02-2008 the suspension had been revoked. Thus, a day prior to the filing of the OA, the applicant's suspension already stood vacated. As such, as on the date of application they're being no suspension, the impugned order is not violative of Annexure A-5 order of the Railway Board.

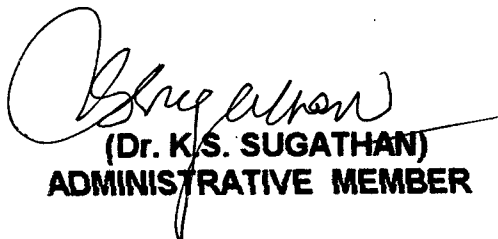
13. In so far as the merit of the matter is concerned, though a feeble attempt has been made by the counsel for the applicant to define the term, 'detected' appearing in Annexure R-1 whereby the provision of effecting inter-divisional transfer has been extended to those who have mass dealing and who have been detected to be indulging in malpractices and to contend that such a detection has not taken place here, that too has to be summarily



rejected in view of the clear admission of the applicant in her representation dated 24-02-2008.

14. In view of the above discussion, we have absolutely no hesitation to hold that there is nothing illegality or irregularity in the issue of Annexure A-1 order and the transfer of the applicant from one Division to another being within the competence of the Chief Commercial Manager (PS), the impugned order cannot be held to be illegal. Hence, the application fails and is dismissed. Interim order gets automatically vacated.

(Dated, the 8th July, 2008)


(Dr. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(DR. K B S RAJAN)
JUDICIAL MEMBER

CVR.