

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THE TWENTY EIGHTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED AND EIGHTY NINE

PRESENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 404/89

A. Venugopal

Applicant

vs.

1. The Union of India represented by the General Manager, Southern Railway, Madras
2. The Divisional Manager, Southern Railway, Palghat
3. The Divisional Commercial Supdt., Southern Railway, Palghat and
4. The Assistant Commercial Supdt., Southern Railway, Palghat

Respondents

Shri P. Santhosh Kumar

Counsel for the applicant

M/s. M. C. Cherian & T. A. Rajan

Counsel for the respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The petitioner who is working as a Travelling Ticket Examiner at Salem Junction of the Southern Railway, challenges in this petition his transfer to Cannanore.

2. According to him, he got a posting to Salem in September, 1986 while he was working at Erode after having worked in various stations in Palghat Division. His family is in Salem and the children are studying there in Tamil medium school. He is also a B.P. patient

AS

undergoing treatment of Dr. Subramanian from 15.5.1989.

3. The present transfer is alleged to have been effected on account of extraneous considerations. The petitioner alleges malafide also and submits that because he has detected several cases of unbooked luggages from passengers, various complaints were sent against him. On 25.1.89, one Sundaramurthy came by Train No. 912 from Kanpur to Salem Junction who carried luggages in excess of permissible limits. This was detected by one Mr. Vasudevan Achari, who has taken steps for collecting additional charges as per the rules. But the passenger mentioned the name of the petitioner as one of his friend and this matter has been reported to the Vigilance Officer and the authorities questioned him and he stated that he was not involved in it. It is presumed that the transfer is based on the request of the Vigilance Department. According to him the transfer was ordered on the basis of a telephonic instruction given by the third respondent on 3.7.89 to the Chief Travelling Inspector, Salem.

4. When the matter came up for admission before the Bench, notice was issued on admission. Accordingly, the learned counsel for the Railways appeared and produced before us the files leading to the transfer and later they have filed a counter affidavit also. On going through the files and the counter affidavit, ^{I am satisfied that the} there are sufficient materials to come to the conclusion that this is not a transfer in

the ordinary course in the exigencies of service or to satisfy the administrative requirements. The Chief Vigilance Officer's report dated 23.3.89 discloses the fact that one Sundaramurthy, one among the three passengers who came to receive the other two passengers stated that the tickets were kept by the petitioner. There is a further statement that during the previous check also the name of the petitioner was found to be involved while he was not on duty. The report reads as follows:-

"It is learned that he (petitioner) plays a major role in dealing with silver smugglers. Knowing the presence of Vigilance, he sent the above tickets through one porter and disappeared."

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X X X X X

"It is suggested that Sri A. Venugopal, TTI/Genl/SA may be transferred out of Salem Jn. and such other action as deemed fit may be taken against him."

This is a clear case where disciplinary action could have been initiated against the petitioner and transferred him ^{as suggested in the report}.

But the learned counsel for the Railway submitted that there is no proposal for taking disciplinary action against the petitioner ^{in this report}.

5. So if a transfer is to be effected on the complaint of somebody making allegations against the petitioner, it is not a bonafide transfer in the public interest. The petitioner is penalised without giving him an opportunity of being heard. The report of the Chief Vigilance Officer supports the case of the petitioner that this is not a normal transfer but it is based on extraneous consideration namely the recommendation

of the Chief Vigilance Officer making allegation of involvement in the smuggling activities at Salem.

6. If the petitioner is really involved in such smuggling activities to the detriment of the interest of the Railway, it is for the respondents to take appropriate action against the petitioner and for the fair conduct of the enquiry or other disciplinary action, petitioner's presence in the particular station can be avoided by transferring him from Salem. But the transfer of the petitioner on the basis of the above complaint cannot be appreciated. The Madras Bench of the Tribunal in *V. Bhaskaran Vs. Deputy Collector of Central Excise, Ernakulam and others* (1987 (4) ATC 473) considered the case of transfer in a more or less similar circumstance and held as follows:

"No doubt, the Collector is given the freedom to choose officers of his collectorate whom he considers fit for posting at the Airport and also for changing them as and when necessary. That does not mean that the freedom is to be exercised as a punitive measure or on irrelevant or extraneous considerations or on considerations which cannot stand scrutiny before a court of law."

7. The Supreme Court very recently by using strong language observed that the lower ^{judicial b} authority should not interfere in transfer of public servants in the "cavalier manner" in the decision reported in *Union of India and others Vs. H. N. Kirtania*, (1989 (4) SLR 9) But it was clarified by laying down the principle as follows:

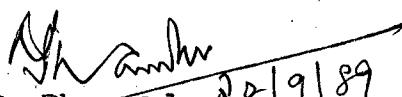
"Transfer of a public servant made on administrative grounds on ^b public interest should not be interfered with unless there are strong and pressing grounds

rendering the transfer order illegal on the grounds of violation of statutory rules or on grounds of malafides."

This is a case in which there is strong ground for interference as stated by the Supreme Court. The allegation of extraneous considerations based on alleged malafides for the transfer of the petitioner are clear from the records produced before ~~us~~ and on going through the files, I am satisfied that this is not a transfer made in the exigencies of service to promote public interest ~~as stated above~~ ^{by}

8. Accordingly, the impugned order transferring the petitioner from Salem Junction to Cannanore is quashed and the O.P. is allowed. But the respondents have the freedom to take appropriate disciplinary action against the petitioner as per rules and transfer him if it is found necessary in public interest.

9. There will be no order as to costs.


(N. Dharmadand) 28/9/89
Judicial Member