

(2023) 01 CAT CK 0034

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00349 Of 2022

Deepa.S

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 23-01-2023

Acts Referred:

Salary, Allowances And Pension Of Members Of Parliament Act, 1954 — Section 8AA
Railway Services (Conduct) Rule, 1966 — Rule 3(1)(ii)

Citation : (2023) 01 CAT CK 0034

Hon'ble Judges : K. Haripal, Member (J)

Bench : Single Bench

Advocate : T.C. Govindaswamy, O.M. Shalina

Final Decision : Allowed

Judgement

1. The applicant is working as Reservation Supervisor-II in the Passenger Reservation System Office, PRS for short, in Thiruvananthapuram Central, under the 3rd respondent. She is aggrieved by Annexure-A1 order of transfer to the extent she stands transferred to Nagercoil junction 'on administrative grounds on vigilance advice'. Earlier she approached this Tribunal with O.A.233/2022 challenging the legality of the transfer; as directed by the Tribunal she moved a representation before the 3rd respondent for reviewing the order. But by Annexure-A15 communication that representation was rejected. Then she has approached this Tribunal for quashing Annexure-A1 to the extent it relates to the applicant and respondents 8 and 9, for quashing Annexure-A15 and to direct the respondents to consider the applicant for posting against vacancy at Thiruvananthapuram Central at Current Reservation Office in preference to the 8th respondent.

2. At the time of admitting the application on 04.07.2022 the Tribunal passed an order to maintain status quo, which continues.

3. The applicant had commenced service as Commercial Clerk in 1989 and later

by promotion she became Reservation Supervisor. She was posted in the Passenger Reservation System Office on 24.10.2017. According to her, immediately thereafter, she registered her preference for transfer to Thiruvananthapuram Central Current Reservation Office, on 15.11.2017. Accordingly, respondents 1 to 6 are bound to recognise her seniority and consider the request for transfer. But ignoring the same and disregarding Annexure-A11 guidelines she has been transferred to Nagercoil, which is arbitrary and illegal. Incidentally, on account of a preventive check conducted by the Vigilance unit she was served with Annexure-A7 memorandum alleging an imputation of misconduct of misbehaviour. She gave a reply. In Annexure-A8 order, though the 3rd respondent was convinced that it was 'an unintentional error while obliging to the request from an Ex-MP', that gave rise to such a complaint, the matter was closed censuring her. According to the applicant, there was absolutely no element of misconduct on her part while handling the application for reservation given by Sri.Mullappally Ramachandran, former MP and the then President of the Kerala Pradesh Congress Committee. The travel concessions are granted to Ex-MPs on the strength of Section 8AA of the 'Salary, Allowances and Pension of Members of Parliament Act, 1954'. When such Ex-MPs undertake journey, follow up steps are done by the Lok Sabha/Rajya Sabha Secretariat, as the case may be. It is not based on the complementary pass issued by the Railway Board. But the respondents 1 to 6 were under the impression that such reservations are done for Ex-MPs based on the complementary passes issued by the Railway Board. Moreover, genuine grievance of the employees regarding transfer at the instance of Vigilance organisation should have been heard by the 3rd respondent as provided under Annexures-A9 and A10 directions issued by the Railway Board. Transfer to a far away place which necessitates change of residence is against the transfer policy. Preventive check and the report thereon were done by the 7th respondent, who is a Reservation Clerk far junior to the applicant. Herself and the respondents 8 and 9 are actively involved in the activities of Southern Railway Mazdoor Union. The applicant is not a member of that union. Any recommendation made by the Vigilance unit is not binding on the official respondents but the respondents were blindly following the recommendations of the Vigilance unit. Annexure- A15 was passed without application of mind. From Annexure-A8 it is clear that there was no element of misconduct on her part. Still she was censured and even thereafter she has been transferred to Nagercoil blindly following the directions of the Vigilance unit. Such a transfer is punitive in character. After imposing penalty of censure the transfer constitutes double jeopardy. Advice of the Vigilance unit is not based on relevant materials or considerations. The 3rd respondent did not consider her representation correctly and thus she has approached this Tribunal with the aforesaid reliefs. There is no meaning in stating that the applicant is continuing in Thiruvananthapuram for the last 25 years. Citing instances of 10 persons she said that all of them are continuing in Thiruvananthapuram Central for 28-30 years. Moreover, she had an inter-caste marriage so that they do not have the support of relatives of both the families

that she has to look after the welfare of the 19 year old daughter. Her husband, an employee of the Railways stands transferred to Kollam in the same order. That means, the transfer will work untold hardships to her family.

4. On behalf of the respondents, the 6th respondent has filed a reply denying the contentions of the applicant. According to him, transfer is due to the applicant after occupying more than four years in a sensitive post. Moreover, on the advice of the Vigilance unit after a preventive check a minor penalty DAR action was initiated against her as evident from Annexure-R1. After passing Annexure-A8 order the applicant did not prefer any appeal against the penalty imposed. Vigilance recommendations also contained a clause to shift the applicant to Thiruvananthapuram Central Station as part of preventive vigilance strategy. Penalty of censure was imposed on the applicant for her misconduct. However, transfer to Nagercoil junction is only an administrative measure taken on the recommendations of the Vigilance as part of preventive vigilance strategy. While attempting to reserve ticket with travel authority No.2626, without resorting to the options available in the system the applicant made reservation on the blocked travel authority. She was overriding the blockade by other means. It was not expected of the staff working in the reservation counter. According to the respondents, the contention of the applicant that she had no malafide intention in generating such reservation has no basis. From Annexures-A9 and A10 it is clear that Vigilance organisation is vested with authority to recommend transfer of railway staff. The imputations made against the 7th respondent are based on professional ego. Moreover, involvement of the respondents 8 and 9 in union activities has no bearing on the transfer of the applicant.

5. According to the respondents, for over 25 years the Railway was taking care of the welfare of the applicant. Reasons that the applicant had entered into an inter-caste marriage, that her daughter is 19 years old etc. are not valid considerations when transfer, which is an incident of service, is made on administrative grounds. Transfer of the applicant is not punitive, but is preventive in nature for the smooth functioning of the Railways. She would be eligible for transfer grant of Rs.49,760/- and also eligible for joining time for ten days. As she said that her daughter is studying for Plus-Two, one month time has been granted for her relief, in Annexure-A15. Therefore, the Original Application is sought to be dismissed.

6. The applicant filed a rejoinder denying the averments in the reply. According to her, in the absence of evidence of any illegality or malpractice committed by her, respondents were not bound by the recommendations for initiation of DAR or shifting her from Thiruvananthapuram Central. Moreover, referring to Annexure-A16 she said that Sl.No.114 in Annexure-A1 who has been proposed to be transferred on the same ground, has been allowed to continue in Thiruvananthapuram Central owing to shortage of staff. It is also reiterated that ID card is issued to the Ex-MPs by the respective Secretariat of the Parliament and not by the Railway Board. She has also reiterated that Annexure-R2

communication has never brought to her notice nor it was circulated in the office of the Southern Railway, that it is a communication addressed only to the General Managers of different Zonal Railways. Annexure-R2 is the copy received by the South-Western Railway, Hubballi, which was collected by the respondents to defend the case. That means, Annexure-R2 has not reached the office of the respondents. It is further stated that the official respondents were obeying the recommendations of the Vigilance unit, which was unwarranted.

7. Heard both sides elaborately. Sri.T.C.Govindaswamy, learned counsel for the applicant submitted that the applicant has been transferred to Nagercoil junction, a station 74 kms away from her place of residence, which is not a station chosen by her as per Annexure-A2 request registered on 15.11.2017. He also reiterated that her station seniority and place of choice were overlooked and the respondents 8 and 9 were favoured by the respondents ignoring her legitimate claims. According to him, the transfer is patently punitive in nature. In fact the applicant has already suffered punishment of censure. Even though it was submitted by the counsel that she has preferred an appeal against Annexure-A8 order, materials are not available to support the claim. Any how, the period for preferring the appeal against Annexure-A8 has already expired. According to the learned counsel, the disciplinary authority was convinced that the allegations against her are trivial in nature and she had committed only an unintentional error, which is not sufficient to transfer her to a long distant place which would cause dislocation of her family. It is also pointed out that her husband stands transferred from Thiruvananthapuram to Kollam. That means, there would be no one to look after the 19 year old daughter, who is a student. He also pointed out that the respondents were under the wrong notion that complementary passes are issued by the Railways to the Ex-MPs. When the reservation application was processed, some defect was noticed in the system for which the allegation of misconduct should not have been imputed. There is absolutely nothing to say that she had acted with malafide intention. The Vigilance unit has no jurisdiction to suggest a transfer and the respondents are under the bad notion that they are liable to honour all recommendations made by the Vigilance.

8. On the other hand, Smt.O.M.Shalina, learned Senior Central Government Standing Counsel pointed out that the applicant is working in a sensitive post requiring frequent transfers, which is a preventive vigilance strategy. Even though the priority list is always maintained by the Railways, there is no Rule that it should not be overlooked at all; violation of the priority list cannot be raised as a big issue. The applicant is due for transfer, but before that she had faced disciplinary proceedings which ended with a censure. She has not preferred any appeal against the same. According to the learned counsel, in order to reserve a ticket in the upper class, an identity card alone is not sufficient. After arranging reservation, the matter should be reported to the Secretariat of the Parliament concerned, then only the cost of reservation will come to the credit of the Railways. Ex-MPs are the only one of the categories of passengers getting such facilities and the employees like the applicant are very familiar with the

procedure. The learned counsel asserted that Annexure-R2 must have been updated in the system; since it is found out that the applicant had done ignoring the updation, blocking the particular ID card, it is a matter of serious misconduct and that was how disciplinary proceedings were initiated against her. In fact such a misconduct was admitted by the applicant; she admitted the punishment also. Referring to Annexure-R1 the learned Standing Counsel pointed out that the Vigilance department had recommended the transfer which is within their domain. It was also pointed out that it was not the first time that such an act of omission/commission was noticed against the applicant. She also produced copies of communications touching rotation of officials working in sensitive posts, Indian Railways Vigilance Manual 2018, standing instructions on submission of report by the Vigilance Officer on complaints and procedure to be followed by the disciplinary authority.

9. After hearing the learned counsel on both sides and giving thoughtful consideration, I have reasons to think that atleast for two reasons Annexure-A1 should be held to be arbitrary and illegal as far as the transfer of the applicant is concerned.

10. It is true that the applicant is working for over four years in the passenger reservation system in Thiruvananthapuram Central Railway Sation. She was posted there on 24.10.2017. During the pandemic period transfers were not effected and thus the first batch of transfer was ordered by Annexue-A1 whereby the applicant, Sl.No.44, stands transferred 'on the same pay and designation on administrative grounds on Vigilance advice', to Nagercoil junction. But for the disciplinary proceedings initiated against her, it is very certain, she would have been given a convenient transfer as has been noticed in majority of cases of transfer in Annexue-A1. Now, the question posed for consideration is whether the transfer to Nagercoil can be justified.

11. It is evident that the Vigilance department had conducted usual preventive checks in the section of the applicant. Relevant portion of Annexue-R1(A) reads thus:

"Sub: Check on reservations done in Complimentary card pass

– Reg.

During the course of a preventive check conducted on the reservations done in Complimentary Card Passes issued to Ex MPs, the following irregularity was noticed in the working of Smt. Deepa, RS-II/TVC (PF No. 04214109) in that

She while working as RS-II/TVC had made reservations on the strength of the Ex.MP Travel authority No.2626 on 02.09.2019 with issuing authority as 'SR' to by-pass the blocking of the travel authority No.2626 in the PRS system with issuing authority 'IR'.

Hence it is recommended to initiate Minor Penalty DAR Action against the employee for the above irregularity and shift her out of TVC Station."

This was followed by issue of Annexure-A7 memorandum. The imputation against the applicant is as follows:

"Smt. Deepa S, while working as RS-II at PRS/TVC has failed in her duties in that during a preventive check conducted on reservations done against Complementary Card Passes issued to Ex. MPs the following irregularity was noticed:

Smt. Deepa S, RS-II, PRS/TVC had made reservation on the strength of the Ex-MP Travel Authority No.2626 on 02/09/2019 with issuing authority as 'SR' to bypass the blocking of travel authority No 2626 in the PRS system with issuing authority 'IR'.

Thus Smt. Deepa S, RS-II, PRS/TVC has failed to maintain devotion to her duties and thereby violated Rule 3 (1) (ii) of Railway Services (Conduct) Rule 1966."

12. She gave her reply. By Annexure-A8 order of the 5th respondent she has been censured. Relevant portion reads thus:

"The case file along with the explanation of the CE has been gone through in detail. CE explains that there is no circulars/standing orders or instructions through the system regarding filling up the station field while reserving MP/Ex-MP passes. In this case, the then CRS has presented the form to the CE at the counter after verifying the genuineness of the pass. While entering the pass details in the system no messages like expired/invalid were displayed. She further explained that as the system was not accepting the code "IR" believing it to be a technical error, she tried with "SR" as is done in the case of metal passes to avoid embarrassment of denying reservation to a dignitary. It is understood that the system is now modified with a feature denying the entry to "SR" for MO/Ex-MP pass booking. Though the CE has done a mistake of issuing ticket against an invalid authority it seems to be an unintentional error while obliging to the request from Ex-MP. Considering all the aspects of the case I have decided to CENSURE her."

13. Now, versions of the applicant and the respondents to the circumstances that led to the initiation of disciplinary proceedings are mutually exclusive. In paragraph 4(q) of the application the version of the applicant can be seen:

(q) The applicant submits that there was no element of misconduct on the applicant's part. She had also categorically indicated that the application for reservation was duly filled in, in favour of Ex-M.P, the then President of the Kerala Pradesh Congress Committee, Shri Mullappally Ramachandran. The same was verified by Chief Reservation Supervisor (the applicant's Supervisor) and personally handed over to the applicant for effecting the reservation. While dealing with the computerized reservation of such travel facilities, the station field has to be filled in as "SR" or "IR", referring "SR" for Southern Railway and "IR" for Indian Railways. There was no instructions from the Railway Board as to whether the field "SR" or the field "IR" is to be operated for the purpose of giving

reservation based on the Identity Card issued to the Ex-M.Ps. However, any one of these field has to be filled in, as otherwise, the reservation ticket cannot be generated. (Now after the applicant filed the earlier OA pointing out the folly, the respondents have changed the system and added Lok Sabha and Rajya Sabha also). Normally, whenever such reservation for Ex-M.Ps are brought forth, either "IR" is shown or "SR" is shown, and whichever is shown, would make no difference. At any case, the system was not accepting the station field "IR" on the day, while reserving the Ex-M.P. Shri Mullappally Ramachandran's request for travel and therefore, the applicant filled the option "SR". Reserved ticket was thus generated and there was no complaint also. Pointing out this aspect, the applicant submitted a detailed reply to Annexure-A7 charge memo whereupon the disciplinary authority was pleased to consider the facts and to dispose of the representation by awarding a penalty of censure....."

This has been rebutted by the respondents in paragraphs 11 and 12 of the reply statement, which states as follows:

"As admitted by the applicant in para 4(q), on receipt of the request with travel authority No 2626, when the applicant attempted to reserve the ticket by filling the station filed with issuing authority 'IR', in the words of the applicant- At any case the system was, not accepting the station field 'IR' on the day". It is pertinent to mention here that at this time an error message will be prompted by the system stating "ESSENTIAL VALIDATION INTEGRITY CHECK FAILED". However, ignoring the said error message, the applicant filled the station field with issuing authority 'SR', which was accepted by the system and reserved ticket was generated.

12. The instances where a travel authority is blocked by the Indian Railway are when any fraud or misuse is detected on the said travel authority or when there is an intimation of loss of the travel authority (ID Card). Any ticket reservation requests received after the travel authority number is blocked are presumed to be not genuine. The commercial clerks at the booking office are provided with options like (i) contacting the CONSOLE (IT Hub at Chennai) or (ii) checking the database software or (iii) verifying the periodic instructions provided regarding blocked travel authorities to determine the cause for blockage of a travel authority. The applicant without resorting to any of these options tried with the issuing authority 'SR' and completed the reservation, which is in violation of the instructions given in this regard. Vigilance department had recommended the applicant be transferred out of Trivandrum station on detecting an irregularity committed by her in generating reservation ticket on a blocked travel authority, bypassing the blockage, by opting an incorrect issuing authority. The travel authority (Identity Card Number) of the Ex MP that was blocked was the one having No 2626. The reason for the said blockage was the intimation from the Lok Sabha Secretariat regarding cancellation/loss of identity cards and issuance of New Identity Cards to MPs and Ex-MPs. The said intimation was circulated to all Zonal Railways by the Railway Board as per letter No.2019/DG-1/20/P/I cards

dated 03.07.2019, a true copy of which is produced herewith and marked as Annexure R2. As per Ann.R2, the travel authority No.2626 has been cancelled by the Lok Sabha Secretariat and the new Identity Card Number/travel authority Issued is No 5817. It is pertinent to mention here that the ticket charges for upper class travel are huge and Railways cannot raise debit to Lok Sabha/ Rajyasabha secretariat against reservation provided on a blocked authority, thus causing leakage of revenue to the Railways."

14. Sri.Mullappally Ramachandran, former MP and the then President of the KPCC had made an application for reservation, which was handled by the applicant. It appears that the reference made to the applicant was ID card No.2626. But by the time, that ID card was cancelled by Annexue-R2 order dated 03.07.2019 and a new ID card bearing No.5817 was issued. The definite case of the applicant is that she was totally unaware of the issue of the new ID number, that without knowing, attempts were made for effecting reservation by filling the necessary station field, the reservation ticket cannot be generated. Normally, such reservation is generated either by filling 'IR' or 'SR', which according to the applicant, do not make any difference. That day she filled the same by opting 'SR' and the ticket was generated and there was no complaint on the same. According to her, the Vigilance unit was determined to trouble her and that was how Annexue-R1 was furnished.

15. Whatever it may be, two aspects require to be highlighted here. Firstly, the disciplinary proceeding initiated against the applicant had already ended with a censure imposed on her. After issuing Annexure-A8 dated 21.09.2021, the matter ended there. The applicant also did not prefer any appeal against it and it has become a fait accompli. It is not known as to how the matter was again allowed to percolate prompting the respondents to give the applicant a transfer to a far away place which was not chosen by her. It is quite certain that the Annexue-R2 communication had not reached the office of the respondents in Thiruvananthapuram. From the seal bearing on the face of the document itself it is clear that the document was borrowed from the South Western Railway, Hubballi. That means, there is considerable force in the contention of the applicant that the communication was not circulated in the office of the respondents nor the employees concerned were updated regarding the loss/cancellation of the old cards and the issue of new identity cards to the dignitaries.

16. There cannot be any doubt that the applicant is working in a transferable post. Moreover, as she occupies a sensitive post, she is susceptible to frequent transfers as part of preventive vigilance strategy. All the same, such a transfer should be in conformity with the transfer guidelines. As noticed earlier, but for the disciplinary proceedings initiated against the applicant, she would never have been transferred out of Thiruvananthapuram Central because officers similarly placed having 28-30 years of service are still retained there. Annexue-A16 pointedly indicates that there is acute shortage of staff in Thiruvananthapuram.

17. In my considered opinion, as far as the applicant is concerned, Annexue-A1

is liable to be interfered with for two reasons. Firstly, it is punitive in nature. As adverted to earlier, from the very face of the remarks shown against the name of applicant in Annexure-A1 it is shown that she was transferred on administrative grounds on Vigilance advice. Annexure-R1 has already been extracted, which indicates the recommendations of the Senior Vigilance Officer to initiate minor penalty DAR action and to shift her out of Thiruvananthapuram Central Station. That means, despite the fact that, by the time Annexure-A1 was issued, she had already suffered a censure. She has again been punished by granting the transfer to an inconvenient place.

18. It is trite that an order of transfer which is used as a cloak for punishment will be a malafide exercise of power. Here, alleging misconduct she has already been punished. But it did not end there. On the guise of the recommendations of the Vigilance unit, she has been punished once again which cannot be a bonafide exercise of power.

19. It is also necessary to note from Annexure-A8 that the misconduct alleged against the applicant was found out to be an 'unintentional error while obliging to the request from the Ex-MP.' It is also not disputed that thereafter the system was modified with a feature denying entry to 'SR' for MO/Ex-MP pass booking. Still, she was granted a censure. We are not on the legality or otherwise of the punishment imposed despite the fact that it was an unintentional error. But on the face of the documents and the contentions in the reply, it is clear like day light that it was a punishment transfer pursuing Annexure-R1 recommendation, which is bad.

20. The second aspect is that, by suffering the punishment of censure she has already sinned than sinning. No doubt, the disciplinary authority is bound to consult the Vigilance in the proceedings initiated at the instance of the latter. But the decision has to be taken by the disciplinary authority. Here, after considering all the aspects, the 5th respondent did not think the allegations serious enough warranting imposition of any major punishment on her. There is also nothing to infer that the error committed by the applicant had given rise to any complaint from any quarter or revenue leakage to the Railways. No motive also alleged against her. In the circumstances, imposition of the second punishment by way of transfer, as rightly pointed out by the learned counsel for the applicant, works as double jeopardy.

21. As noticed earlier, but for the disciplinary proceedings initiated against her she would have been given transfer conforming to Annexure-A11 norms. Therefore, the applicant is entitled to get a transfer convenient to her without causing her change of residence.

22. Upshot of the discussion is that the Annexure-A1 is quashed to the extent transferring the applicant to Nagercoil junction. She will be given a transfer convenient to her without causing change of residence.

The Original Application is allowed as above. No cost.

Dated 23rd January, 2023