

**(2008) 02 DEL CK 0078**

**In the Delhi High Court**

**Case No :** WP (C) No. 429 of 2008 and CM No. 849 of 2008

A.K. Gupta and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 01-02-2008

**Acts Referred:**

**Citation :** (2008) 02 DEL CK 0078

**Hon'ble Judges :** Veena Birbal, J; Manmohan Sarin, J

**Bench :** Division Bench

**Advocate :** A.K. Behera and Manjit Singh Reen, for the Appellant; Neeraj Atri and Jai Raj Mudgal, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Manmohan Sarin, J.—Petitioners A.K. Gupta and K.S. Parmar, by this writ petition, assail judgment dated 3.1.2008 of the Central Administrative Tribunal, Principal Bench in OA No. 1220/2007 (hereinafter referred to as "The Tribunal"). By the impugned judgment, the OA preferred by the above two petitioners and one Shri V.S. Meena, was dismissed. In the OA, the petitioners had challenged the transfer orders dated 9.5.2007 and 13.2.2005 by which the two petitioners were transferred to Allahabad Division while the third person, V.S. Meena, was transferred to Jhansi Division from Agra Division.

2. Before considering the grounds of challenge in the present writ petition, the facts in brief which are relevant for the purposes of present OA, may be noted.

(i) Petitioners No. 1 & 2 were posted as Head Booking Clerk and Head Parcel Clerk in the Agra Division. The two petitioners were found indulging in malpractices by the Vigilance Department in accepting excess amount from the passengers. They were charge-sheeted and departmental proceedings were initiated. Petitioners were found guilty in the departmental inquiry. They were found to have developed a nexus with the local staff and the Railway users. Petitioner No. 1 was found guilty of demanding and accepting Rs. 30/- over and

above the due railway charge for booking luggage ticket from the decoy customer. Petitioner No. 2 was found guilty for demanding and accepting more money than the actual money from the decoy passenger. Petitioners were transferred to Allahabad Division. They challenged the same by filing OAs claiming the said transfer to be in contravention of Railway Board's Letter dated 25.1.1969. The OAs were disposed of directing the respondent to complete the departmental proceedings within the stipulated period and consider their posting back as per the said letter dated 25.1.1969 and pass a detailed and speaking order. Pending the same, the transfer order was stayed. It is the petitioners' case that without concluding the departmental proceedings and passing speaking order, respondent passed order dated 15.3.2007 of their transfer resulting in contempt petitions being filed. The Divisional Railway Manager, however, cancelled the order.

(ii) It is the petitioners contention that the Divisional Railway Manager had cancelled the transfer order keeping in view the petitioners conduct since the date of incident and their abstaining from indulging in any malpractices. Petitioners contend that in these circumstances, the Chief Commercial Manager could not have passed the order dated 15.5.2007 transferring the petitioners, assuming the powers of a General Manager in derogation of the order of the Divisional Railway Manager.

3. The question to be considered in this petition is the validity of the order of transfer passed by the Chief Commercial Manager dated 15.5.2007, by which the initial order of transfer dated 13.12.2005 was maintained.

4. Mr. Behera submits that once the Divisional Railway Manager had exercised his discretion in cancelling the earlier transfer order vide order dated 20.4.2007, it was not within the domain of the Chief Commercial Manager to pass an order cancelling the said order and transferring the employees. He submits that the Chief Commercial Manager had exceeded the authority in passing such an order.

5. The Tribunal had considered this aspect and observed that the Senior Divisional Personnel Officer was a senior Administrative Officer of the Division who communicated the transfer order passed by the competent authority, i.e., the Chief Commercial Manager being the Head of the Department of all the employees in the Commercial Branch of the Headquarters of the Division. The Chief Commercial Manager was fully competent to pass the said order. The Chief Commercial Manager and Divisional Railway Manager, both are equal administrative controlling authority having equal status, i.e., Divisional Railway Manager is the controlling authority at Divisional level, whereas the Chief Commercial Manager is head of the Department of Commercial branches all over the Headquarters. The petitioners who were working as Booking Clerk and Parcel Clerk, came under the Chief Commercial Manager. Thus, the Tribunal has rightly held that the Chief Commercial Manager was fully competent to pass the order.

6. Mr. Behera next submitted that considerable period had elapsed since the

incident. The petitioners have already been imposed the penalty following the departmental inquiry by bringing them at the initial grade. Transferring them out of the Division would, in practical terms, amount to a double penalty which was not warranted especially when in the interregnum, their conduct has been blemish less .It is also urged that following the imposition of penalty, they were not posted at places where they had mass contact and as such, the object, for which the transfer was affected, stands already accomplished.

7. There are several judicial pronouncements where this Court has upheld the provision regarding inter-divisional transfers pending disciplinary enquiries to curb malpractices among the Railway staff in areas of mass contact. Reference may be invited to the decisions of the High Court of Delhi in "Jagdish Singh Brar v. Union of India" and "Sumit Vig v. The Secretary, Railway Board", which have been noticed by the Tribunal. In addition, reference may also be made usefully to the decisions of the Division Bench of this Court in the batch of writ petitions namely, WP(C) No. 6082/2005 (Ganesh Din), WP(C) No. 17165/2005 (Sudhir Kumar), WP(C) No. 36-37/2006 (Shiv Raj Singh & Satpal Singh) and WP(C) No. 3942/2006 (M.P. Kushwaha), to which, one of us (Manmohan Sarin, J.) was a party. This Court observed as under:

16. The Railways as a matter of policy and in their wisdom have carved out a different treatment for employees, who are either posted in the ticket checking or other areas of mass contact and are found to be indulging in malpractices. Inter divisional transfer for these persons has been provided by the circular dated 2.11.1998. The transfer need not await the completion of departmental inquiry as for the other non-gazetted staff whose conduct is under examination. The objective is to root out corruption totally from the posts, which are in public contact or having public dealings. The different treatment is clearly justifiable based on a reasonable classification and an intelligible differentia. The railways cannot be faulted with for taking strong and vigorous steps to project a clean image and towards that end to effect transfer necessary in public interest. Transfer is an incidence of service and unless the transfer is vitiated by mala fides or by extraneous considerations, the Courts are loathe to interfere. Courts are not expected to interdict the working of the administrative system by interfering in transfers as held by the Supreme Court in the State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others, . No Government servant or employee has a legal right to be posted at a particular place. Transfer apart from being an incidence of service is also a condition of service necessary in public interest for maintaining efficiency in public administration as held in National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, .

17. In view of the foregoing discussion, we reject the challenge to the Circular of 2.11.1998 as being discriminatory and violative of Article 14 of the Constitution of India or being arbitrary and punitive in nature. As noticed earlier, the Circulars dated 25.3.1967, and 30.10.1998 prescribing a restraint on transfers pending the disciplinary or departmental enquiry are intended for the general non-

gazetted staff of railways, while the circular of 2.11.1998 deals specifically with the railways staff posted in ticketing and the areas of mass contact.

8. Applying the ratio of the aforesaid judgment to the facts of this case, it would be seen that if as a result of a judicial order pending the culmination of the departmental inquiry and its conclusion, it has not been possible to affect the transfer the same cannot be urged as a ground subsequently for avoiding transfer especially when the employee has been found guilty in the departmental proceedings and the department exercises its discretion to transfer. This is especially so where there is no allegation of the transfer being vitiated by any extraneous factor or malafides.

9. We accordingly find that the Tribunal was fully justified in dismissing the OAs challenging the orders of transfer and the impugned judgment of Tribunal cannot be faulted with. No case is made out warranting interference in the exercise of writ jurisdiction.

Writ petition is dismissed.