

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.379/2000

Wednesday this the 10th day of April, 2002.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.Satheesh Kumar,
Travelling Ticket Examiner,
Southern Railway, Nagercoil Junction.

.. Applicant

(By Advocate Sri T.C.G.Swamy)

vs.

1. Union of India represented by
The General Manager,
Southern Railway,
Park Town P.O.
Madras-3.
2. The Chief Personnel Officer,
Southern Railway,
Park Town P.O.
Madras-3.
3. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
4. The Chief Vigilance Officer,
Southern Railway,
Park Town P.O.
Madras-3.
5. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
6. The Secretary,
Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

.. Respondents

(By Advocate Smt.Sumathi Dandapani)

The Application having been heard on 14.3.02, the Tribunal
on 10.4.2002 delivered the following:-

ORDER

HON'BLE SRI A.V.HARIDASAN, VICE CHAIRMAN:

The applicant a Travelling Ticket Examiner, Southern Railway posted at Nagercoil in Trivandrum Division, was placed under suspension from 17.11.98 to 2.2.99 and an enquiry was initiated against him on the basis of a decoy check which was conducted on 20/21.8.1998. The enquiry report was submitted by the Enquiry Officer on 23.4.99 and the applicant submitted his objections to the enquiry report. While a final order was yet to be passed in the disciplinary proceedings by the impugned order Annexure A1 dated 15.11.1999, the applicant was transferred from Trivandrum Division to Palghat Division. Since the applicant was transferred out of his cadre, aggrieved by Annexure 1 order, the applicant filed O.A. 1344/99. The O.A. was disposed of by the judgment dated 14.12.99(Annexure A2) permitting the applicant to make a representation to the second respondent and directing the second respondent to consider and dispose of the representation. In furtherance of the above judgment, the applicant submitted a representation dated 15.12.99(Annexure A3). In the mean while the final order in the disciplinary proceedings was passed against the applicant imposing a penalty of reduction in pay by one stage against which the applicant filed an appeal. In reply to the representation the applicant was given the impugned order Annexure A7 stating that the transfer was made in the exigencies of service as warranted on the decoy check and that it was open

for him to seek re-transfer or transfer elsewhere, which would be considered by the competent authority and a decision would be taken on merits. Aggrieved by that the applicant has filed this application challenging Annexure A1 to the extent it relates to his transfer and Annexure A7 order on the ground that the order has been passed without application of mind to the facts mentioned in the representation and without giving the applicant a personal hearing as required in the Railway Board's letter dated 6.2.1978(Annexure A6). The applicant has also challenged the legality of the Railway Board's circular No.30/86 dated 3rd March,1986(Annexure A9) wherein it has been stated that "the ticket checking staff who have been transferred out of the Division on complaints of corruption and who were later exonerated or awarded a penalty of censure, may not be brought back to the parent division" as also the Railway Board's letter dated 2.11.98, wherein it has been stated that in terms of the 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".The Railway Board endorsement No.123/2000 dated 26.6.2000 wherein it has been stated that instructions regarding inter-divisional/inter-railway transfer of staff detected to be indulging in mal-practices or substantiated vigilance cases shall continue to be strictly complied with, is also challenged by the applicant in this O.A. It is alleged by the applicant that the stipulation in Annexures A9, A10 and A11 for compulsory transfer of ticket checking staff on complaints of corruption to other divisions or Railways, is

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ultra vires of Rule 226 of the Indian Railway Establishment Code as also Article 14 and 16 of the Constitution of India. The applicant has therefore prayed that the impugned order Annexure A1 to the extent it affects the applicant and Annexure A7 may be set aside and Annexures A9 ,A10 and A11 which stipulates the inter-divisional transfer of ticket checking staff may be set aside, as the same is ultra vires of Rule 226 of the Indian Railway Establishment Code and violative of Articles 14 and 16 of the Constitution of India.

2. The respondents have filed reply statements seeking to justify the impugned orders.

3. We have gone through the pleadings and other materials placed on record and have heard at length the arguments of Sri T.C.G.Swamy, the learned counsel appearing for the applicant and Smt. Sumathi Dandapani, learned standing counsel for the respondents.

4. The undisputed facts are that a decoy check was held on the basis of which the applicant was placed under suspension and was proceeded against departmentally and that as a result of the proceedings, a penalty has been imposed on the applicant against which the applicant filed an appeal which is pending. That the impugned order Annexure A1 transferring the applicant from Trivandrum Division to Palghat Division outside his cadre was issued in connection with a decoy check is also not in dispute. The only point

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stressed by the learned counsel of the applicant is that the transfer of the applicant from Trivandrum Division to Palghat Division outside his cadre is ultra vires of the provisions contained in Rule 226 of the Indian Railway Establishment Code. The stipulations contained in Annexures A9, A10 and A11 which provide for inter-divisional or inter-railway transfer of ticket checking staff detected in mal practices also is ultra vires of Rule 226 of Indian Railway Establishment Code as also Article 14 and 16 of the Constitution of India , argued the learned counsel. Sri Swamy further argued that the Annexure-A7 order turning down the representation of the applicant was issued without application of mind and ignoring the decision of the Railway Board contained in its letter dated 6.2.78(Annexure A6). In accordance with the provisions of Rule 226 of the Indian Railway Establishment Code, a railway servant is to be employed throughout his service on the railway or railway establishment in which he was appointed for the first time and powers have been conferred on the President which may be exercised by the General Manager or lower authority to transfer Group-C and D railway servants to other Railways or other establishments only in the exigencies of service and therefore in the absence of an exigency in service, the exercise of power of such transfer is ultra vires of Rule 226 , argued the learned counsel. The learned counsel also argued that the transfer out of the cadre is in violation of the Fundamental Rights guaranteed under Article 14 and 16 of the Constitution. The objection based on the provisions of Article 14 and 16 of the Constitution has only to be mentioned and rejected because there is no fundamental right

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to a Railway servant to continue in a particular cadre. We will examine the question whether the transfer of the applicant from Trivandrum Division to Palghat Division is ultra vires of Rule 226 of the Indian Railway Establishment Code. The impugned order Annexure A1 has been issued by the Senior Divisional Personnel Officer, Trivandrum with the approval of the competent authority. Rule 226 reads as follows:-

"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."

It is evident from the rule that in the exigencies of service, a railway servant may be transferred from one Railway to another Railway or another Railway Establishment. The question is whether the transfer of the applicant from Trivandrum Division to Palghat Division on detection of alleged malpractices during decoy check was in the exigencies of service or not. Sri Govinda Swamy argued that transfer of the applicant on the basis of the decoy check which is said to be on the basis of a policy decision of the Railway Board, cannot be treated as transfer in the exigencies of service, for according to him "exigencies of service" means "an urgent need or demand" and not a policy. We find little force in this argument. The urgent need or



demand in this case arose on the detection of alleged mal-practices by the applicant in a decoy check. In the Railway Board's circular No.30/86 dated 3rd March,1986 it has been reiterated that instructions did exist in terms of which ticket checking staff detected in mal-practices are required to be sent on inter-divisional transfer as a matter of policy. This policy has been evolved by the Railway Administration with a view to deter the ticket checking staff from indulging in mal-practices. The policy, according to us, has been evolved with the laudable intention to maintaining probity in service which, undoubtedly, is desirable. If a member of the ticket checking staff is found indulging in mal-practices, the administrative exigency arises which calls for his transfer out of the division or the Railway. The argument that such transfer out of the cadre is opposed to the Rule 226 of the Indian Railway Establishment Code therefore has no force at all. /

5. The argument of the learned counsel of the applicant that the provisions in Annexures A9, A10 and A11 requiring inter-divisional/inter-railway transfer of ticket checking staff found indulging in mal-practices is objectionable and ultra vires of Rule 226 also has no force because it is not for the first time either in Annexures A9,A10 or A11 that such a policy was evolved as such instructions had been in existence as even prior to that as mentioned in Annexure A9. Therefore the challenge to these orders also have no force.The Chief Personnel Officer has considered the representation submitted by the applicant and justified the

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applicant's transfer on the ground that in terms of the existing instructions of the Railway Board, ticket checking staff detected to be indulging in mal-practices are required to be transferred out of the division. The contention that this decision has been taken without application of mind is unsustainable as going through the impugned order Annexure A7, it is seen that clear and cogent reasons have been given for rejecting the claim of the applicant made in the representation and confirming the applicant's transfer made by Annexure A1 order. The learned counsel of the applicant invited our attention to a ruling of the Principal Bench of the Central Administrative Tribunal reported in 2000(3) SLJ CAT 125. It was held in that case that a transfer ordered on 7.10.98 could not be justified on the basis of the Railway Board letter dated 2.11.98 which is Annexure A10 in this case because the letter dated 2.11.98 would not apply to an order passed prior to issue of that order. The inter-divisional transfer of the applicant in that case was held to be against the provisions in the circular dated 25.3.1967. The facts of the case are different. In this case the applicant was not transferred for the reason that a disciplinary proceedings was pending against him, but on the basis of a policy decision of the Railway Board that when the ticket checking staff are found indulging in mal-practices, they should be transferred out of the division or the Railways. The learned counsel of the applicant then referred us to another decision of the Central Administrative Tribunal, Mumbai Bench reported in 2002(I) SLJ CAT 138. There again the facts

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are different. The transfer was sought to be justified on the ground that it was so advised by the vigilance . Therefore the above ruling of the Mumbai Bench has no application to the facts of this case.

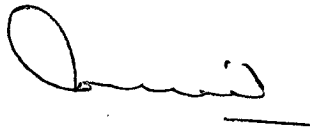
6. Sri T.C.G.Swamy, next referred us to the ruling of the Ernakulam Bench of the Central Administrative Tribunal in O.A.No.234/2001 -S.Hariharan vs. Union of India represented by the Secretary to Government of India, Ministry of Railways, New Delhi. In that case, the applicant a Commercial Clerk facing departmental disciplinary proceedings on the basis of a decoy check was transferred from Palghat division to Madras division. He challenged his transfer on the ground that it is ultra vires of Rule 226 of the Indian Railway Establishment Code. The respondents contended that the transfer was the result of a decoy check made by the vigilance to test the integrity of the applicant wherein it was proved that he was dishonest. The Tribunal interfered in the order on the ground that a transfer as a penalty could not have been ordered without a finding of guilt. It is to be noted that the Tribunal observed that the respondents contended that the transfer was not in the exigencies of service, but as the applicant was found to be dishonest. The facts of this case are totally different. The respondents have contended that the disciplinary

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proceedings initiated against the applicant was independent and the transfer in this case was in the exigencies of service.

7. In the light of the above discussion, we find that the impugned order of transfer of the applicant from Trivandrum to Palghat Division, is not ultra vires of Rule 226 of the Indian Railway Establishment Code as the transfer was made in the exigencies of service as it was found that retention of the applicant who has been allegedly detected to be indulging in malpractices was not in public interest .

8. In the result we find that there is no merit in this application and therefore we dismiss the same leaving the parties to bear their own costs.



(T.N.T.NAYAR)
ADMISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:-

1. Annexure A1 True copy of the Office Order bearing No.62/99/ Comml dt. 15.11.99 issued by the 3rd respondent.
2. Annexure A2 True copy of the judgment in O.A. 1344/99 dt. 11.12.1999 passed by the Hon'ble Tribunal.
3. Annexure A3 True copy of the representation dt. 15.12.99 submitted by the applicant to the 2nd respondent.
4. Annexure A4 True copy of the penalty advance bearing No.V/VO/T/FR/113/98 dt. 29.12.1999 issued by the Sr.Divisional Commercial Manager, Southern Railway, Trivandrum.
5. Annexure A5 True copy of the appeal dt.10.2.00 submitted by the applicant to the ADRM/TVC.
6. Annexure A6 True copy of the Railway Board order No.E(NG)II/77/TR/112 dt. 6.2.1978 issued by the Railway Board.
7. Annexure A7 True copy of the letter No. P(S)535/III/O.A.1344/99/TVC dt. 16.3.2000 issued by the 2nd respondent.
8. Annexure A8 True copy of the letter V/C 569/TTE/V dt. 5.4.2000 issued by the Sr.DCM/TVC.
9. Annexure A9 True copy of the Railway Board's letter No.E(NG)1-80/TR/28 dated 19th February, 1986 circulated under Personnel Branch circular No.30/86 dt. 3rd March, 1986.
10. Annexure A10 True copy of the Railway Board's letter No.E(NG)1-98/TR/II dated 2.11.98.
11. Annexure A11 True copy of the Railway Board's letter No.E(NG)1/2000/TR/17 dated 26.6.2000 forwarded under Chief Personnel Officer, Madras letter No.P(R)676/P/Vol.II dt. 12.7.2000

Respondent's Annexures:

1. Annexure R-1 True copy of letter No.E(NG)/1-80/TR/28 dated 19.2.1986 issued from the Director, Railway Board, New Delhi.

2. Annexure R2 True extract of the Railway Board's letter No.E(NG_1-98 TR 11 dated 2.11.98.
3. Annexure R3 True extract of the letter No.P(R) 676 P Vol.II dated 12.7.2000 of the Chief Personnel Officer, Madras forwarding Railway Board's letter No.E(NG)1 2000 TR 17 dated 26.6.2000.