

**Central Administrative Tribunal
Madras Bench**

OA/310/01259/2017

Dated the 17th day of December Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

C.Thangaraj,
Chief Ticket Checking Inspector,
Arakkonam Railway Station,
No.10-A, Munuswamy Pillai Street,
Girigilspet, Arakkonam. .. Applicant
By Advocate M/s.K.Manickaraj

Vs.

1. Union of India, rep by
The Chairman, Railway Board,
New Delhi 110 001.
2. The General Manager,
Southern Railway,
Park Town, Chennai 600 003.
3. The Senior Deputy General Manager,
Southern Railway,
Park Town, Chennai 600 003.
4. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai 600 003.
5. The Senior Divisional Commercial Manager,
Chennai Division, Southern Railway,
Park Town, Chennai 600 003.
6. G.Manokaran,
The Station Manager,
Arakkonam Railway Station,

Chennai Division,
Southern Railway, Arakkonam,
North Arcot District.

7. Anichandran,
Chief Vigilance Inspector,
Vigilance Branch,
Southern Railway,
Veperi, Chennai 600 007.

8. Gridharan
Chief Vigilance Inspector,
Vigilance Branch,
Southern Railway,
Veperi, Chennai 600 007. .. Respondents

By Adovacte **Shri V.Radhakrishnan, Sr. counsel for Mr.P.Srinivasan**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant is a Chief Ticket Inspector in Southern Railway and his work was mainly supervising the function of Ticket Examiners under him. He was working as Chief Ticket Inspector at Arakkonam w.e.f. November 2015. The case of the applicant is that on 31.10.16 while he was standing in the front of his office in 3rd platform, an unknown person suddenly came near to him and pushed a packet into his pocket. The 7th respondent (R7), Chief Vigilance Inspector along with another came there and took him into custody and dragged him to their office and took his signatures in a pre-written statement without permitting him to read the same. The applicant was suspended on 02.11.16 as per Annexure A2 order. Subsequently on 19.12.16 the suspension was revoked. On 24.1.17 the 6th respondent (R6) has handed over a memo transferring him to Trivandrum Division which is produced as Annexure A4. He was also asked not to do any work at Arakkonam on 25.1.17 onwards. He filed a representation for cancelling his transfer but the respondents did not respond and the applicant filed OA 130/16 before this Tribunal and this Tribunal as per order produced as Annexure A6 directed the respondents to consider the representation of the applicant and pass a speaking order. According to the applicant, if any disciplinary proceedings is going to be initiated against an employee, the respondents are not expected to transfer him. Such an action is clearly punitive in

nature. The transfer to Trivandrum Division was illegal, malafide and against Master Circular issued by the Railway Board which is produced as Annexure A8&9. According to him, the transfer given to him is a punishment and is vitiated by malice in law. The transfer was effected on the basis of irrelevant considerations. So, he prays for the following relief:-

“...to call for records relating to the issue of the impugned unsigned transfer order dated 24.1.2017 and the alleged original order No.M/P.676/III/TE/AT, dated 24.1.2017 (O/o M/P(S)II/2019) referred to in the impugned order and to declare that the said orders of transfer are vitiated by illegality, irregularity being based on malice in law and on facts and also violating their own orders of Annexure A-8, A-9 and A-10 and accordingly, quash and set aside the impugned order and the alleged original order No.M/P.676/III/TE/AT, dated 24.1.2017 (O/o M/P(S)II/2019) referred to in the impugned order being punitive in character in addition to being in contravention of the provisions of para 14 (a) of Master Circular No.67 Annexure A-8, and the orders under second sub-para of para II of Master Circular No.64 Annexure A-9 and also violating the policy orders of 4th respondent vide Personnel Branch Circular No.203/2016, dated 17.01.2017 (Marked as Annexure A-10). The applicant be permitted to perform his duties at the Arakkonam Railway Station as Chief Ticket Examiner as hitherto-fore.

to pass any other suitable order or orders as this Tribunal may deem fit to meet the ends of justice.

To award exemplary and deterrent cost against the erring respondent No.5, 6, 7 & 8 to be paid to the CAT Bar Association.”

2. The respondents entered appearance and filed a detailed reply denying the allegations in the petition. They admitted that the applicant was working as Chief

Ticket Inspector at Arakkonam Railway Station and also admits the filing of OA 130/16 and the speaking order passed on the said representation. According to the respondents, the transfer was effected in accordance with the policy guidelines issued as RBE 251/98 and as per the said guideline, when an enquiry is contemplated against an officer, he has to be transferred to another division. According to them, Para 14(a) of the Master Circular stated by the applicant applies only if a charge memo is already issued. So, according to the respondents, there is no malafide and there is no merit in the allegations raised in the application. At the time of transfer, no charge memo or proceedings was initiated and there is no intention to punish the applicant. According to them, transfer to another place is an incident of service. The allegations made by the applicant against some of the respondents is vague and false and it is done in order to divert the attention of the Tribunal from the malpractices committed by him. It is made to specifically harass the respondents. Since all the averments of the applicant regarding enmity to the applicant is not correct. It is not correct to say that the applicant was not having any EFT books with him for imposing penalty etc. when the incident took place. He was having possession of EFT books and he had made remittance of the penal amounts collected from the passengers in between 09.7.16 and 27.10.16. On 31.10.16 when a departmental check was conducted, it was detected that the applicant has indulged in malpractices and the transfer of the applicant to another division was made on the basis of public policy that ticket checking staff who was having mass contact should be transferred on inter-divisional basis when they are found indulging in malpractices. The objective of this

provision is to curb malpractices among railway staff who were having mass contact. According to Rule 226 of the IREC, the competent authority is given power to transfer a railway servant in the exigencies of service. The transfer was made in the public interest so as to make a clean administration where mass contract is necessary. The provision of Master Circular 67 is not applicable to the applicant's case as the transfer was not during suspension period.

3. The applicant also filed a rejoinder denying the averments in the reply.
4. We have perused the pleadings and heard the arguments put forward by the applicant as well as the government counsel appearing for the respondents.
5. The main contentions put forward by the applicant is that the transfer order is against the Master Circular No.67 Proviso 14 of the Railway Board produced as Annexure A8. He also relies on the decision of ***National Hydro Electric Power Corporation Ltd. v. Sri Bhagwan & Another*** to support his argument that if there is malafide, the Tribunals can interfere with transfer orders. The counsel also invited our attention to the case of ***Divisional Railway Manager, Union of India & Others v. Registrar, Central Administrative Tribunal, Madras Bench, Chennai & Another*** [reported in (2016) 6 MLJ 757] wherein it was held that a transfer during suspension cannot stand.

6. On the other hand, the counsel for the respondents would contend that the respondent have authority to transfer an employee in public interest. No enquiry was initiated and charge memo was not given. So, there is no merit in the contention of malafide. Though the applicant has raised contention that the respondents are on

inimical terms with the applicant, no evidence was adduced to support the same. Transfer is an incidence of service and generally Court never interferes unless there is malafide. When some irregularities were detected, the applicant was transferred to Trivandrum Division on the basis of the Policy Circular Nos.E(NG)I-98/TR/11 dt. 30.10.98 and 02.11.98 which stipulate that ticket checking staff as also other staff having mass contact should be transferred on inter divisional basis when some malpractices were detected.

7. On going through the various exhibits and pleadings, the main contention raised by the applicant against his transfer is that of malafide. According to the applicant, some of the respondents were on inimical terms with him as he attempted to stop unauthorised vending in train. But though such a contention was raised, the applicant had failed to show *prima facie* that respondents were on enmity due to the alleged incidents. So, the applicant has failed to show malafide behind the transfer order.

8. The next argument that the transfer was against Master Circular No.64 of Railways produced as Annexure A8. Provision No.14 states that -

“Non-gazetted staff against whom a disciplinary/criminal case is pending or is about to start, should not normally be transferred from one Railway/Division to another Railway/Division till after finalisation of the disciplinary/criminal case.”

Here the respondents would contend that they had not issued any charge memo to the applicant till the date of filing of reply. It is true that normally a non-gazetted officer will not be transferred to another division while a disciplinary proceedings is

pending. But as per the policy guidelines issued by the Railways, as regards employees having mass contact with people, should be transferred to another division on public interest when malpractices were detected. Here according to the respondents, they had detected some malpractices on the side of the applicant when his office was inspected and accordingly he was transferred to another division in accordance of the policy of the Railways. We feel that any malpractices committed by Ticket Examiners having mass public contact will affect the reputation of the department and the employer is entitled to take action to avoid such irregularities to repeat. In such cases, it is the policy of the Railways to transfer such employees to another division. Such action in accordance with the policy cannot be considered as punitive. Hence, we are of the opinion that there is no merit in the arguments raised by the applicant. The decisions cited by the applicant has no application in the facts and circumstances which came out in this case. In ***N.K.Singh v. Union of India [reported in (1994) 6 SCC 98]*** the Hon'ble Apex Court laid down the following dictum:-

“23....Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make the decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinised judicially, there is no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government

departments. Thus must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

9. Considering the totality of facts and circumstances revealed, we find that there is no merit in this case. Hence, we hereby dismiss this OA. No costs.

(T.Jacob)
Member(A)

(P.Madhavan)
Member(J)

17.12.2019

/G/