

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

Hyd.

O.A. No.

311

of 1987

T.A. No.

DATE OF DECISION _____

Mr. A.B. Avadhani

Petitioner

Mr. G.V. Subbarao

Advocate for the Petitioner(s)

Versus

GM, SC(Rly) & others

Respondent

Mr. N.R. Devanaj, SC / Railway

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C. Mathur, VC(A), Principal Bench

The Hon'ble Mr. D. Sanyal, MCI, Hyd. Bench,

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓

2. To be referred to the Reporter or not? X

3. Whether their Lordships wish to see the fair copy of the Judgement? ✓

4. Whether it needs to be circulated to other Benches of the Tribunal? NO

[Signature]
(HBEM)

[Signature]
(HD&R)

ORIGINAL APPLICATION NO. 311 / 1987

(JUDGMENT OF THE TRIBUNAL PREPARED BY HON'BLE MEMBER (JUDL.)
SHRI D. SURYA RAO).

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The applicant herein is a Commercial Clerk of the South Central Railway and has filed this application questioning the order of transfer passed by the Divisional Railway Manager, Vijayawada in letter no.B/P.535/1/1 vol.10-D dated 7-11-1986 and DRM(P)/BZA letter no.B/P.535/1/1 Vol.10-D dated 5-4-1987, communicated to him by the DRM rejecting his claim for cancellation of his transfer order.

2. The applicant's case is that he was medically decategorised to C-1 grade and below in the year 1977. He was, therefore, not competent to work as a Clerk-in-charge of a Station, as that post requires verifying of colours, signals etc. Despite such de-categorisation, he was on more than one occasion, posted as Clerk in-charge of Railway Stations. He, thus, attributes mala fides to the Senior Divisional Superintendent, Vijayawada and the Divisional Railway Manager, Vijayawada for having posted him as Clerk-in-charge. He states that while working as Clerk in-charge, he was illegally placed under suspension by the C.P.S.R., Bezwada, who later hastily revoked the suspension. That was in the year 1982. At that time, he was transferred to the Yard Duty, which should not have been done in view of his medical de-categorisation. He alleges that while working at Angalakuduru as Clerk i/c, one Chalapathi, an Assistant Clerk, assaulted him. The applicant reported against this, but no action was taken against the said Chalapathi. He

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further states that he had made a complaint to the Senior DCS/BZA and the DRM, BZA and Secunderabad, referring to certain irregularities committed by the said Chalapathi. The applicant states that the Vigilance Inspector, on threat, obtained a statement from the applicant and consequently made certain mis-representations to the Senior Deputy General Manager against the applicant. This resulted in the applicant's transfer from Vijayawada to Hubli Division by the DRM/BZA. The applicant alleges that the Vigilance Inspector and the Senior DCS/BZA are responsible for illegally transferring the applicant with mala fide reasons to Hubli. He then made an appeal to the GM, who pursuant to the orders of this Tribunal in an earlier O.A.No.580/86, passed the following order :-

" I have gone through the representation dated 16-11-86 submitted by Shri A.B.Avadhanulu, CNC/BZA division. He has sent a baseless complaint to Vigilance Branch against his assistant Shri Chalapathi Rao, which is unbecoming of a Railway servant. The performance of Shri Avadhanulu is not found satisfactory and there are complaints from public. He has also been punished a number of times for various malpractices. ✓

The transfer of such an employee is, therefore, a salutary step which will tone up the administration and improve the quality of service rendered to the public. I see no reason to cancel or modify the orders of transfer in this case. " ✓

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The applicant contends that there were never any complaints against him, that he was never punished even on a single occasion for the last 10 years, and that, therefore, the transfer is bad. So far as the complaint against Chalapathi is concerned, it is contended that no proper investigation was made into the complaints against Chalapathi and that it was not properly investigated into and the applicant was punished to cover up the mistakes of the said Chalapathi. He, therefore, contends that the transfer is not based upon administrative reasons or convenience, but because of malafides on the part of the senior officers and Vigilance Inspector. It is further stated that transfer to a far-off place like Hubli, that is, beyond the division, amounts to punishment. The applicant states that his family is uprooted by causing irreparable harm to him. Reliance is placed upon the decision of the Central Administrative Tribunal, Principal (1) Bench in ATR 1986 CAT 304 (K.K. Jindal Vs. General Manager, Northern Railway.)

3. On behalf of the respondents, a counter has been filed stating that the applicant's transfer is made purely on administrative grounds and that the decision ^{to} for transfer ^{him} has been taken at zonal headquarters level after careful consideration, in view of the applicant's behaviour in

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lodging an irresponsible complaint against his co-employee. It is stated that the decision to transfer him was taken in public interest as, if he was allowed to continue in the division, it would not only affect discipline and morale of the employees of the division but also seriously affect the public services for which the organisation is meant for. It is contended that the transfers are within the discretion of administration and not normally interefered by the Tribunals. It is stated that the applicant had undergone various penalties ^{on} different ^{occasions} ~~spells~~ during his last twenty years of service, many of which are due to public complaints and misbehaviour with public. He was no doubt promoted twice, but this was based on seniority-cum-suitability. This itself shows that there is no bias against the applicant by the officers under whom the applicant had been working. It is contended that under Rule 226 of the Indian Railway Establishment Code, Vol.I, the railway servants can be transferred in exigencies of administration . The ^sallegations of bias are denied and it is contended that it is not borne out by record. Insofar as posting of the applicant to a place which could not be manned by a person of his medical category, it is contended that the

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applicant has requested for his retention at the very station ^{and this} shows that the main dispute is not in regard to the nature of his job. The allegations of bias and malafides ~~regarding~~ recoveries and harassment etc. are denied and it is stated that they were orders of recoveries passed by respective competent authorities in accordance with rules in different periods. It is further stated that the applicant made only one complaint dated 15-6-1986 to the Senior D.G.M. (Vigilance) against one Shri K. Chalapathi. One of the Vigilance Inspectors, viz., Shri K.R.K.V. Prasad was deputed to cause ^a surprise check and investigate into the complaint and he found that there is no basis for the allegations made against the said Chalapati. It is denied that the Vigilance Inspector compelled ^{the applicant} him to give his statement and it is contended that the applicant himself on his own was ready and willing to give his statement which was recorded. It is also denied that the Vigilance Inspector threatened the applicant with divisional transfer. ~~It is stated that~~. It is further stated that basing on the investigation report ^{in regard to} over the complaint and the past service record of the applicant, the Senior DGM came to the conclusion that the employee should be transferred out of Vijayawada

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division, to Hubli Division to prevent him from tampering the records and influencing the witnesses in the ensuing disciplinary proceedings relating to false and malicious allegations against the co-employee, viz., Mr. Chalapathi. It is stated that the applicant had no doubt made a representation and also filed O.A.No.580/86 before this Tribunal, and that the Tribunal while disposing of the application directed the General Manager to consider the applicant's appeal. It is stated that it was duly considered and disposed of by the General Manager by a speaking order dated 13-2-1986. It is, therefore, stated that there are no grounds for interference by this Tribunal.

4. We have heard the learned counsel for the applicant and Shri N.R. Devaraj, learned Standing Counsel for the Railways.

5. Two main contentions have been made out by the applicant. The first contention is that the applicant has been transferred due to mala fide intention on the part of the respondents, viz., the Divisional Officers and the Vigilance Inspector. It is contended that the divisional officers have been harassing the applicant,

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that he had been posted to yard duty, that he had been de-categorised medically and posted^{as}/in-charge of a station ~~in~~ involving identification of colours and signals etc. He stated that despite de-categorization, he has been posted as Clerk in-charge ^{and also} of yard duty, ^{which} and posts should be manned by an employee of a different medical category and this itself shows the intention of the respondents to harass him. We are unable to agree ^{that} the fact that the applicant was given such postings would amount to mala fides or harassing on the part of the department. If the applicant was aggrieved by such postings, he should have immediately questioned the same by way of an appeal to the competent authority and got the orders set aside, and if the competent authority ^{had} rejected his appeal, then it was always open to him to seek the Tribunal's intervention. The fact that he had acquiesced in such postings and carried out such orders of transfer would clearly go to show that these grievances are apparently trotted out only for the purpose of the present application. Insofar as allegation of mala fides against Vigilance Inspector is concerned, apart from mere allegation, there is no proof nor reason why the Vigilance Inspector should be actuated by the mala fides against the applicant. Neither ^{the} record ^{produced} establishes ^{mala fides} nor any proof ^{is} coming forth that ^{the said} vigilance inspector was responsible for the transfer of the applicant. We, therefore, reject the contention ~~is~~ that the transfer of the applicant is actuated by mala fides.

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6. The next contention of the applicant is that ~~xxx~~ his transfer is not in the interest of administration and that it is contrary to the procedure and the guidelines given by the Railway ~~xx~~ Establishment Code. Reliance is placed upon Establishment Serial No.116/67 contained in Circular Letter No.P(R)227 dated 12-4-1967 issued by the Railway Board [appearing at page 187 of the Establishment Serial Circulars with Classified Summary (1966 and 1967) issued by the CPO, S.C.Railway, Secunderabad] . which reads as follows :-

"Copy of Railway Board's letter No.E(D&A)65RG6-6 dated 25-3-1967 together with Railway Board's letter No.E(D&A)RT6-15 of 29-3-62 is forwarded for information and guidance.

Copy of ~~xx~~ Railway Board's letter No.E(D&A)65R46-6 dated 25-3-67 addressed to GMS/All Indian Railways and others.

Sub: Transfer of Railway Staff whose conduct is under investigation.

Reference Board's letter no.E(D&A)62RG6-15 dated 29-3-1962 wherein it was laid down that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service including those under suspension, should not be transferred from one Railway Administration to another till after the finalisation of the departmental or criminal proceedings against them. The Board have considered the matter further and have now decided that non-gazetted staff against whom a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after the finalisation of the departmental or criminal proceedings, irrespective of whether the charges merit imposition of a major or a minor penalty.

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Railway Board's letter of 29-3-1962.

Sub: Transfer of Railway staff whose conduct is under investigation.

Cases have come to Board's notice that staff whose conduct was ~~in~~ under investigation were transferred from one Railway to another, which made it difficult to finalise departmental proceedings. The Board, have, therefore decided that non-gazetted staff whose conduct is under investigation for charges meriting dismissal/removal from service, including those under suspension, should not be transferred from one Railway administration to another till after the finalisation of the departmental or criminal proceedings against him."

case against
It is contended that the/applicant was under investigation and a decision had been taken that charges should be framed against him. In such circumstances, ^{learned counsel} Shri G.V. Subbarao contends that the Railway Board's Circular ^{ought} directly applies and he ~~is~~ not to have been transferred from Vijayawada division to Hubli Division. Shri Devaraj, standing counsel for the respondents, on the other hand, contends that the circular limits the transfer only from one railway to another and it does not apply to transfers from one division to another division within the railway. ^{This contention cannot be accepted as} ~~A~~ reading of the Circular discloses, that the ^{also} Railway Board's letter ~~prohibits~~ transfers ~~transfers~~ from one division to another till after the finalisation of the departmental proceedings. Shri Devaraj has thereafter contended that the injunction is not absolute ^{this circular} and all that ~~it~~ says is that normally such transfers should not be affected. The question, therefore, is

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administration has, whether the ~~fact~~ /in this case, sufficient reasons for making a departure from the normal procedure of not transferring a non-gazetted employee during the pendency of a disciplinary case. For this purpose, we have called for the relevant record. The record produced before us shows that the applicant had made a complaint against one Mr. Chalapathi, his co-clerk at the same station, to the Vigilance department and the matter was investigated into by an Inspector, who submitted a report in the matter. On the basis of that report, the Vigilance Department of the S.C.Railway came to the conclusion that the allegations made by the ~~applicant~~ against Shri Chalapathi are motivated, and that no action need be taken thereon, and that disciplinary proceedings should be initiated ^{against the applicant} for the false complaint made by ^{him} (the appli-
~~cant~~) to the Vigilance Department. Apart therefrom, the Vigilance was of the view that penalty proceedings should be initiated for other acts of misconduct like replacing of a muster sheet to suppress the fact of his absence from duty, declaration of high amounts of private cash contravening instructions, attending the Sr.DCS's office without being summoned and marking in the muster ~~as~~ if he had attended the office on official work etc. On this, the divisional authorities ~~had~~ at

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Vijayawada took a view that the applicant be transferred out of the division. The fact that the applicant was transferred on these grounds also is confirmed by the order of the General Manager, who while rejecting the appeal of the applicant has stated that the transfer is based on the fact that the applicant had sent baseless allegations against his ^{assistant} ~~applicant~~, Mr. Chalapathi, that his performance was not found satisfactory, that there were complaints from the public against him and that he had been punished a number of times for various mal-practices. The counter filed states that the applicant's transfer was on administrative grounds since the intention was to prevent him from tampering with the records and witnesses if he was allowed to remain at Angalakuduru. It is obvious that the record does not disclose that this was the reason for transfer. The reason for the transfer is that a decision has been taken to frame charges against him and that, therefore, he should be transferred. The question is whether it was necessary to transfer him out of the division departing from the normal procedure prescribed by the Railway Board in its circular letter cited above. It was held by the Full Bench of this Tribunal in ATR 1988 (2) C.A.T. 116 (Mamlesh Trivedi Vs. I.C.A.R. & another) that any order of transfer must be in public

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interest and in exigency of service on administrative grounds. It must not be in colourable or mala fide exercise of power. It was further held by the full bench that the order of transfer must not be ordered arbitrarily. It was no doubt held in the Full Bench decision that transfer may be on administrative grounds and one of the grounds ~~could~~ very well be the allegations themselves, provided no finding is given on the allegations themselves. Viewed in this light, no doubt merely on the allegation that the applicant had made ~~a~~ baseless complaint against Sri Chalapati, it ~~could~~ be argued that the applicant could be transferred. But the full Bench was neither considering nor was its attention drawn to the embargo put by the Railway Board in regard to transfer ^{when a case was under investigation.} from one Division to another. The Railway Board's instruction is no doubt not absolute and it would be open to the authorities in a proper case to effect transfer ^{on administrative grounds} from one division to another, but then some reason must be contained in the record or there must be a conscious decision of the competent authority why it is departing from the policy ~~or the~~ guideline prescribed. It is necessary to examine whether such a conscious decision is taken.

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7. As already held by us supra, the question of transfer being vitiated ~~or~~ mala fide on colourable exercise of power doesnot arise. The transfer order in the instant case is also ^{not} based upon a finding of misconduct on the allegations made against the applicant as the enquiry is yet to be commenced. However, the real and only reason for transferring the applicant both as stated by the Vigilance Department and the General Manager is that he made baseless allegations against Chalapathi which was the subject matter of the proposed charge against him. The General Manager has added that he had been punished in the past on several occasions and that there was also complaints from the public. The ~~xx~~ punishments relate to 1981 and earlier years, that is, ^{by} back. No record is produced to show complaints by the public against the applicant at Angalakuduru where he was working. Hence, the only reason for his transfer out of the division is his having made a false complaint against Chalapathi for which it was proposed that charges be framed against the applicant. In view of the Railway Board's Circular, without establishing these allegations, would it be open to the respondents to transfer him on the ground of administrative interest. Earlier it has been held by the Principal Bench of this Tribunal in ATR 1986(1) CAT p.304 (K.K. Jindal Vs. General Manager, Northern

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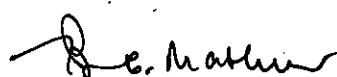
Railway) in regard to transfer as follows :-


".....Though the State was not bound to enunciate a policy in this regard, in which case each individual transfer when questioned would have to be considered on its merits, once a policy is enunciated, any action not conforming to it would prima facie ^{be} ~~be~~ unsupportable. A very strong case would have to be made out to justify the deviation from the declared policy. Like every other administrative order, an order of transfer also must conform to rules, if any, framed, and policy, if any, enunciated by the Government. Even if, there are none, an order of transfer cannot be arbitrary or discriminatory, for that is a Constitutional requirement which every order must satisfy."

In the teeth of the policy of the Railway Board ~~xx~~ that non-gazetted employees should not be transferred from one division to the other when his conduct is under investigation or till the disciplinary case is finalised and in the absence of either the note-file or the counter seeking to justify why deviation is sought for transferring the applicant from one division to another, it would follow that the transfer of the applicant from Vijayawada division to Hubli ~~division~~ is arbitrary.

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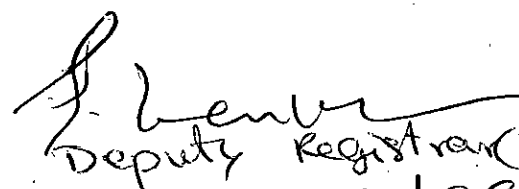
8. We would, therefore, set aside the impugned order of transfer of the applicant from Vijayawada division to Hubli division in letter nos. B/P/535/1/1/Vol.10-D dated 7-11-1986 and 5-4-1987 of the respondents. The applicant himself states that he is not anxious to stay at Angalakuduru. In the circumstances, we would observe that it is open to the respondents to post the applicant at any station within Vijayawada division and that the applicant would be liable to carry out such orders of transfer without any demur. With these directions, the application is allowed. But in the circumstances of the case, there will be no order as to costs.


(B.C. MATHUR)
VC, Principal
Bench.


(D. SURYA RAO)
Member(J)

31.1.1989.

RSR°


Deputy Registrar
2/2/89