

(2023) 02 CAT CK 0001

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00369 Of 2022

Suresh Babu K.

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 01-02-2023

Acts Referred:

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

Citation : (2023) 02 CAT CK 0001

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

K. Haripal, Member J

1. The applicant is presently posted as Chief Commercial-cum-Reservation Supervisor at MLA Hostel Passenger Reservation System (PRS), Southern Railway in Thiruvananthapuram attached to the TVC station. He is a native of Thiruvananthapuram. He is aggrieved by his premature transfer to Ernakulam in Annexure A1 order. He is also aggrieved by the order of the respondents posting the 8th respondent in his place through Annexure A2 order.

2. He had commenced service on 09.04.1997 in sports quota in the electrical department. Later he was transferred to the category of Commercial Clerk in 2002 and promoted as Cheif Commercial-cum-Reservation Supervisor and is working in the present office since 31.05.2019. While so, he has been transferred to Ernakulam without request and against his interest. He is deeply aggrieved by the said transfer.

3. During July 2021, the 7th Respondent who is a Commercial Clerk holding the post of Vigilance Inspector visited his office and submitted a report to the effect that he had made reservation on the strength of Ex-MPs authority No.2626

bypassing the blocking of the above travel authority using issuing authority as 'SR' in the PRS system instead of 'IR'. On the basis of the above report and on the strength of certain directions from the office of the 2nd respondent, he was served with Annexure A8 memorandum alleging that he has failed to maintain devotion to his duties and thereby violated Rule 3(1)(ii) of Railway Services (Conduct) Rules 1966. He gave a reply denying any act of misconduct on his part. Ultimately, it ended up by imposing penalty of censure on him. The proceedings were initiated as though reservation of tickets are made by ex-MPs on the basis of authority/passes issued by the Railways and that there is a period of validity for the said authority. But the 5th respondent found that there was no misconduct or malafide intention on the part of the applicant, still he has been ordered to be transferred to Ernakulam as punishment. Referring to Annexure A10 & A11, it is pointed out that genuine grievance in the matter of transfer effected at the instance of vigilance organisation should be heard by Divisional Railway Manager in respect of divisionally controlled staff and by the Additional Chief Personnel Officer/ Chief Personnel Officer in the case of headquarters controlled staff, before a final decision is taken. That means even after imposing a punishment of censure, he has been transferred to Ernakulam, an inconvenient place in violation of Annexure A12 transfer norms. The personal inconveniences of the applicant were not considered at all. The transfer involves change of residence. His wife is employed in the Kerala Health Research Welfare Society on contract basis. His elder son is studying in plus two and younger son in 8th Standard. Both his parents are aged above 70 years and are heart patients and the presence of the applicant is necessary in his residence. Annexures A1 & A2 were passed without considering relevant materials. The Vigilance unit has no authority to recommend a transfer. Such a transfer was recommended even before conclusion of the disciplinary proceedings initiated against him. No malpractice or misconduct is proved against the applicant and the report of the Vigilance Officer is based on erroneous presumption that travel facilities granted to the Ex-MPs is by the Railway Board and not under Sec.8AA of the 'Salary, Allowances and Pension of Members of Parliament Act, 1954. The foundation of the recommendations of the report is non-est as there is no element of misconduct or malpractice on his part. The identity card issue of Lok Sabha or Rajya Sabha ex-MPs is not capable of being blocked by the computer system. Such travel facilities are not based on computer system. Such travel facilities are not complementary passes issued by the Railway Board. Even after imposing an order of censure, he has been transferred to Ernakulam on the basis of the vigilance direction. It is punitive in nature and also amounts to double jeopardy. Such an order should have been passed only with the prior approval of the Divisional Railway Manager. Even though he had made a representation at the instance of this Tribunal, that was rejected as per Annexure A4 order. Therefore Annexures A1, A2 and A4 are sought to be quashed and the respondents are to be directed to allow the applicant to continue in his present office.

4. On behalf of Respondents 1 to 6 the Senior Divisional Personnel Officer has

filed detailed reply denying the contentions in the application. According to him the applicant had filed OA No.304/2011 seeking the very same reliefs and obtained interim order for disposing the representation submitted by him. That representation was considered and rejected by Annexure A4 order dated 16.06.2022. However, since the OA stood adjourned to 13.07.2022, the applicant was not relieved. On 13.07.2022 the applicant moved to withdraw OA No.304/2022 and the instant OA was filed and continued in the same station on the strength of the interim order passed by the Tribunal. According to the respondents, as part of the preventive vigilance strategy, vigilance team had conducted an inspection of the office of the applicant and gave Annexure R-1 recommendations for initiating minor penalty DAR action against the applicant and for shifting him out of TVC Station. On inspection it was found that he made reservation on the strength of travel authority No.2626 issued to Shri Mullapally Ramachandran, ex-MP with issuing authority as 'SR' to by-pass the blocking of the travel authority in the PRS system using issuing authority 'IR'. According to the respondents identity cards are issued to ex-MPs by the Parliament Secretariat. When tickets are reserved as provided u/s 8AA of the 'Salary, Allowances and Pension of Members of Parliament Act, 1954', the number of the Photo Identity Card has to be entered in the PRS system for making computerised reservation. Such a reservation was made on 03.10.2019 with ID No.2626. During the course of the preventive check conducted by the Vigilance unit, it was noticed that the said reservation was made using as incorrect authority. In that context Annexure R1 was issued with the aforesaid recommendations. According to the respondents on receipt of request for reservation with travel authority No 2626, the applicant attempted to reserve the ticket by filling the station field with issuing authority 'IR', which was found blocked since the system was not accepting the above station field. At this stage, an error message will be prompted by the system stating 'Essential Validation Integrity Check Failed'. Ignoring the error message the applicant filled the station field using issuing authority 'SR', which was accepted by the system and the reservation ticket was generated. Such a blockage is effected by the Railway when fraud or misuse is detected on the said travel authority or when intimation of loss of the travel authority. When such a blockage was noticed the applicant was bound to contact the Console (IT Hub at Chennai) or check the database software or verify the periodic instructions provided regarding blocked travel authorities. But without resorting to any such course he generated the ticket. He completed the reservation by filing the field with 'SR', which is in violation of standing instructions. The fact that the identity card No.2626 was blocked and new identity card was issued to the ex-MP was intimated through Annexure R2 communication, generating reservation through a blocked identity card may cause leakage of revenue to the Railways.

5. According to the respondents, noticing the above misconduct DAR proceedings was initiated and the applicant was censured. At that time recommendation regarding transfer was not effected because of the surge of Covid, when

transfers were started effecting, he is transferred to Ernakulam through Annexure A1.

6. It is also contended that the argument that he has not completed his tenure, has no basis. The maximum period of four years for employees manning sensitive posts is the outer limit, there is no impediment to transfer such persons due to administrative exigencies. There are 9 posts of Chief Commercial cum Reservation Supervisor in Ernakulam Town Railway station out of which only 8 have been filled up including that of the applicant. Such a transfer is necessary in administrative exigencies. Insinuations made against the 7th respondent are unfounded. She was doing her legitimate duty as a Vigilance Inspector and the application is bad for misjoinder of parties.

7. According to the respondents, the applicant has occupied the post in MLA Hostel Passenger Reservation System for seven years in two separate tenures. Annexure A8 charge memo was issued as directed by the Chief Vigilance Officer. Even though he was censured under Annexure A9 order, he has not preferred any appeal against the same. The applicant is working in Trivandrum for over 20 years and is susceptible for transfer between Melapalayam in Tamil Nadu and Vallathol Nagar in Kerala. The 8th respondent was posted in the place of the applicant since it is a sensitive post. It is to be manned by an experienced staff. Annexure A9 order was passed after finding misconduct/ irregularity on the part of the applicant. The transfer is made in the best interest of the administration and it is not punitive but preventive in nature. Referring to the decision in Dr. Sivaramakrishnan P. v. State of Kerala and others {2008 (2) KHC 891} it was pointed out that the applicant has no vested right to continue in the same station. Therefore, the application is sought to be dismissed.

8. I heard Shri T.C. Govindaswamy and Smt. O.M. Shalina, SCGSC in great detail. Both the learned counsel have reiterated their respective contentions. According to the learned counsel for the applicant it is a premature transfer, but for the initiation of the DAR action and recommendation of the Vigilance unit, the applicant would have been able to continue in the present post for full term of four years. Now on a wrong notion that complimentary passes are being issued to ex-MPs by the Railway Board, preventive check was conducted. Thereafter Annexure R1 recommendations was made following which Annexure A8 charge memo was served on the applicant and ultimately it ended up in imposing censure under Annexure A9. There is absolute no allegation that the applicant had committed any misdemeanour or misconduct or irregularity. He had a good track record and that is why he is posted in a sensitive post. There was no error on his part and the DAR has ended as though the error was unintentional. Still he has been censured. The applicant has not taken steps to prefer an appeal because the censure does not have much consequence in his official career. The learned counsel also pointed out that no motive is alleged against the applicant. There is no case that he has given any room for such allegation in the past, that he has worked in the MLA Hostel for 7 years in two spells, that itself is indicative

of his clean official record. Referring to the charge-sheet and the alleged misconduct, everything had commenced after doing the preventive check by the Vigilance. Vigilance did not receive any complaint from the ex MP, Shri Mullappally Ramachandran. There is no case that the identity card issued to Shri Mullappally Ramachandran has been misused by anyone or any one else has travelled using the same. Even if any such misuse was done that will be detected by the TTE on board the train. There is no such allegation that the alleged mistake on the part of the applicant has caused any revenue loss to the Railways. After a preventive check, it was conventional to issue such recommendation which is not binding on the respondents.

9. It is also pointed out that the applicant has been transferred to a far of place in Ernakulam Town causing dislocation of his residence. It is in violation of Annexure A12 transfer norms. He asserted that it is an act punitive in nature, that the applicant has already suffered a punishment of censure, a second punishment of transfer means double jeopardy. The learned counsel also highlighted various personal inconveniences and personal difficulties of the applicant. After the order of transfer, on 07.07.2022 the applicant suffered a heart attack and had to undergo angiogram followed by angioplasty was done. He is continuing the treatment. Moreover, his aged parents have to be looked after by him. His children are in 12th and 8th Standards. His wife is working in Trivandrum so the transfer is troublesome for him. Referring to Annexure A15 he pointed out that continuing in Trivandrum for 20 years is not uncommon because people having 28-32 years of service are still retained in Trivandrum unabated, therefore, the fact that he is continuing in Trivandrum is not a big issue to be blown out of proportion. Moreover, transfer on the recommendations of the Vigilance is highly stigmatic that too without committing any offense. The learned counsel also pointed out that Annexure R-2 was never communicated to the officials in Trivandrum, on the face of the records it was obtained from South Western Railway, Hubballi, which itself is sufficient to say that the applicant was not aware of the same. Applicant or other members of service in Southern Railway are unaware of the same.

10. On the other hand Learned SCGSC reiterated that the applicant is continuing in the same seat for more than seven years though in two spells, he cannot have vested right in the seat. It is a highly sensitive post and therefore he is liable to be transferred. He is occupying a transferable post, such preventive check and transfer are made to avoid creation of vested interests.

11. Regarding initiation of DAR she pointed out that ID 2626 issued to Shri Mullappally Ramachandran was blocked by the Lok Sabha Secretariat, which was communicated under Annexure R2. It was also uploaded in the system, still it is not believable that the applicant was not aware of the same. In order to bypass the blockage, the applicant filled the system using a different field, which itself is an act of misconduct and that was why DAR action was initiated. He accepted the punishment of censure and now there is no point in saying that the said

punishment was on account of no fault of the applicant. Referring to Annexure R-1 recommendation of the Vigilance Officer, she pointed out that the transfer was recommended by the Vigilance. Therefore, misconduct on the part of the applicant stands proved, he did not challenge the same. Now he cannot be heard to say that there is no misconduct on his part etc. According to the learned Standing Counsel, in Annexure A-6 representation nothing more has been stated than what is stated in the Original Application. Since the applicant has transfer liability and is continuing in Trivandrum for more than 20 years he cannot challenge the same which has been done in administrative exigencies. Learned counsel reiterated that it is not punitive in nature. She has also pointed out that the order was issued after obtaining approval of the competent authority at the appropriate level.

12. As rightly pointed out by the Learned SCGSC, transfer is an incident of service. The applicant is liable to be transferred within the limits of operation of the Southern Railway; he is continuing in Trivandrum for the last more than 20 years. Highlighting Annexure A15 list it is stated that officials having service of 28-32 years are still continuing in Trivandrum and therefore the fact that he was not being disturbed for the last 20 years is of no consequence. According to the learned counsel, it is not a concession, that there is acute shortage of employees in Trivandrum and therefore the applicant is normally not liable to be transferred. But having regard to the fact that he is susceptible to transfer and is continuing in his seat for nearly four years it cannot be described as premature. He was posted in the present seat on 31.05.2019; that means within few months he will complete four years tenure and therefore the transfer granted to him cannot be challenged on that angle. Moreover a person cannot have a vested right in a particular station or seat. He is occupying a sensitive post. It has also come out that in two spells he has completed more that seven years service in MLA Hostel PRS seat itself. So on that ground Annexure A1 cannot be attacked.

13. Even though it was asserted by the learned SCGSC that the transfer is not punitive in nature from the fact of records it is evident that it was done on the recommendation of the Vigilance unit. From the tenor and steps taken starting from issue of Annexure R1 followed by issue of Memo and imposition of censure, it is apparent that the applicant has been transferred as a punitive measure. Annexure R1 itself is standing testimony to the fact that he has been recommended to be transferred. It is also evident from the statements in the reply that Annexure A1 transfer has been made pursuant to Annexure R-1 recommendation made by the Vigilance unit. It is also stated by the respondents that the transfer is part of a preventive vigilance strategy. I have no doubt that since the applicant is occupying a sensitive post, is liable to be transferred frequently. But it is certain that, but for the Annexure R1 recommendation followed by issue of memo, imposition of punishment, he would not have been transferred. As rightly pointed out, officials serving Railways for 28-32 are still continuing there. No other allegation has been raised against the applicant. Therefore it is clear that the transfer was made as part of imposition penalty with

the clear goal of keeping him out of Trivandrum.

14. This would immediately take us to the question as to whether the applicant was liable to be transferred as part of imposition of penalty. Of course such a recommendation was made. But Annexures A10 and A11 produced by the petitioner indicate that, normally on the basis of an advice of the vigilance it is not binding on the administration to effect transfer. It is also evident from the words of the learned counsel that if an advice is given by the Vigilance unit, before passing any order, it is for the administration or competent authority or Controlling Authority to decide whether it should be acted upon. The final decision taking authority is always the Controlling Officer. Even though he is bound to consult the Vigilance Officer, the advice given by the Vigilance Officer is not binding on him. He has to take independent call whether such advice should be accepted or not. But here, having regard to the circumstances it is certain that the respondent was blindly swallowing the words of the Vigilance Officer and was mechanically transferring the applicant which cannot be approved.

15. Moreover as rightly pointed out by the learned counsel for the applicant, after having suffered a penalty of censure, it is not proper for the respondents to effect a transfer. The applicant has wholeheartedly accepted the punishment of censure. After having suffered the punishment, transferring him to a distant place surely means imposing a second punishment, which amounts to double jeopardy. It is stigmatic and something like adding insult to injury. Therefore, such a transfer cannot be accepted in right earnest.

16. As rightly pointed out by the learned counsel for the applicant, after all, what is the allegation of misconduct committed by the applicant? The reservation ticket was generated by the applicant at the request of a former MP Annexure A-9 indicates that even though he used a wrong field, that was only an error. From the Annexure A-9 it is clear that after the episode some system updation has been made. Moreover it is very patent that Annexure R-2 order was never brought to the notice of the applicant or his colleagues. It is also evident from the face of Annexure R-2 that document was borrowed from South Western Railway, Hubballi. That would support the version of the applicant that it was never brought to the notice of the officials in Trivandrum Centre. Again, the applicant could generate the reservation at the instance of the Ex-MP and there is no case of any misuse of the facility done by anyone. There is also no evidence or allegation that this has resulted in leakage of revenue to the Railways. Therefore, such an alleged act of misconduct was inconsequential and had no impact at all. Therefore, the allegation of misconduct, if at all there is basis, was trivial in nature that was why the matter was closed imposing a censure.

17. A rightly pointed out by the learned counsel for the applicant, respondents especially the Vigilance Officer was acting as though it was a complimentary pass issued by the Railways to the ex-MPs. From Annexure R-1 etc it is clear that they were under the notion that it was a concession by the Railways. But as a matter of fact, the Railways even though is the organisation which facilitates travel of ex-

MPs, the right of an ex-MP emanates from Sec.8AA of the Salary, Allowances and Pension of Members of Parliament Act, 1954.

18. I have no doubt that, as rightly pointed out by the learned SCGSC, the imputations made against Respondent No.7 was unwarranted. Even though notice against her was dispensed with, such imputations were out of place. As a matter of fact, Respondent No.7 was acting on the instructions of the Railways, she was discharging her duty. Her parent post is Commercial Clerk, but at the time of conducting inspection, she was a Vigilance Officer discharging her duties irrespective of the question of seniority in the parent cadre.

19. Learned counsel for the applicant has highlighted various personal inconveniences of the applicant. But once it has come out that the transfer is punitive in nature and it amounts to double jeopardy, this Tribunal is inclined to interfere with the same. It is a malafide exercise of power. Making transfer of an employee as penalty, that too after already imposing a punishment as part of disciplinary proceedings cannot be in the interest of good administration. It is pertinent to note that in a similar case, when a person similarly placed, Smt. Deepa had filed OA No349/2022, by order dated 23.01.2022, this Court interdicted that transfer. She also faced very same allegations and had suffered a censure and was transferred to Nagercoil. This Court interfered with that transfer and quashed the same and directed the respondents to grant her a convenient transfer without causing dislocation of her residence. I feel that the applicant is also entitled to the very same treatment.

20. So long as Respondent No.8 has already been ordered to be transferred to the seat, having regard to the fact that the applicant is continuing in the post for nearly four years, which is a sensitive post, it is only appropriate that he is given a convenient post. In the result Annexure A-1 is quashed to the extent that transfers him to Ernakulam Town station. However, considering the fact that he is continuing in the present seat for nearly four years, I direct the respondents 3 to 6 to grant him an alternate posting convenient to him, without affecting dislocation of residence, within 15 days from the date of receipt of a copy of this order. Interim order granted on 14.07.2022 shall stand vacated. The OA is allowed as above. No costs.

Dated this the 1st February, 2023