

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.161/2004

Monday this the 6th day of December, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

C.Vasudevan, aged 50 years,
S/oKaliyan, Goods Driver/
Southern Railway, Quilon,
Residing at Charuvila Melethil Veedu,
Kulamon PO, Kottarakkara,
Kerala.Applicant

(By Advocate Mr.T.C.Govindaswamy)

v.

1. Union of India, represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town PO, Chennai.3.
2. The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town PO,Chennai.3.
3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum.14.
4. The Senior Divisional Mechanical Engineer,
Southern Railway, Trivandrum Division,
Trivandrum.14.
5. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.14.
6. The Additional General Manager,
Southern Railway,
Headquarters Office,
Park Town PO, Chennai.3.Respondents

(By Advocate Mr.P.Haridas)

The application having been heard on 11.10.2004, the
Tribunal on 6.12.2004 delivered the following:

.2.
O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The challenge in this application is against Annexure.A.1 order by which the applicant was transferred from Trivandrum Division to Madras Division of Southern Railway and Annexure.A. 10 order by which his representation for cancellation of transfer was rejected. Shorn off details which are not material the facts are as follows.

2. The applicant a member of Scheduled Caste working as Goods Driver, Quilon in Trivandrum Division was transferred by Annexure.A.1 order dated 1.12.03. The order was issued while he was undergoing training at Tiruchirapally. Stating that his mother, wife and son are sick, that he was facing D.A.R. proceedings as also court cases and that his transfer during the pendency of the proceedings would cause great hardship and prejudice to him he submitted a representation Annexure.A. 7 to the 1st respondent. Finding no response the applicant filed OA 35 of 2004 seeking to set aside Annexure.A.1 order of transfer. The said O.A. was disposed of by this Bench of the Tribunal by order dated 14.1.2004 directing the 1st respondent to consider the representation judiciously and to pass an appropriate order keeping in abeyance the effect of the impugned order. In obedience to the direction Annexure.A.10 order dated 24.02.2004 has been issued turning down the request for cancellation of transfer on the ground that the transfer was made in the exigencies of service to further

public interest, as the non-cooperation of the applicant to work in trains when called, and disobedience was not conducive to smooth functioning of the train service. Aggrieved by that the applicant has filed this application seeking to set aside Annexures.A.1 and A.10 orders and to direct the respondents to grant him consequential benefits. It has been alleged in the application that transfer of the applicant from Trivandrum Division to Madras Division is against the Rules, that during the pendency of the disciplinary proceeding a Railway Servant should not ordinarily be transferred, that he should have been given the benefit available to Members of the Scheduled Castes/Scheduled Tribes in the matter of posting in terms of Railway Board letter Annexures.A2 to A4, that his transfer was punitive, that it was issued malafide out of vengeance as the applicant had represented to the Chairman of the Scheduled Caste/Scheduled Tribe Commission regarding denial of justice to him as a member of Scheduled Caste and that the Ist respondent has not personally applied its mind and disposed of the representation.

3. The respondents seek to justify the impugned order on the ground that the transfer of Railway Servants from one Railway establishment to another can be made in exigencies of service and that the impugned order of transfer was made in the exigencies of service. The allegation of malafides have been refuted. It is pleaded by the respondents that the refusal on the part of the applicant to perform duties



when called upon, which resulted in award of penalties, warnings and censure shown in the lists Annexures.R.1 and R2 and his general attitude towards work having been found to be detrimental to the interests of the Railways which is a public utility service, the competent authority bonafide issued the impugned order. It is further contended that the 1st respondent has personally considered the representation and disposed it of under his signature. A copy of the order has been produced as Annexure.R.3. The respondents contend that the Tribunal may not interfere in the matter.

4. I have carefully perused the pleadings and documents placed on record. Shri Govindaswamy first argued that the applicant who belongs to the Trivandrum Divisional Cadre was not liable to be transferred out of his Division in terms of Rule 226 of the Indian Railway establishment Code Volume I and therefore the Annexure.A.1 order of transfer is bad in law and Annexure.A.10 order refusing to cancel the same is unsustainable. Shri P. Haridas, the standing counsel for Southern Railway referred us to Rule 226 which reads thus:

"Normally a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a Project in or out of India. In regard to Group C and Group D railway servants, the power of the President under this rule in respect of transfer, within India, may be exercised by the General Manager or by a lower authority to whom the power may be re-delegated."

and argued that in the exigencies of service a Railway Servant can be transferred from one cadre to another and that the details given regarding the performance of the applicant in the reply statement and in Annexures.R.1 and R.2 lists amply prove that there was exigency of service in transferring the applicant. I find considerable force in the argument of the learned counsel of the respondents. It is seen that during the year 2003-2004 the applicant was awarded penalties five times for not performing duty or not being found when called for duty. Once he was censured. There are three proceedings pending. It is seen from Annexure.R.2 list of punishments imposed on the applicant from the date of his appointment, he has been awarded penalties 18 times. Most of the penalties were for the misconduct of not being available for duty or showing dereliction of duty. The details show that the public interest was suffering on account of the unbecoming conduct of the applicant and that the decision to transfer the applicant was taken in public interest. Shri Govindaswamy argued that if the transfer of the applicant was on account of misconduct then it being punitive is vitiated for non compliance of principles of natural justice. I find little substance in this argument. It is not for a specific act of misconduct that the applicant was transferred and the transfer was not as a measure of penalty either. Because on account of the several acts or omission of the applicant it was found that public interest was suffering the competent authority with a view to improve the functioning of the

Railways as a public utility service decided to move the applicant from the place of his posting hoping that such a change would bring about a healthy change in his attitude as has been stated in the impugned order Annexure.A.10 with which I do not have any reason to disagree. Shri T.C.Govindaswamy argued that Annexures.R.1 and R.2 and that averments regarding refusal of the applicant to perform duty cannot be considered by this Tribunal as justification for the transfer because those reasons were not stated in the impugned orders and that the impugned orders should be justified only on the reasons stated in them. Learned counsel on this point referred us to the ruling of the Apex Court in Mohinder Singh Gill and another Vs. Chief Election Commissioner and others, AIR 1978 SC 851. A perusal of Annexure.A.1 would show that the applicant's transfer was on administrative grounds and in Annexure A.10 the first respondent had stated that the frequent acts of the applicant in not reporting to duty had affected the train service and caused inconvenience to public and that was why he could not be retained at Quilon. All the details of the exigencies of service need not be narrated in a routine administrative order like an order of transfer. The argument therefore does not have any force.

5. Shri T.C.Govindaswamy next argued that the transfer of the applicant pending disciplinary proceedings is against the Railway Board orders and opposed to the decision of the various Benches of the Tribunal. However Shri Swamy could

not bring to my notice any Railway Board Order which prohibits the transfer of a Railway Servant even when exigencies of service require such an action just because disciplinary proceedings is pending. Such a declaration is not seen made in any rulings also. Hence this argument also has to fail.

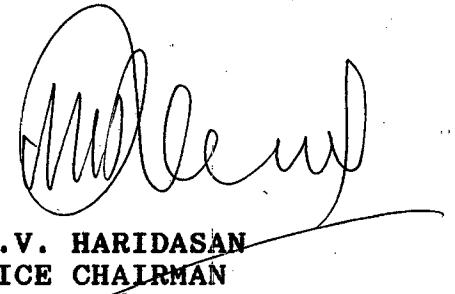
6. Shri Swamy next argued that the applicant being a member of the Scheduled Caste he should not have been transferred to a distant place and that in his case the instructions contained in Railway Board's letter Annexures.A2 to A4 have been violated. Annexures.A2 to A.4 do not prohibit transfer in the exigencies of service and therefore the argument has only to be mentioned and rejected.

7. The last limb of the argument of Shri T.C.Govindaswamy is that the order of transfer is vitiated by malafides as the respondents are hostile towards him being a member of the Scheduled Caste Community and an activist. No one in personal capacity has been impleaded and it has not been stated which of the officers has any reason for enmity to the applicant. It is difficult to accept that the entire Southern Railway administration is against Scheduled Caste Community or inimical to the applicant in particular. There is no specific allegation of malafides too.

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8. In the conspectus of facts and circumstances finding no merit, I dismiss the O.A. leaving the parties to bear their costs.

Dated this the 6th day of December, 2004



A.V. HARIDASAN
VICE CHAIRMAN

s.