

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 322 / 2008

Friday, this the 20th day of February, 2009..

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER


P.Prabhanandan,
Sr. Ticket Examiner,
Kerala Mangala,
Southern Railway, Palghat.Applicant

(By Advocate Mr TC Govindaswamy)

1. Union of India represented by
the General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Assistant Commercial Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Chief Commercial Manger (PS),
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
5. Senior Personnel Officer, Traffic,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.
6. The Chief Commercial Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O., Chennai-3.Respondents

(By Advocate Mrs Sumathi Dandapani, Senior with Mr Sunil Jose)

This application having been finally heard on 27.1.2009, the Tribunal on 20.2.2009 delivered the following:



ORDER**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

The applicant's grievance in this case is against the following Annexure A-1 office order by which he has been transferred from Palghat Division to Trivandrum Division:

"Office Order No.33/2008 dated 11.6.2008

Sub: Inter Divisional Transfer of Ticket Checking staff on administrative grounds – Sri Prabhanandan, TTE/SL/PGT Division

Sri P Prabhanndan, TTE/SL/PGT (Staff No.J/T.1979 and PF No.02529841) PGT Division in scale Rs.4000-6000/- is transferred to TVC Division on his same Pay scale on administrative grounds.

The above transfer is ordered subject to the following conditions:

- a) He is eligible for transfer privileges such as Composite Transfer Grant, joining time etc.
- b) He should vacate Railway Quarters if in occupation at his present working station immediately on relief provided no prior permission has been obtained for retention of the quarters.
- c) His seniority in the new Division shall stand regulated as per Para 311 of IREM.

This has the approval of CCM/PS.

Headquarters Office,
Personnel Branch
Chennai-600 003.

sd/-
(L.Kabilan)
Sr.Personnel Officer/Traffic

No.P(S)676/III/IDT/TC/MAS & TVC Dn dated 11.6.2008.

Copy to: CCM, CCM/PS, CVO/MAS/DRM(P)PGT&TVC, Sr.DCM, DCM/PGT/TVC & O.O.File."

2. The aforesaid order of transfer has been challenged by the applicant on the following grounds:

- i) It is arbitrary, discriminatory, contrary to law and hence violative of the constitutional guarantees enshrined in Articles 14 and 16.
- ii) There was no exigency of service warranting his transfer from Palghat to Trivandrum Division.



iii) It is ultra vires rule 226 of the Railway Establishment Code, Vol.I

which reads as under:.

"226. Transfers - 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. 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."

iv) It was issued by the 5th respondent, namely, Senior Personnel Officer, Traffic, Southern Railway, Head Quarters Office, Park Town.P.O., Chennai-3, with the approval of the 4th respondent, namely, The Chief Commercial Manager (PS), Southern Railway, Headquarters Office, Park Town.P.O., Chennai-3. Neither the 5th respondent nor the 4th respondent is the competent authority as defined in Rule 103 (11) of the IREC, Vol.I.

v) It is ultra vires of the statutory rules inasmuch as his seniority would hence forth be determined in terms of para 311 of the IREM which would mean that his lien in Palghat Division would stand transferred to Trivandrum Division. The power to transfer the lien is vested only with the Head of the Department and the 4th respondent who transferred the applicant is not the Head of the Department.

vi) The disciplinary proceedings have already been initiated against him by the Divisional authorities and in such circumstances, the transfer of the applicant is explicitly prohibited by the Railway Board in term of the Annexure A-6 instructions/orders of the Railway Administration with regard to disciplinary action against the employees not under the administrative control of the

authority.

vii) It was issued not in bonafide exercise of power but under the directions of the Vigilance Organisation of the Southern Railway.

viii) It is punitive in character and it is opposed to the principles of natural justice.

3. During the course of the arguments, learned counsel for the applicant submitted that he is not against the transfer of the applicant per se but he is against the inter-Divisional transfer of the applicant from Palghat to Trivandrum Division which involves his seniority and further promotional chances.

4. According to the respondents, on 29.9.2008 while the applicant was on duty manning the S-8 to S-10 coaches of Train No.2602, when a departmental check was conducted in S-10 Coach the following irregularities were detected:

- a) He had demanded and collected Rs.250/- from Shri G Narayanan, a Constable and issued receipt of Rs.140/- and not returned the balance amount of Rs.110/- and retained the same for his personal gains.
- b) He had also demanded and collected Rs.250/- from Shri K Rajendran, another constable and issued receipt for Rs.125/- and returned Rs.25/- as balance and retained Rs.100/- for his personal gains.
- c) He had carried his son Shri Mithun aged 17 years in S-9/7 (berth earmarked for TTE) from Mangalore to Palghat without making any entry/endorsement on the 2nd Class Privilege Pass No.178734.
- d) To cover up the excess cash collected from the above two persons, he produced a shortage of Rs.15/- in his railway cash after setting aside the above excess cash.




5. They have further stated that collection of excess amount from the passengers and issue of receipt to them for less amount and retaining the balance amount for personal gains are corrupt practices. They have also submitted that all the currencies marked during the time of check in the above two transactions were recovered from the applicant. Since the applicant was found to have committed serious irregularities, he was first placed under suspension vide Annexure A-2 dated 3.3.2008 which could be served on him only on 19.3.2008. As per the recommendations of the Review committee nominated by the Divisional Commercial Manager, Southern Railway, Palakkad to review the suspensions, in terms of the instructions contained in the Railway Board's letter No.E(D&A) 2004/RG 6-8 dated 19.7.2006, the applicant's suspension period was reviewed and extended until further orders vide Annexure A-3 order dated 5.6.2008 and it was served on him on 7.6.2008. Thereafter, he was transferred vide Annexure A-1 Office Order dated 11.6.2008 and the order of suspension was later revoked by the Division vide (Annexure R3 (1) order dated 9.9.2008.

6. According to the respondents, as per the instructions contained in Railway Board's letter No.E(NG)I-80/TR/28 dated 19.2.1986, the Ticket Checking staff found indulged in malpractices are required to be invariably sent on inter Division/Inter Railway transfer as a matter of policy. Those instructions were reiterated by the Railway Board in their letter No.E(NG)I-90/TR/11 dated 2.11.1998 (Annexure R-3(2)) which reads as under:

"In terms of existing instructions ticket checking staff detected to be indulging in malpractices, are required to be invariably sent on inter-divisional/inter-railway transfer as a matter of policy.

2. The question of feasibility of effecting inter-divisional transfer of staff in mass contact areas including ticket checking staff, was discussed in the conference on Malpractices and Corruption in



mass contact areas organised by the Ministry of Railways on 10.7.1998.

3. Pursuant to the above discussion, it has been decided that while the existing policy of inter divisional/inter railway transfer of ticket checking staff detected to be indulging in malpractices shall continue, other staff in mass contact areas detected should also be transferred on inter-divisional basis."

7. As regards the competency of the authority which has issued the transfer order, the respondents have submitted that it was issued from the Headquarters by Senior Personnel Officer, Traffic, Chennai on 11.6.2008 with the approval of Chief Commercial Manager, Passenger Service and it was communicated to the Division concerned only on 13.6.2008. They have also submitted that the said order was not served on the applicant before he had approached this Tribunal by filing the present O.A. Since the Annexure A-1 order has already been stayed by this Tribunal on 20.6.2008, the Division did not issue the repeat order of transfer subsequently to the applicant.

8. The learned Senior counsel for the respondents Smt Sumathi Dandapani, justified the impugned transfer of the applicant and relied upon the judgment of the Apex Court in **Union of India and others v. Janardhan Debanath and another** [(2004) 4 SCC 245] in which it has been held as under:

"14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any misbehaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest of exigencies of administration to enforce decorum and ensure probity would get frustrated. The question whether the respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other. The judgment of the High

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Court is clearly indefensible and is set aside. The writ petitions filed before the High Court deserved to be dismissed which we direct. The appeals are allowed with no order as to costs."

9. Further contention of the respondents is that the issue involved in this case has already been discussed in detail in O.A.102/2008 – **Shobha Mary Alexander v. Union of India**. The applicant in that case was a Chief Commercial Clerk at Kottayam Railway Station of Trivandrum Division of Southern Railway and on 21.11.2007 when she was on duty at about 22.15 hours, official of vigilance department had entered the counter and found that the applicant had retained a few tickets surrendered for cancellation, without cancelling the them and the applicant was kept under suspension from 22.11.2007. Thereafter the respondents issued the order transferring the applicant from Trivandrum Division to Palghat Division on administrative grounds. They have contended that inter-divisional transfers of Ticket Checking Staff on administrative ground, were already existing and by order dated 25.1.1998 such inter-divisional transfers were extended in respect of other staff in mass contact areas, detected to be indulging in malpractices also. The Tribunal vide its order dated 8.7.2008 has held as under:

"11. The respondents are right when they contended that the guidelines of normal routine transfer are not applicable to a transfer on administrative grounds.

12. The counsel for the applicant also raised the issue of transfer being violative of Annexure A-5 notification of the Railways. It is seen from the sequence of events that though the authorities have suspended the applicant w.e.f. 22-11-2007, they had issued the revocation order of suspension dated 14-12-2007 and as per the respondents, on 19-02-2008 the suspension had been revoked. Thus, a day prior to the filing of the OA, the applicant's suspension already stood vacated. As such, as on the date of application they are being no suspension, the impugned order is not violative of Annexure A-5 order of the Railway Board.

13. In so far as the merit of the matter is concerned, though a feeble attempt has been made by the counsel for the applicant to define the term, 'detected' appearing in Annexure R-1 whereby the provision of effecting inter-divisional transfer has been extended to those who have mass dealing and who have been detected to be



indulging in malpractices and to contend that such a detection has not taken place here, that too has to be summarily rejected in view of the clear admission of the applicant in her representation dated 24-02-2008.

14. In view of the above discussion, we have absolutely no hesitation to hold that there is nothing illegality or irregularity in the issue of Annexure A-1 order and the transfer of the applicant from one Division to another being within the competence of the Chief Commercial Manager (PS), the impugned order cannot be held to be illegal. Hence, the application fails and is dismissed. Interim order gets automatically vacated."

10. After hearing the learned counsel for the parties and perusing the documents available on record, I am of the considered view that this O.A is squarely covered by the order of this Tribunal in O.A.102/2008 (supra). The submission of the Smt Sumathi Dandapani that the impugned order of transfer of the applicant is in conformity with the Apex Court judgment in the case of Janardhan Debnath and another (supra) is also well accepted. It is an admitted fact that the applicant's transfer from Palghat Division to Trivandrum Division is in terms of the instructions contained in Annexure R-3(2) letter dated 2.11.1998 issued by the Railway Board to tackle the checking staff detected to be indulged in malpractices. The applicant has not challenged the aforesaid letter of the Railway Board in this O.A. I, therefore, do not find any merit in this O.A and accordingly the same is dismissed. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER