

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 234 of 2001

Thursday, this the 12th day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. S. Hariharan, S/o V. Subramanian, Commercial Clerk, Coimbatore Junction, Southern Railway Residing at "Swarna", Kaikuthu Parambu, Maithri Nagar, Noorani Post, Palghat District.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India represented by the Secretary to Government of India, Ministry of Railways, New Delhi.
2. The General Manager, Southern Railway, Headquarters Office, Park Town PO, Chennai-3
3. The Chief Personnel Officer, Southern Railway, Headquarters Office, Park Town PO, Chennai-3
4. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, Palghat.
5. The Chief Vigilance Officer, Southern Railway, Headquarters Office, Park Town PO, Chennai-3Respondents

[By Advocate Mrs Sumathi Dandapani]

The application having been heard on 12-7-2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1 and to direct the respondents to grant him consequential benefits.

2. The applicant is a Commercial Clerk at present working at Coimbatore Junction Railway Station of Palghat Division of Southern Railway. He belongs to the Palghat Divisional cadre of Commercial Clerks. As per A1, he is transferred from Palghat Divisional cadre to Madras Divisional cadre. On the basis of a decoy check conducted by some Vigilance Inspectors of the Railways, he was served with a charge memo (A2). The departmental enquiry was concluded on 23-2-2001. A1, the order of transfer, is ultra vires of Rule 226 of the Indian Railway Establishment Code Vol.I. It involves transfer from one cadre to another and from one Division/Establishment to another. There is no exigency of service warranting his transfer. A1 is opposed to A6 orders of the Railway Board. As per instructions of the Railway Board on the subject, a railway servant facing disciplinary proceedings cannot be transferred from one division to another during the pendency of proceedings.

3. Respondents resist the OA contending that the order under challenge was the outcome/result of a check made by the Vigilance to test the integrity of the applicant, where it was proved that the applicant was dishonest. The enquiry was over and the charges stand proved. Consequently the applicant was issued with a transfer order to an adjacent Division. The transfer was ordered as the applicant was caught red handed and found indulged in malpractice. Notwithstanding A6, the applicant was transferred only on account of his dishonest transaction. "The transfer is not due to any exigency and not ultravires of Rule 226 of IREM." The transfer is the result of a departmental enquiry. A guilty person cannot take shelter under A6.

4. It is well settled that an order of transfer will be interfered with by the Tribunal/Courts only in exceptional circumstances.

5. A1, the impugned order dated 22-2-2001, says that on administrative grounds the applicant is transferred with immediate effect as he is involved in vigilance case. In A1 there is a reference to the letter of CPO, Madras dated 15-2-2001. Though in A1 it is stated that the applicant is transferred since he is involved in a vigilance case, the stand taken by the respondents in the reply statement is that A1 is the outcome/result of a check made by the vigilance to test the integrity of the applicant, where it was proved that the applicant was dishonest. If he was only involved in a vigilance case, it cannot be said that the charge or charges would have been proved. It could be said that the employee is found guilty when the authority concerned enters into such a finding. A3 shows that the enquiry was completed with the examination of defence witness, that the applicant was advised to submit his written brief on or before 28-2-2001 and that failing which the enquiry report will be finalised with the available evidence. There is no attack against A3. From A3 it is clear that as on 23-2-2001 the applicant was not found guilty of the charges or that it was not proved that he was dishonest and it could not also be. So, the stand of the respondents that it was because of the fact it was proved that the applicant was dishonest A1 was issued cannot be accepted. If the stand of the respondents is accepted, it will lead to the situation that as early as on 15-2-2001 the CPO, Madras has

decided or has come to the conclusion that the applicant was dishonest. There cannot be such a finding. There cannot be such a presumption also.

6. It is also stated by the respondents that the enquiry was over and charges stand proved and consequently the applicant was transferred as per A1. On the face of A3, the stand of the respondents cannot be accepted.

7. Rule 226 of the Indian Railway Establishment Code Vol.I says that ordinarily 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, that 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, and that in regard to Group C and Group D railway servants the power of the President under those rules 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. So, as per Rule 226, a transfer can be effected in the exigencies of service. Respondents say that A1 order of transfer is "not ultravires of Rule 226 of IREM". In order not to be ultra vires of Rule 226 of the Indian Railway Establishment Code Vol.I, the transfer should be in the exigencies of service. Respondents also say that the "transfer is not due to any exigency". If the transfer is not due to any exigency, then no doubt it is ultra vires of Rule 226 of the Indian Railway Establishment Code Vol.I.

8. The learned counsel appearing for the respondents drew my attention to the ruling in Shri Kamlesh Trivedi vs. Indian Council of Agricultural Research and another [1989 (1)SLJ (CAT) 641] and argued that by transferring the applicant there is no double jeopardy. The applicant is not proceeding on the footing that A1, the order of transfer, is liable to be interfered with since it amounts to double jeopardy. The learned counsel for respondents submitted that reliance is placed on the said ruling in order to substantiate the stand that the transfer is not a penalty. In the said ruling, it has been held that when an order of transfer is made after the disciplinary proceedings have concluded imposing penalty the Tribunal may be required to consider whether it is arbitrary, malafide or in colourable exercise of power, but it certainly cannot strike down the order as penal merely because it is in respect of a person against whom there are allegations of misconduct. Here, the specific stand taken by the respondents is that as a result of the enquiry it was proved that the applicant was dishonest and as the charges stand proved A1 order was issued. That being so, the Tribunal is required to consider whether it is arbitrary or in colourable exercise of powers. It is further stated in the said ruling that if a finding of misconduct is arrived at without observing the principles of natural justice and that is the operative reason for the transfer, it is liable to be quashed. According to the respondents, finding of misconduct has been arrived at and as a result of the same A1 was issued.

9. The learned counsel for respondents drew my attention to the ruling in Rajan vs. Director General of Police [1999 (2) KLT 673], wherein it has been held that a transfer can always be done in public interest. There cannot be any dispute on this aspect.

10. In C.C. Ouseph vs. Union of India and others [2000 (1) ATJ 54] it has been held that if a transfer was made for a misconduct or a conduct unbecoming of a government servant as a punishment, the principles of natural justice demand that a notice should be given to the person concerned and he should be heard before taking a decision.

11. Respondents specifically say that charges against the applicant were proved. There is nothing stated in the reply statement as to the punishment awarded to him after having found him guilty of the charges. What could be seen from the reply statement is that instead of awarding any punishment specified in the Railway Servants (Discipline and Appeal) Rules, 1968, the applicant was given a transfer as per A1. If that is the position, that is taken as a punitive measure. In that circumstance, the ruling in 2000 (1) ATJ 54 is attracted.

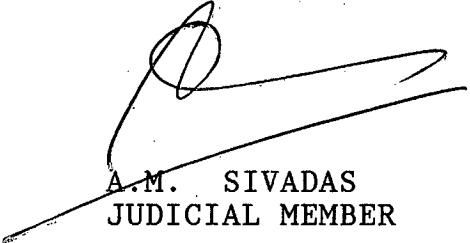
12. In Shri Bhupenendra Kumar and Others vs. The General Manager, Northern Railway, New Delhi and Others [1999 (2) ATJ 647], it has been held that where arbitrariness or malafide is writ large on the face of the order the courts can step to ensure that justice is done and it is needless to add that the respondents are free to consider the transfers within the

Division if otherwise required in public interest. Here it is a case where the applicant has been transferred as per A1 not within the same Division but to another Division.

13. In Suresh Kumar Bholu vs. Union of India & Others [2000(3)(CAT) SLJ 125], wherein facts are almost identical to the facts of the case at hand, the Tribunal has observed that the respondents have acted against their own policy circulars on transfer matters.

14. Accordingly, the Original Application is allowed. A1 is quashed. Respondents are directed to grant consequential benefits, if any, to the applicant. No costs.

Thursday, this the 12th day of July, 2001



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the Order No. J/C 10/2001 dated 22-2-2001 issued by the 4th respondent.
2. A2 True copy of the Charge Memo No. CON/J/V/467 dated 22-9-2000.
3. A3 True copy of the proceedings of the departmental enquiry.
4. A6 True copy of the Railway Board Order No. 147/97 dated 5-11-1997.