

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 408 of 2013

CORAM: Thursday, this the 09th day of January, 2014

Hon'ble Mr. Justice A.K. Basheer, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

V.G. Sabu, aged 44 years, S/o. V.M. George,
 Chief Commercial Clerk Gr.III, Booking Office,
 Southern Railway, Trivandrum Central,
 Trivandrum – 695 014, Residing at : Railway Quarter
 No. 156-A, Anwar Gardens, Poojappura,
 Thiruvananthapuram – 695 012.

..... **Applicant**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by
 The General Manager, Southern Railway,
 Head Quarters Office, Park Town P.O.,
 Chennai – 600 003.
2. The Divisional Railway Manager,
 Southern Railway, Trivandrum Division,
 Trivandrum – 695 014.
3. The Senior Divisional Commercial Manager,
 Southern Railway, Trivandrum Division,
 Trivandrum – 695 014.
4. The Divisional Personnel Officer,
 Southern Railway, Trivandrum Division,
 Trivandrum – 695 014.

..... **Respondents**

(By Advocate – Ms. P.K. Radhika)

This application having been heard on 27.11.2013, the Tribunal on

09.01.2014 delivered the following:



ORDER

By Hon'ble Mr. Justice A.K. Basheer, Judicial Member-

Applicant who is presently working as Chief Commercial Clerk Grade-III in the Booking Office at the Central Railway Station, Trivandrum under the Southern Railway has filed this Original Application impugning Annexure A1 order of his transfer to Ollur Goods Shed.

2. Applicant contends that the above order of transfer is totally illegal, discriminatory and against the transfer norms. According to the applicant there was no exigency of service warranting his transfer. He further alleges that it is actuated by malice.

3. Per contra it is contended by the respondents that Annexure A1 order was issued on administrative grounds and in public interest. The allegation of malice and ulterior motive is vehemently denied by the respondents and it is contended that the order of transfer has been issued due to administrative exigencies and that it is perfectly legal and valid.

4. The thrust of the argument of the learned counsel for the applicant while challenging Annexure A1 order is that the respondents have totally ignored the directives and mandates contained in Annexures A3, A4, A8 and A9 orders of the Railway Board while transferring the applicant from Trivandrum where he had been working for less than 3 years. According to the learned counsel, the respondents have acted entirely at the behest of the Vigilance Wing of the administration. It is conceded by the applicant that an excess amount of Rs. 173/- was detected by the Preventive Check Cell of the

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Vigilance on February 2, 2012 while he was on duty as Chief Commercial Clerk at the booking office of the Central Railway Station, Trivandrum. However, it is contended by the applicant that "excess in cash" is not unusual in booking offices and for that reason alone it cannot be said that the employee is guilty of misconduct or negligence. Applicant claims that there cannot be any *mens rea* either. Applicant has produced Annexure A7 memorandum of charge apparently issued in connection with the above incident in which the Vigilance Wing of the administration had found a sum of Rs. 173/- in excess. The statement of imputation in Annexure A7 shows that on two previous occasions also when vigilance checks were held, it was found that sums of Rs. 529/- and Rs. 468/- were found short on October 21, 2012 and November 23, 2012 respectively. We have referred to the above aspect only since Annexure A7 produced by the applicant reveals it. The case of the applicant is that the excess cash of Rs. 173/- found at the booking counter manned by him on February 2, 2013 was the only reason which prompted the administration to transfer him to Ollur. Be that as it may, the short question that arises for consideration is whether in the peculiar facts and circumstances of the case, Annexure A7 order of transfer can be said to be illegal, arbitrary and malafide.

5. In State of U.P Vs. Gobardhan Lal; (2004) 11 SCC 402 it has been held thus :-

"A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication



to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.”

6. A Division Bench of the High Court of Kerala in *Nirmalandan Vs. Dinakaran* (1989) 1 KLT 126 has held that :-

“Transfer is an incidence of service and the Government servant has no legal right in this behalf. Guidelines for transfer are not statutory and are only meant for the guidance of the transferring authority. The guidelines issued by the Government from time to time in the matter of transfer are not exhaustive and it is open to effect transfers taking into consideration circumstances not covered by the guidelines, as in administration variety of situations not contemplated by the guidelines may arise which have to be taken into account. The appellant cannot therefore successfully contend that he has acquired immunity from transfer on the strength of the guidelines of the Government in this behalf. The guidelines themselves make it clear that if transfers are required to be made to sub-serve public interest, none of the guidelines in the matter of transfers shall come in the way of effecting such transfers.”

(emphasis supplied by us)

7. In *Union of India and others Vs. S.L.Abbas* JT 1993 (3) SC 678 their Lordship of the Supreme Court has held that “an order of transfer is an incident of Government service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Guidelines however does not confer upon the Government employee a legally enforceable right.”

8. In *Shilpi Bose (Mrs.) & Ors. Vs. State of Bihar & Ors.* AIR 1991 SC 532 it has been held that “A government servant holding a transferable post

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has no vested right to remain posted at one place or the other; he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights." The Court further held that "Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department.....".

9. We have carefully perused the entire materials available on record. The respondents have denied the allegation that Annexure A1 order has been issued as "instructed" by the Vigilance Wing. However, it is fairly admitted that the working of the applicant as Chief Commercial Clerk at the Trivandrum Central Railway Station was far from satisfactory and there were lapses in discharging his duties. But that does not mean that applicant has been ordered to be transferred at the behest of the Vigilance. Curiously the applicant has tried to belittle the entire issue and he has contended that "occurrence of shortage" in a cash counter is not unusual. Any how we do not propose to deal with this issue at length particularly since applicant has been served with Annexure A7 memorandum of charge in connection with the above incident.

10. The other contention raised by the applicant is that the respondents have failed to take note of Annexures A8 and A9 orders issued by the Railway Board. Annexure A8 states that in the case of a transfer of a staff effected at the behest of Vigilance Organization the employee concerned

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shall be given an opportunity to make a representation before the Divisional Railway Manager. Annexure A9 states that the above instruction is applicable to all of the Railway employees except office bearers of recognized Unions. Annexure A4 deals with periodical transfer of Railway employees. Obviously Annexure A1 does not fall in that category since apparently it has been issued in an administrative exigency.

11. Keeping in view the entire facts and circumstances of the case we do not find any reason to interfere with Annexure A1 order of transfer. Original Application fails and it is accordingly dismissed. No costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE A.K.BASHEER)
JUDICIAL MEMBER

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