

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO. 2166/2003

New Delhi, this the 24th day of September, 2003

Hon'ble Shri Shanker Raiu, Member (J)

Dharamvir,
Senior Booking Clerk,
Northern Railway,
R/o 75/C-5,
Motia Bagh Railway Colony,
Old Subzi Mandi,
Delhi - 110 054.

...Applicant

(By Shri S.N. Anand, Advocate)

Versus

1. General Manager (P).
Northern Railway Headquarters Office.
Baroda House.
New Delhi.
2. Senior Deputy General Manager.
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Personnel Officer.
Divisional Office.
Northern Railway.
New Delhi.
4. Shri Ashwini Kumar,
Vigilance Inspector,
Vigilance Department,
Northern Railway,
Baroda House,
New Delhi.
5. Shri S.K. Singh,
Vigilance Inspector,
Vigilance Department,
Northern Railway,
Baroda House,
New Delhi.Respondents

(By Shri H.K. Gangwani with Shri Rajender
Khattar, Advocates)

6

Applicant imbuans respondents' order dated 26.08.2003 transferring him along with the post on administrative grounds and public intrest on Inter-Division basis from New Delhi to Ferozepur. Quashing of the above order has been souhnt.

2. The applicant, on a decov check conducted by a team of Department of Vigilance on 16.4.2003 while he was on duty at Booking Counter at New Delhi Railway Station, was found short in Govt. cash.

3. Admittedly no disciplinary proceedings have been initiated in pursuance of the vialance raid.

4. By the imbuaned order, applicant in administrative exigency and public interest was transferred to Ferozepur Division giving rise to the present OA.

5. Learned counsel for the applicant Shri S.N. Anand imbuans the order being punitive, arbitrary, malafide and relvina upon the decision of this Tribunal in OA No. 2061/98 (Bhupendra Kumar & ORs. vs. Union of India & Ors), which is affirmed in CWP 4137/99 by the Delhi Hiah Court vide order dated 5.4.2000, contents that transfer of the applicant during the pendency of proceedings involving vialance angle is illegal. It is further

stated that the applicant has been transferred along with the post during the current academic session adversely affecting the education of his children.

6. It is further stated that the manner in which the clothes have been put off and search was effected by the vigilance, has been complained against in a representation against access by Inspectors of the Vigilance Department, who are impleaded as necessary parties, but the representation is yet to be disposed of.

7. Having regard to the above, it is stated that as no chargesheet has been issued, the applicant has been condemned unheard, which is violative of principles of natural justice.

8. Lastly it is contended that transfer of the applicant, retaining the junior most, would entail loss in the seniority.

9. On the other hand, respondents' counsel Shri H.K. Ganwani and Shri Raiender Khattar vehemently opposed the contention and drawing my attention to Rule 226 of Indian Railway Establishment Code, Volume-I, it is stated that it is within the jurisdiction of General Manager to effect Inter-divisional transfer in exigency of service.

10. By further relying to Railway Board's instructions dated 2.11.1998. it is contended that in cases where ticket checking staff and other staff in mass contact area are detected to be indulged in mal-practices are required to be invariably sent on inter-divisional transfer as a matter of policy.

11. Learned counsel states that the earlier record of the applicant where he has been punished several times shows his inefficiency.

12. Shri Gandwani states that on the date of decoy check on source information pertaining to over-charging from the passengers. a vigilance team conducted a raid. Dharam Vir - applicant while preparing cash details had hidden one currency note in the ticket pocket of the trouser. Accordingly on search a crumpled note of Rs. 100/- was found.

13. Learned counsel relying upon the Division Bench decision of this Tribunal in V.K. Gupta vs. Union of India (OA No. 1421/2002) decided on 8.11.2002. contends that Circular dated 2.11.1998 has been held to be valid. Though plethora of decisions have been cited. a reference has been made to the latest decision in Dharam Raj vs. Union of India (OA No. 1689/2002) decided on 22.5.2003 stating that the decision in all fours covers the present case.

14. I have carefully considered the rival contentions of the parties and perused the material on record.

15. Admittedly applicant was working as Senior Booking Clerk in Mass Contact Area. As per Railway Board's instruction dated 2.11.1998, ticket checking staff and other staff detected to be found indulging in mal practices are required to be invariably sent on inter-divisional transfer as a matter of policy. Rule 226 of the Code ibid authorises the General Manager to effect inter-divisional transfer.

16. In so far as contention putforth that no disciplinary proceedings have been initiated is concerned, the refence to Bhupendra Kumar's case (supra) is relied upon, which is affirmed by the High Court in CWP 4137/99. The decision in Bhupendra Kumar's case was valid on the fact that as no further action has been taken after the raid, transfer is a camouflage for an order of punishment. But the High Court has not dealt with the issue on merits as the judgement stood complied with and none appeared on behalf of the parties. OA was rendered infructuous and was dismissed. A decision without giving reasoning on merit, cannot be treated as a precedent.

17. Applicant, who was found indulging in mal practices i.e. found in excess cash on search. In so far as the manner in which search had taken place and his grievance put to the authorities is concerned, is an irrelevant issue and has no bearing on the transfer. It is not disputed that the applicant has not availed his remedy by way of making a representation against the transfer.

18. The transfer in public interest and administrative exigency in accordance with guidelines cannot be questioned in judicial review unless the same is malafide against the statutory rules or issued by an incompetent authority. Transfer in administrative exigency cannot be interfered to stall the wheels of administration being run smoothly. A Railway servant has no indefeasible right to be posted at a particular place.

19. In so far as the contention that the transfer is a short cut as no disciplinary proceedings have been ordered is concerned, the proceedings are in contemplation after the Vigilance processes the case and finalises the chargesheet. It is for the disciplinary authority to order such a proceedings and law shall take its own course in that event.

20. In so far as the contention that if a disciplinary proceeding is ordered transfer cannot be issued is concerned, the Apex Court in State of Punjab vs. Joainder Singh Dhatt. AIR 1993(SC)2486 held that it is for the authorities to decide as to when, where and what point of time a public servant is to be transferred and the courts are not to interfere with the transfer order unless the malafide is established.

21. The order has been issued by the competent authority and has not been shown to be in derogation of any statutory rules.

22. Applicant, who has been detected to be indulged in mal-practices, has been transferred in accordance with the guidelines which had been held to be valid by a Division Bench in V.K. Gupta's case (supra) which is binding on me. However, I find that Railway Board's letter dated 29.6.1995 stipulates that those who have been transferred on inter-divisional basis on account of suspected mal practices and where the disciplinary authorities failed to prove any charge and the delinquents are fully exonerated, they may be transferred back to the original seniority unit. The aforesaid stage has not yet reached as the disciplinary proceedings are yet to take shape.

23. Having regard to the decision of the Apex Court in State Bank of India vs. Anjan Sanyal, AIR 2001 (SC)1748 as well as N.K. Sinha Vs. UOI, AIR 1995 (SC)423, transfer is found to be in accordance with the guidelines. The OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

/na/