

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.313/2008

FRIDAY...., this the 3rd day of October, 2008.

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

V.K.Sabu Hari, S/o V.K.Kochan,
Chief Commercial Clerk III,
Trichur Booking Office,
Southern Railway, Trichur,
residing at Railway Quarters II A,
Trichur.Applicant

(By Advocate Shri Martin G Thottan)

Vs.

1. The Chief Personnel Officer,
Southern Railway,
Park Town P.O., Chennai.
2. The Senior Commercial Manager,
Southern Railway,
Trivandrum Division, Trivandrum.
3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum.
4. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum.
5. K. Arunkumar, Commercial Clerk,
Mulankumathukavu Railway Station,
Mulankumathukavu. Respondents

(By Advocate Ms.P.K. Nandini)

The application having been heard on 28th August, 2008,
the Tribunal on 3-10-08... delivered the following:

OR D E R

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is presently working as Chief Commercial Clerk Grade III in
the Booking Office at Trichur Railway Station in the Trivandrum Division of the

Southern Railway. He is 58 plus, i.e. having less than two years' service to superannuate. He is aggrieved by the order of transfer from Trichur to Mulankunnathukavu, vide impugned Annexure A-5 order dated 21-04-2008. The applicant has been transferred along with the post to the said place. He has alleged that it is with a view to accommodating one Veena Sulochanan in replacement to fifth respondent at Alwaye itself, who earlier stood transferred to ^{Where} _{on} Mulankunnathukavu that the applicant has been transferred. It is the case of the applicant that he being sick and ⁱⁿ the verge of retirement, he should not have been transferred, especially along with the post. Hence, he has prayed for quashing and setting aside of the Annexure A-5 impugned order.

2. Respondents have contested the O.A. According to them, there is no malafide alleged against them by the applicant. All that he has mentioned against the transfer are nothing but personal inconveniences, which are not genuine. The Annexure A-1 document produced in support of the sickness is subsequent to the issue of Annexure A-5 order. Transfer on administrative ground is not generally interfered with. The applicant was found on many occasions to have made short remittances and even after initiating disciplinary proceedings, there has been no change in his failure to remit the cash as per actual transaction dealt with by him. Even after the issue of the transfer order, there has been a short remittance of Rs 1616/- from 29-04-2008 to 17-07-2008.

3. The applicant has filed a rejoinder in which he has stated that transfer of one post of Commercial Clerk from Mulankunnathukavu to Trichur and in turn transfer of one post of Chief Commercial Clerk from Trichur to Mulankunnathukavu and transfer of the applicant to the said place apparently are to accommodate respondent No. 4 as her transfer to Mulankunnathukavu was to be

stalled which could be possible only when some one else is posted there. The fact that the applicant (who has put in only 3-1/2 years' service at Trichur and who is within two years of superannuation) has been transferred at a time other than that when routine transfers were already effected, clearly goes to show that it is with a view to accommodating the said respondent No. 4. As regards short remittance, there has been no allegation of misconduct or dishonest motive on the part of the applicant. If there is short remittance, to that extent the same is recovered from the applicant and no loss to the respondents takes place.

4. Counsel for the applicant argued that this is a clear case of disturbing the applicant purely to favour one individual. Smt. Veena Sulochanan stood transferred to Mulankunnathukavu vide Annexure Annexure A-3 order dated 29-02-2008 and this was under the routine transfer along with others. This transfer was modified vide Annexure A-4 order dated 18-04-2008 posting the said individual from Parcel Office Alwaye to Booking Office, Alwayee on administrative and health ground. It was stated in the said order that vacancy at Mulankunnathukavu would be filled up separately. Notwithstanding the fact that there is no post of Chief Commercial Clerk at Mulankunnathukavu, the applicant stands transferred from Trichur to Mulankunnathukavu along with the post. No justification has been brought forward to show the necessity of shifting a higher post from Trichur (a bigger station) to Mulankunnathukavu (a very small station). Apparently the transfer is initiated as it is with a view to favouring the individual. Again, the applicant having been in Trichur only for the past 3-1/2 years and he nearing the age of superannuation, under the normal transfer policy, his transfer is not to be made.

5. Counsel for the respondents argued that the applicant has been transferred on administrative grounds. He has been found, in the course vigilance inspection,

to have made short remittances. This is not an isolated occasion. As such, the vigilance department has, in addition to recommending initiation of major penalty proceedings, recommended transfer. It has therefore become necessary to see that the applicant is no longer in the same place but is moved out. Even if there be no vacancy to the post of Chief Commercial Clerk elsewhere, with a view to removing the applicant from Trichur, due to his continued habit of making short remittances, it was proposed to transfer the applicant along with the post elsewhere, where the possibility of his short remittance would not be there or would be minimum. There is absolutely no link with the retention of the fourth respondent at Alwaye and the move of the applicant. Both of them are independent of each other.

6. As it was felt necessary to have a look at the records to see whether there has been any link between the transfer of the applicant and of the said Veena Sulochanan, relevant records were called for, for perusal. The same has been made available.

7. Arguments were heard and documents perused, including the records produced.

8. First to deal with the legal position relating to judicial interference in matters of transfer. In the case of *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, (2004) 12 SCC 299, wherein the Apex Court has also referred to the decision in the case of Debnath, relied upon by the counsel for the respondents, the Apex Court has held as under:- ,

“4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly **arbitrary** or visited by mala fide

or infraction of any prescribed norms of principles governing the transfer (see *Abani Kanta Ray v. State of Orissa* 1995 Supp (4) SCC 169. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see *Union of India v. S.L. Abbas* (1993) 4 SCC 357). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. In *Union of India v. Janardhan Debanath* (2004) 4 SCC 245 it was observed as follows:

*"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan* (2001) 8 SCC 574."*

9. Without interfering with the other decisions of the Apex Court as available till then, in matters of transfer, the Apex Court in the case of *B. Varadha Rao v. State of Karnataka*, (1986) 4 SCC 131 has held as under:-

"6. One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."



10. The test is whether the applicant's case falls in the category of Damodar Prasad Pandey/ Debnath or Varadha Rao.

11. True, the applicant has been transferred with the post. Normally a post is attached to a place, depending upon the work load. Higher the work load or greater the responsibility, higher the post sanctioned to that place. Otherwise, it would lead to additional expenditure to the exchequer. No justification or functional necessity has been given in this case as to the need to have one post of Chief Commercial Clerk at Mulankunnathukavu when the work load in that station could be carried out by a senior Commercial Clerk. But this alone does not lead to a conclusion that action of the respondent is vitiated nor could the adjustment so made be treated as abolition or surplusses of posts.

12. The above would then lead to a conclusion that the intention of the respondents in shifting the applicant along with the post from Trichur is with a view to removing the said applicant from Trichur. If the intention is to move him from Trichur even at the cost of losing one post of Chief Commercial Clerk at Trichur, then why only Mulankunnathukavu and why not some other place would be the question. The argument of the counsel for the applicant in this regard is that the same is with a view to favouring one individual who originally was transferred to Mulankunnathukavu by retaining her at Alwaye itself.

13. To verify as to whether there has been any interlink between the retention of the said individual and move of the applicant, the original records were perused. From the records it is observed that there is absolutely no link between the two. In fact, Smt. Veena Sulochanan was transferred by a general order vide Annexure A-3 order dated 29-02-2008 from Alwaye PO to Mulankunnathukavu. She had

penned a representation dated 3rd March 2008 praying for her retention at Alwaye itself and family position (of she having a tender child of 2 years and another young child of 7 years, with the husband away due to his service) has been highlighted. This representation along with many other representations of various other persons were considered together by the Senior DCM who had approved, inter-alia of her retention at Alwaye at C.C. at Booking Office. This decision is dated 11-04-2008. Vide Annexure A-4, it was stated that the vacancy at MGK would be filled up separately. This was the position as on 18-04-2008.

14. Coming to the posting of the applicant, the same appears to have the grass root in a vigilance department communication dated 09-10-2007 issued by the then Senior Vigilance Officer. In fact the said communication talked not only of recommendation for transfer but also touching the misconduct of the applicant. On 04-03-2008, the FA & CAO referred to misappropriation of Railway money by the applicant and advised taking suitable departmental action against the applicant. A note was put up to the Sr. DCM on 31st March, 2008 about the above matter with a recommendation that the applicant be transferred out of Trichur. The Sr. DCM had in his own hand, endorsed, "Shri V.K. Shabu Hari CCC III/TCR proposed to be transferred along with post on administrative account in lieu of SCC post to MGK. DRM may kindly approve please." It was on 17-04-2008 that the D.R.M had approved the same.

15. Thus, there appears no link between the retention at Alwaye of respondent No. 4 and the posting out from Trichur of applicant.

16. The question next to be considered is whether there is any illegality in the transfer of the applicant along with the post. Retention in the same place or choice

place of posting during the last limb of service is a matter to facilitate an individual in having his rehabilitation plan after retirement. There is no vested right. Of course, for no reason, if an individual at the end of the service career is transferred, interference is certainly called for. Here, the applicant was found to have been making short remittance not on one occasion but many. From October, 2007 his performance seems to have been under close watch and action was taken to have him moved away from Trichur. At that time there did not appear to be any other place where the applicant could be transferred. At the same time, on the posting out of Respondent No. 4 from Mulankunnathukavu, vacancy existed in the post of Commercial Clerk at Mulankunnathukavu. With the approval of the DRM the applicant has been posted to the said place along with the post. Transfer of the applicant along with the post, has not resulted in any civil consequence to the applicant. There is no depletion in his pay or pay scale or status. True, the post warranted higher responsibility compared to that of Commercial Clerk but the overall impact in the transfer seems to be with the intention that the applicant is not given any opportunity to indulge in the short remittance. This is an administrative measure to clean the administration. Such an administrative measure cannot be said to be violative of any of the statutory or other right of the applicant. It has been held in the case of *Fasih Chaudhary v. D.G. Doordarshan, (1989) 1 SCC 89*, While, fair play is an essential requirement, 'free play in the joints' is also a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere ... (Also see *Sterling Computers Ltd. v. M & N Publications Ltd., (1993) 1 SCC 445*, wherein the Apex Court has, citing Justice Holmes, observed, 'courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive.')

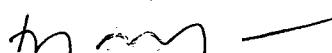
17. The case of the applicant in the instant case falls under the above latitude available to the respondents. Thus, the applicant's case is covered by the decision in the case of Damodar Pandey/Debnath instead of B. Varadha Rao, referred to above.

18. The health condition of the applicant, as rightly pointed out by the respondents, is an after thought.

19. Merely because ~~of~~ ^{is on} the applicant being ~~at~~ the verge of retirement, it cannot be stated that the impugned transfer order is illegal. The said order having no bearing with the transfer or cancellation of transfer order of another individual, it cannot be stated that very transfer of the applicant along with the post is to accommodate the said individual.

20 There being, thus, no merit in the case, the O.A. is dismissed. No cost.

Dated the3rd.....OCTOBER.....2008.


Ms.K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr.K.B.S.RAJAN
JUDICIAL MEMBER