

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.302/2003

Wednesday, this the 4th day of June, 2003.

C O R A M

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

C. Narayanan Kutty,
Senior Travelling Inspector of Accounts,
Southern Railway, Calicut.
Permanent Address : "Gurukripa",
Pattambi Road,
Shornur -2.

..Applicant

[By Advocate Mr. T.C. Govindaswamy]

Vs.

1. The Union of India represented by the General Manager, Southern Railway, Headquarters Office, Park Town, P.O. Chennai -3.
2. The Financial Advisor and Chief Accounts Officer, Southern Railway, Moore Market Complex, Chennai - 3.
3. The Assistant Financial Advisor (SN), Office of the Financial Advisor and Chief Accounts Officer, Southern Railway, Moore Market Complex, Chennai - 3.

..Respondents

[By Advocate Mr. P. Haridas)

The application having been heard on 26.05.2003, the Tribunal on 04.06.2003 delivered the following :

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant, who was initially appointed as a Signaller under the respondents in Southern Railway during 1978 and subsequently earned promotion in various posts, is presently working as Senior Travelling Inspector of Accounts, Southern Railway, Calicut. He was firstly transferred from Shoranur to Bhadravathy during April, 1999 and again from Bhadravathy to Coimbatore during April, 2000 and thereafter, he was transferred to Calicut in April, 2002, and now vide order Annexure A/1 dated

3.4.2003, the applicant was transferred from Calicut to Hubli, South Western Railway, on loan basis. Vide order Annexure A/2 dated 3.4.2003, the applicant was directed to get himself relieved to report to FA&CAO/SWR, Hubli. According to the applicant, his transfer is made on loan in the South Western Railway applying 'pick and choose' formula. Aggrieved by the impugned orders A/1 and A/2, the applicant has filed this O.A. under Section 19 of the Administrative Tribunals Act, 1985, praying for following reliefs:

- (a) Call for the records leading to the issue of Annexure A1 and quash the same in so far as it relates to the applicant.
- (b) Call for the records leading to the issue of Annexure A2 and quash the same.
- (c) Award costs of and incidental to this application.
- (d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

2. Learned counsel for the respondents has filed a statement on 17.4.2003 and subsequently on 2.5.2003, the respondents themselves have filed a detailed reply statement contending that the applicant being a Travelling Inspector of Accounts who inspected the relevant accounts at Calicut Railway Station of Southern Railway, failed to trace out and report the alleged irregularity to the administration. It is also averred that it is the duty of the Travelling Inspector of Accounts to audit and verify the said accounts once in a week. He is to strictly verify the records pertaining to cash remittance and the entries therein. Investigation of a case of excess remittance of Rs. 10,000/- pertaining to 26.11.2002 of West Hill Station revealed misappropriation with regard to the transactions dated 26.4.2002, 6.9.2002 and 25.11.2002 respectively. Though the entries of cash remittance were made at the West Hill Station, the said amount has not been received at the cash office, Chennai. The amount involved comes to Rs. 1,23,060/-. In the instant case, the cash

remittance receipt pertaining to the dates mentioned above, which will be forwarding from Chennai has not reached the Calicut Station. The Travelling Inspector is bound to verify the retrieval receipts with regard to each and every day's transaction. Gross collections pertaining to 16.09.2002 should have been available there at the Station when he conducted his inspection on 17.09.2002. Though the applicant is bound to open the bag, he did not do so. Therefore, there was dereliction of duty on the part of the applicant to trace out the said irregularity and to report to the administration. The vigilance department has already started an investigation into the matter and departmental enquiry has also been ordered with a view to bring out truth. In these circumstances, Annexure A/1 order of transfer has been issued on administrative ground. Respondents submitted that the intention behind issuing the said order is to pay way for an impartial investigation enquiry. The contention of the applicant that the Railway administration never allowed him to complete the term prescribed by the rules at any one of these stations is patently wrong because his transfers from Bhadravathy to Coimbatore and thereafter to Calicut were made on his own request. The contention of the applicant that the transfer orders were issued against the transfer policy of the Railways to accommodate one or the other in his place is wrong and hence denied. Further contention of the applicant that the present transfer order is in defiance of Railway Board's Order No. 147/97 dated 5.11.97 is also wrong. Respondents submitted that it becomes necessary to transfer the applicant from the present station during the pendency of investigation in order to meet the interest of justice. The applicant was transferred purely on administrative ground and any averment contrary to the same is wrong and denied. The applicant who inspected the West Hill Station during the course of his periodic accounts inspection has failed to notice and to report the administration

the non-availability of acknowledged cash remittance note pertaining to 26.4.2002. The applicant who commenced his inspection of West Hill Station on 17.09.2002 failed to check the previous days earnings which was available on hand in the sealed cash bag awaiting for despatch, despite the fact that no 'Cash chest' was available in the nominated 'Cash chest' carrying train on that particular day. As per para 210 of TIS Manual, it is the duty of the applicant to open and verify the contents of the sealed cash bag. In the instant case, though the cash bags containing the station earnings (Coaching and Goods) of dates 26.4.2002 and 16.9.2002 were received at the Cash Office, Chennai, it did not contain the goods cash. Had the applicant verified the contents of the cash bag during his inspection, this serious irregularity could have been detected earlier. The respondents would, therefore, submit that the applicant has failed to discharge his duty with due care. The contention of the applicant that as he exercised his option to be retained in Southern Railway, any order of his transfer to Hubli is a bad one in the eye of law, is not sustainable because the question of option arise only in matters of transfer on regular basis. In the instant case, the transfer is only on a loan basis and the employee can come back to his parent Railway as and when his tenure at Hubli, South Western Railway, is over. The administration bona fide believed that allowing the applicant to continue at the same section where the incident of misappropriation of money took place, may tamper the investigation and enquiry. Hence the administration felt it necessary to remove the applicant from the present place of working till the investigation and enquiry are over. Public interest was also considered while issuing such an order. Hence any averment contrary to the same is wrong and hence denied. The orders of transfer were not against the transfer policy. He had never questioned the veracity/validity of the orders then passed.

The transfer of the applicant was purely on administrative grounds pending investigation and enquiry, for the reason that the administration is of the view that allowing the applicant to continue in the present section will be an obstacle to the free and fair investigation as well as enquiry, which is going on.

3. The applicant has filed a rejoinder stating that the reason stated by the respondents is one invented to cover up their arbitrary action in picking and choosing the applicant, notwithstanding his unwillingness to be transferred to the South Western Railway. The contention that the applicant failed to trace out and report the said irregularity to the administration is incorrect. The applicant sent a communication to the Accounts Officer/Station Inspection/Madras vide Annexure A/5 and in addition to that, he intimated the authorities over phone through TIA/PGT, which will show that the applicant intimated the irregularity then and there and only on his intimation, further investigation was conducted. The CR Note consists of one sheet containing three identically worded formats. The first and second formats are filled up by the Station Masters indicating the quantum of cash and vouchers remitted. The third part will be left unfilled by the Station Master. The first part is retained in the book as a station copy/office record and other two parts are sent alongwith the cash to the Cash Office. The unfilled part is the one to be filled by the Cash Office at Chennai in acknowledgement of the cash and vouchers received and that part would again be sent back to the concerned stations alongwith the empty cash bags. There is no system of booking of the empty cash bags back to the respective stations under acknowledgement. Cash bags collected from the Cash office are dumped at Madras Central and Madras Egmore Railway Stations from where they are dumped into the Break vans of trains going to concerned directions again without any acknowledgement. This

process has been going on for several decades. With the result, on several occasions, the empty cash bag which is in open condition and the CR notes placed inside the same are not received back by the Stations. The applicant also quoted the Rules 3301 to 3304 of Chapter XXXIII of the Code for the Accounts Department Part I and II and contended that the Travelling Inspector of Accounts is not duty bound to audit and verify the said account once in a week. It is also averred that the vigilance investigation and the departmental fact finding enquiry has been ordered only at the instance of the applicant and as a sequel to Annexure A/5. Therefore, there is no valid reason in issuing impugned orders A/1 and A/2, which are faulted and deserve to be dismissed.

4. I have heard Shri T.C. Govindaswamy, learned counsel for the applicant and Shri P. Haridas, Standing Counsel for Railways.

5. Learned counsel on either side took me to the pleadings and the material placed on record. Learned counsel for the applicant submitted that the impugned orders A/1 and A/2 did not reflect that the transfer of the applicant was ordered on account of the alleged irregularity. On going through A/1 and A/2 orders, it is clear that the transfer of the applicant to South Western Railway is made on loan basis and also on administrative reason. The applicant did not give his option for South Western Railway at any point of time and therefore, the present transfer is against principles of natural justice, the learned counsel urge. The learned counsel for the respondents submitted that even though it did not contain the reason, the transfer of the applicant was ordered for ensuring free and fair investigation into the alleged irregularity. Learned counsel for the applicant submitted that that even assuming that the allegations levelled are true, it is not proper to isolate the applicant alone from

the persons who are also involved in the alleged irregularity. For such incident, the respondents cannot transfer the applicant anywhere they wish. The correct procedure is to initiate disciplinary proceedings, if any, against the applicant as well as the other faulted employees. Instead of doing so, without issuing a show cause notice to the applicant, the impugned transfer order was issued, which is not in accordance with law. Learned counsel for the applicant further submitted that the transfer of the applicant is against the policy of the Government and implemented in terms of Railway Board's Order RBE 147/97 dated 5.11.97. He also contended that the applicant is facing great difficulty because of his frequent transfer. Applicant's wife is also employed in the Central Government and his children aged 15 and 13 years respectively are also studying near Shoranur. Learned counsel for the respondents on the other hand, submitted that the transfer of the applicant was ordered purely on administrative ground and admittedly, there is irregularity on the part of the applicant for which appropriate action has already been initiated by the respondents and in the public interest as well as the interest of the Institution, it is necessary that the applicant should be sent away from the present place of posting. Otherwise, there is every likelihood of tampering the evidence etc. The respondents, therefore, contended that the impugned orders A/1 and A/2 are justified and not faulted.

6. I have given due consideration to the arguments advanced by the respective parties. My attention is invited to Annexure A/3 Circular RBE No. 147/97 dated 5.11.97 (Supplementary Circular No.6 to Master Circular No. 24) regarding posting of husband and wife at the same place/instructions in respect of Groups 'C' and 'D' Railway employees in which clause 2 stipulates that "the husband and wife may invariably be posted together in

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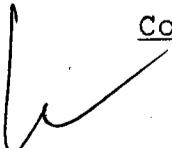
order to enable them to lead a normal family life and look after the welfare of the children, especially till the children are ten years of age." Applicant's wife is presently working at Kalladipet Post Office (Ongallur near Shoranur) and the children are studying in 10th and 8th standard respectively and this is the 4th transfer he is subjected to within the spell of four years. Clause 5(iii) of the said circular further states that "Where one of the spouses is a railway servant and the other belongs to All India Service or a Central Service, the Railway servant should be posted at station/place in the Railway/Division/PU in whose territorial jurisdiction the place/state of posting of his/her spouse falls or as close to it as possible if there is no Railway Organisation/Post at the place state of posting of the spouse." In the 'Minutes of the Meeting' (A/4) held on 4.6.2002 with the representatives of SRMU in the chamber of FA&CAO/WST regarding TIAs transfer policy, the decision reached therein is that "it is only in the best interest of TIAs that transfers are ordered, once the TIA completes three years in his area of preference or otherwise the TIA will have to wait for so many years in a place not of his choice for a posting to a place of his choice. Even if there is no demand for a particular section, no TIAs are at present allowed to continue in the same headquarters for more than six years. At least, a change in their jurisdiction is made, retaining the Headquarters. Transfer once in four years as per Railway Board's transfer policy on periodical transfers will be followed. However, in case any serious irregularities in the working of the TIA is brought to the notice of the administration a transfer will be made on administrative grounds". Therefore, it is clear from the A/4 guidelines, which was agreed to by the Union representatives and that of the management, that in case any serious irregularities in the working of the TIA is brought to the notice of the administration, 'transfer will be made on administrative

ground'. Now this Court has to evaluate the position with reference to the rules on the subject and that of the factual matrix of the case. Annexure A/1 categorically states that the applicant has been transferred from Calicut to Hubli, South Western Railway on administrative ground. Learned counsel for the respondents has made it clear that the transfer was necessitated on account of the reason that a fraud to the tune of Rs. 1,23,060/- has been found out, wherein enquiry was commenced from 13.12.2002 and verification of enquiry had started on 03.03.2003 and finding that applicant's present posting will tamper the proceedings, he was transferred to South Western Railway in the best interest of the Institution.

7. Quoting Section 121 of the Manual of Instructions for the guidance of Travelling Inspectors of Accounts, 1986 (revised), learned counsel submitted the procedure in dealing with cases of fraud and contended that "at a station where a fraud is suspected, the TIA should immediately proceed to the station concerned and conduct his investigations with proper care and deliberation, avoiding excitement and any tendency to exaggerate facts or jump to conclusions. When he is convinced that a fraud is occurred, he should proceed with the investigation in an orderly manner and take notes of such particulars as would establish conclusively the existence of the fraud and stand the test of cross-examination in a Court-of law. In such cases, the detailed check should be full and extensive instead of being confined to the limits prescribed in this Manual, with a view to establishing the nature, extent and the details of the fraud. But in this case, the applicant was inactive and hence other officers were to be deputed to do that job. Annexure A/5 shows that "a message was received by SM/WH from the cash office through Commercial Control which states about the discrepancy in the cash remittance" and a reply was sent by the applicant vide

A/5 communication. The contention is that the respondents have initiated disciplinary proceedings only on the basis of Annexure A/5 for the first time, is not correct. Whether the applicant is involved in the alleged fraud or not is a matter of investigation in which this Court has no comments at this stage. It is pertinent to note that the Travelling Inspector of Station Accounts of Southern Railway (the post which the applicant is holding) is authorised to enter any Railway Office, Station, Siding, Out-Agency, City Booking Agency, Travel Agency, Workshop, Stores Department etc. and to inspect records/materials and to take possession of or seize the documents and/or materials required for investigation. This fact is quite evident from the Identity-Cum-Authority Card produced by the respondent's counsel. This means that using his powers and jurisdiction, it is possible that the applicant may tamper the evidence or interfere in the investigation. Therefore, I am of the view that the order of transfer in the present case is justified on the administrative ground. The circumstances that has been borne out from the material available in the case file and the documents filed by the respondents, it is clear that the respondents have applied their mind in effecting the transfer of the applicant and it is a conscious and concerted decision in the interest of all.

8. As already stated, I am not making any opinion on the point of involvement of the applicant in the alleged irregularity. This is for the investigating agency to find out and till then, the transfer of the applicant as enunciated in the Minutes of the Meeting (A/4) is justified. I am of the view that the respondents have not violated the guidelines A/3 and A/4 in respect of transfer. Learned counsel for the applicant has cited a decision in support of his contention reported in AIR 1978 SC 851, Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi and Other wherein in para 8, Hon'ble Apex



Court observed that an order bad in the beginning may, by the time it comes to the Court on account of a challenge, get validated by additional grounds later brought out. I have gone through the facts of that case and the case on hand which is not similar in nature and has no relevancy with the present case. This is a transfer matter and in the transfer order, it is clear that it was ordered on administrative ground. In the reply statement, the respondents have also specifically stated that the disciplinary proceedings in the present case are in progress and, therefore, the said decision is of no help to the applicant.

9. As has been discussed above, the transfer is not a malafide one and against any rules, therefore, I am of the view that no interference is warranted by this Tribunal in the present case. In a decision reported in 2002 (1) SLJ page 86, National Hydroelectric Power Corporation Limited vs. Shri Bhagwan and Another, Hon'ble Supreme Court observed that the transfer is an incidence of service and the Court can't interfere in transfers unless it is malafide or against the rules. In another case reported in 1999 (2) KLT 673, Rajan vs. Director General of Police, Hon'ble High Court of Kerala held that the transfer can always be done in public interest. There is yet another decisions reported in (1995) 3 SCC 270, State of M.P. and Another vs. S.S. Kourav and Others, and also in 1994 SCC (L&S) 230, Union of India and Others vs. S.L. Abbas, in which Hon'ble Supreme Court has held that the Courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. It is for the administration to take appropriate decision and such decision shall stand unless they are vitiated either by mala fides or by extraneous considerations without any factual background foundation. No such exceptional situation, such as malafides etc., is found in this case. On the other hand, it is on an institutional and public interest.

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10. Considering the fact that the respondents have not violated any guidelines and the mala fide alleged appears to be incorrect and the fact that the investigation on a fraud case, in which the applicant may be or may not be implicated, has already been initiated and the transfer was ordered on the ground of administrative reason and institutional interest, I am of the view that the transfer order of the applicant is not faulted and, therefore, there is no reason to interfere with the said order. However, it may be pointed out that considering the specific submissions made by the learned counsel for the respondents that this transfer is made only for the smooth conducting of investigation, this Court is confident and trust that the applicant will be given a posting of his choice station/nearby station immediately after the enquiry proceedings are over or such other lesser time that the respondents may deem fit, if the applicant is not implicated in the said charge. In the circumstances, the O.A. does not have any merit and only to be dismissed.

11. The O.A. is accordingly dismissed with no order as to costs.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

cvr.