

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 296 of 2013

Friday, this the 14th day of February, 2014

CORAM:

Hon'ble Dr. K.B. Suresh, Judicial Member

R. Vijayakumar, aged 47 years, S/o. C. Rajadurai,
Senior Commercial Clerk, Southern Railway,
Chirayinkizhu, Trivandrum Division, Residing at 133 A,
Railway Quarters, QAC Road, Kollam. **Applicant**

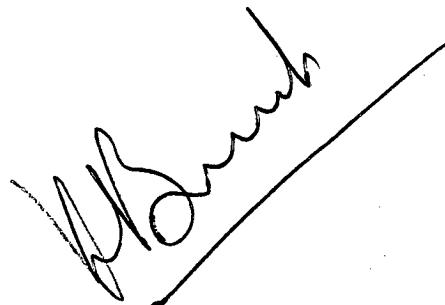
(By Advocate – M/s. Varkey & Martin)

V e r s u s

1. The General Manager, Southern Railway,
Headquarters Office, Chennai-600 003.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
3. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 14.
4. The Chief Commercial Manager (Passenger Service),
Headquarters Office, Park Town PO,
Chennai – 3. **Respondents**

(By Advocate – Mr. Thomas Mathew Nellimoottil)

This application having been heard on 14.2.2014, the Tribunal



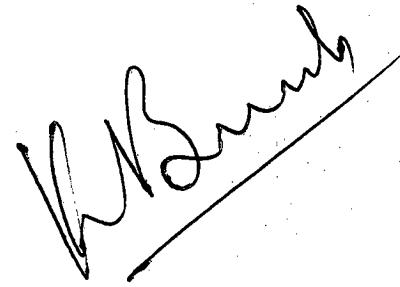
on the same day delivered the following:

ORDER

Heard.

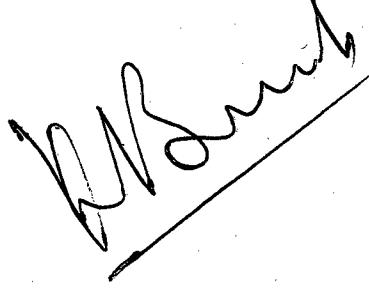
2. Applicant assails his transfer to Palghat Division on multiple grounds.

3. Apparently there was a complaint regarding some of the Booking Clerks indulging in ulterior transactions overlooking the priority of passengers waiting in the queue. It was found that they were booking tickets for persons who were not in the queue and vigilance check was conducted on 28.12.2012. Applicant who was the Senior Commercial Clerk was caught red handed during this transaction and at the time of his entrapment he was found with two tatkal tickets which he had booked overlooking the priority of the passengers. He had undeclared cash with him. The Railway cash was short. According to the paragraph 123 of IREM the extant directions are that such people must be transferred out of the Division to enable a more purposive investigation.

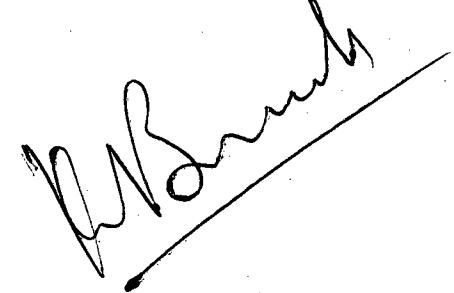
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4. **Two elements exist in service jurisprudence. The protection of a Government servant during the course of his employment and the protection of the governed because of his employment.** If a Government servant commits an infraction by which the general public is made to suffer the normal stipulation is that the unseen faces of the public is never kept in mind when actions are formulated or forgotten. Apparently after the initial order of transfer as rightly been pointed out by the learned counsel for the applicant there was no action on the part of the respondents. He contends that the unnecessary delay in completing the disciplinary inquiry have caused him prejudice and he relies on a medical certificate issued by a competent Doctor to indicate that he is suffering from major psychotic disorder for two years prior to this incident. His case might be that therefore, because of the negligence on the part of the respondents his disorders might have aggravated.

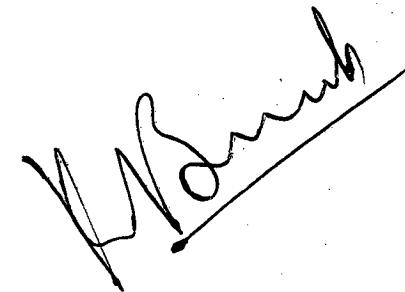
5. He also alleges that the person who had issued the order, i.e. the CCM/PS/M is not competent to pass such an order as only the Chief Commercial Manager who is the Head of the Department can



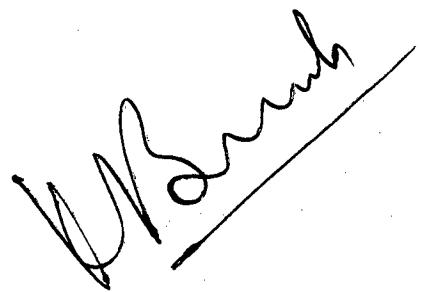
pass such an order and not a subordinate officer and the power of the DPO do not extend beyond the parameters of the Division. He also relies on a ruling of this Bench in OA No. 653 of 2005 wherein also another Senior Ticket Collector was apprehended. But in this case nothing incriminating was found against the applicant. The Bench rely on certain Hon'ble Apex Court judgements to come to the conclusion that there cannot be a transfer as a punishment. It rely on a Principal Bench decision in Upendra K. Vs. G.M., Northern Railway – 1992 (2) ATJ 648, when the transfer on administrative ground and a penal action was considered. Therefore, the Bench held that transfer as an alternate punishment alone cannot survive. It is the request of the learned counsel for the applicant that this Bench also should follow the same. He also relies on another ruling of this Bench in Original Application NO. 698 of 2011 wherein intra-divisional transfer was assailed. There also transfer was indicted as a punishment and not for administrative exigencies. Apparently the learned counsel for the applicant is correct. A Government servant cannot be transferred as a punishment.

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6. But then the learned counsel for the respondents points out that in paragraph 7 of their reply they have indicated that a detailed inquiry will be followed in which the applicant will be provided all reasonable opportunities to defend his case and prove his innocence. They also say that the applicant had not offered any remarks at all for the shortage in Railway cash and for the other charges and whatever he has said has no convincing value or in other words they do not believe what he has said and a disciplinary inquiry is contemplated. They would say in paragraph 9 that the Chief Commercial Manager/PS/MAS is an HOD rank officer and he is competent to transfer an employee working in the Commercial Department. They would also say that according to rule 226 of the Indian Railway Establishment Code, Volume No. 1 that an officer to whom powers may be re-delegated can also transfer Group-C and D Railway servants to any other establishment. ***Unless fraud is eliminated in Government service the general public will suffer great detriment. While ensuring protection of the employees it must be taken into consideration that the process of governance exists for the people of the nation.*** Therefore, the issue of the Government servant cannot be taken piecemeal. After

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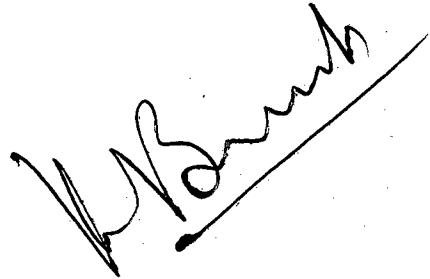
having been caught red handed there must be a disciplinary action against the applicant and to enable this, in a prevailing culture of militant protectionism it is imperative that the concerned Government officials are kept out of the sphere of action so that the integrity of the disciplinary process can exist unabated and undiminished. Therefore, there cannot be any doubt that the Railway Board instructions that the concerned person must be kept out of the reach of mischief cannot be faulted provided that **after being kept out it must be for the duration of disciplinary proceedings; subject to its consequences if any.** The other alternative would be an immediate suspension. Therefore, I have asked the learned counsel for the applicant about his preference in being kept under suspension or being compelled to go out of the Division. He would say that if he is transferred within the Division then he may not have much grievances **but in the prevalent condition it is imperative that a person who is alleged of such a wrong doing would not have been able to do so without the active participation of his co-workers.** Therefore, it is undesirable to keep him in the same Division. He had no instructions from his client as to whether he should remain in suspension instead of being transferred. Therefore,

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it is necessary that since he be removed from the place of occurrence and in particular view of the fact that without the co-operation of co-workers such things could not have happened at all. At this point he relies on the judgment of the Hon'ble High Court in WP(C) No. 605 of 2013 dated 1st March, 2013 in which an almost similar issue was considered but in that case there was a reduction in four stages in pay by the transfer and the question which came up about was can there be twin punishment for the same offence. That judgment has no application to the present case.

7. *Unless such infraction are dealt with by a firm hand the greater public interest along with the concept of fair governance will be curtailed and diminished.*

8. But at the same time the disciplinary inquiry if at all must commence within two months next. After having made him to wait all this long, if they cannot do this within two months then it will be dropped and in that case the concerned official must be put to task by the Railway Board. It is to be understood that the transfer to another Division will be for the duration of the disciplinary inquiry and its consequences if any. After such consequences are over the concerned authority may consider whether it is required and justified



to bring him back.

9. At this time it is submitted that the applicant is residing with his family at a Railway quarters at Kollam and his children are studying. He assures that he will not apply for the quarters at the transferred place. Therefore, since the inquiry also will be held some where near to that place it will be appropriate to allow him to retain the quarters till the final decision is taken in the disciplinary inquiry.

10. In the result there is no merit in the Original Application. It is dismissed but with the above direction. No costs.

11. A copy of the judgment shall be addressed to the Members of the Railway Board for information and to take appropriate action against the officials for negligence. O.A dismissed. No costs.



(DR. K.B. SURESH)
JUDICIAL MEMBER

“SA”