IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 19.07.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.MANIKUMAR**
and
THE HONOURABLE MR.JUSTICE **G.CHOCKALINGAM**

W.P.No.26022 of 2015
M.P.No.1 of 2015

1. The Divisional Railway Manager/PL/MAS,
   Union of India,
   Southern Railway,
   Office of the Divisional Railway Manager,
   Personnel Branch, MAS Division,
   Chennai 600 003.

2. The Senior Divisional Commercial Manager,
   Commercial Branch,
   Chennai Division,
   Chennai.

3. The Assistant Commercial Manager/I/MAS,
   Commercial Branch,
   Chennai Division,
   Chennai 600 003. ... Petitioners

Vs.

1. The Registrar,
   Central Administrative Tribunal,
   Madras Bench, Chennai 600 104.

2. Mr.Rohit Kumar,
   S/o.Shri Ganesh Prasad,

Dy.(T)/BG I/Sleeper Section/MAS/Southern Railway,
Chennai Division,
Residing at Flat No.2F,
Block-3, Natwest Aura,
Revathypuram Main Road,
Urapakkam, Chennai. … Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, to call for the records of the 1st respondent in O.A.No.154 of 2015 and the order, dated 28.04.2015 and quash the same.

For Appellant : Mr.V.Radhakrishnan,
Senior Counsel
for Mr.V.G.Suresh Kumar

For 1st Respondent : Tribunal

For 2nd Respondent : Mr.L.Chandrakumar

JUDGMENT
(Order of the Court was made by S.MANIKUMAR, J.)

Challenge in this Writ Petition is to an order, made in O.A.No.154 of 2015, dated 28.04.2015, by which, the Central Administrative Tribunal, quashed the order, dated 24.11.2014, of Assistant Commercial Manager/I/MAS, Commercial Branch, Chennai Division, Chennai, 2nd appellant herein, transferring the 2nd respondent from Chennai Division to Salem Division.

2. Facts as per the case of the 2nd respondent are that on 01.04.2014, when he was on duty in Sampark Kranti Express train, he excessed the passenger, viz., Rasmi Gupta, for transfer of ticket, as she was travelling on the ticket issued in the name of one Abishek Nagar (M/22), along with two other passengers, viz., Swetank Sharma and Swati Bansal. Mother of Swathi Bansal prevented him, from claiming excess amount for transfer of ticket, as per the Railway rules in force, using the name of Ex. Railway Minister, Sri.Pawan Kumar Bansal and all of them threatened him, that he would face dire consequences. But the 2nd respondent did his duty and charged due fare, through Excess Fee Ticket No.0335579 for Rs.3,510/-. Before reaching Vijayawada, he received a message from the Depot, Commercial Control/MAS, and DCM 1/MAS that he misbehaved with a passenger. When the train reached Vijayawada, RPF came and asked for explanation.

3. The respondent has further submitted that on his arrival to Head Quarters/MAS on 02.04.2014, he was asked to meet DCM 1/MAS. He met and explained. Thereafter, he was asked to meet CCM/MAS on 03.04.2014. On 25.08.2014 and 26.08.2014, when he was working in train

No.15901, Bangalore to Dibrugarh Express, he issued EFT No.0531657 for Rs.100/- to one Maruduraj, for ticket conversion and another EFT No.0531658 for Rs 220/- to Mr.Vinod and Mr.Suresh Kumar. At Jolarpet, Shri.Anichandran, Chief Vigilance Inspector, entered the coach and conducted a check. He gave the cash check memo and declared Rs.100/- as private cash and Rs.320/- as railway cash. However, when the train reached Kadpadi, three other persons, viz., Mr.Goutham, Mr.Rajiv and Mr.V.Giridhar accompanied by Mr.Anichandran and others, to whom, he had issued EFT for conversion, surrounded him and lateron, he came to know that the three passengers were decoys and they had come with an intention to trap him. They collected his signatures on blank papers.

4. The 2nd respondent has further submitted that from 28.08.2014 to 01.11.2014, he was sick. On 01.11.2014, when he reported for duty, he was served with an order of suspension, dated 26.80.2014. Subsequently, on 27.01.2015, the said order of suspension was revoked. On 29.01.2015, the 2nd respondent was served with a copy of the order of Inter Divisional Transfer, dated 24.11.2014, order of revocation of suspension dated 27.01.2015 and the relieving order, dated 29.01.2015.

The 2nd respondent has challenged the inter-divisional transfer order, on the grounds, contending that it was a measure of penalty.

5. The petitioners in the reply statement, have submitted that a surprise Vigilance check was conducted in Train No.15901 Bangalore City to Dibrugarh Express on 25/26th August 2014, based on the complaint, received from the passengers that the Ticket Checking staff, working in Train No.15901, were in the habit of collecting fare, as Railway dues and they neither issued receipts nor returned the balance to the passengers.

6. According to the petitioners, the 2nd respondent was manning S6 and S7 coaches in Train No.15901 and during check, he had declared Rs.350/- as personal cash, in the Rough Journal Book, in accordance with the procedure for declaring personal cash. However, during the time of check, he was found to have only Rs.100/-. He had not returned Rs.80/- to the Railway decoys, when he issued EFT No.0531657 for ticket conversion and retained the same. In view of the serious irregularities, he was suspended from duty, by an order, dated 26.8.2014, which was periodically reviewed. In terms of Railway Board's guidelines contained in

the Ministry of Railways letter No.E(NG) I-98/TR 11, dated 30.10.1998, it was decided to transfer him to adjoining Salem Division. Therefore, suspension was revoked on 27.1.2015 and that he received the same on 29.1.2015. Transfer order, dated 24.11.2014 was also received by the 2nd respondent on 29.1.2015.

7. Thereafter, the 2nd respondent was relieved on 3.2.2015 to Salem Division. Ministry of Railways, vide their letter No.E/I/98/TR 11, dated 30.10.1998, have decided that the staff involved in malpractices should be transferred out of the Division. The said circular has been challenged and a Full Bench of the Central Administrative Tribunal reported in **2005 (2) ATJ 209,** has upheld the policy of the interdivisional transfer, arising out of vigilance traps. Based on the said judgment, the Tribunal has dismissed the O.As., challenging inter-divisional transfer orders. It was upheld by the Delhi High Court in **Ganesh Din v. Union of India [WP(C) No. 6082/2005, dated 15.3.2005].**

8. The petitioners have further contended that transfer is an incidence of service and unless the transfer is vitiated by mala fides or by extraneous considerations, the same should not be interfered with.

Though the petitioners have relied on various decisions, on the scope of judicial review of the order of transfer, adverting to the rival submissions, the Central Administrative Tribunal, vide order, dated 28.04.2015, has set aside the inter-divisional transfer.

9. Assailing the correctness of the abovesaid order, Mr.V.Radhakrishnan, learned Senior Counsel appearing for the petitioners submitted that a decoy check, known as Departmental check, was conducted by the Vigilance Department of Southern Railways in Train No.15901 – Bangalore City to Dibrugarh on 25/26th August 2014, based on the complaint, received from the passengers that the Ticket Checking staff, working in the said train, were in the habit of collecting money as Railway fare, but they neither issued receipts for the amount collected nor returned the balance to the passengers, and retained the same, for their personal gains.

10. Learned Senior Counsel further submitted that for the purpose of decoy check, a pre-drawn proceedings was prepared, duly marking the currency note numbers handed over to the decoy passengers,

with clear instructions. When the decoy passenger and independent witnesses, approached the 2nd respondent for accommodation, the 2nd respondent allowed them, allotted accommodation and collected Rs.400/-. The balance amount of Rs.80/- was not returned to the decoy passenger, and the amount was retained by the 2nd respondent.

11. According to the learned Senior Counsel, when the 2nd respondent was manning S6 and S7 coaches in the abovesaid train, he had declared Rs.350/- as personal cash, in the Rough Journal Book, in accordance with the procedure for declaring personal cash. However, during the time of check, he was found to have only Rs.100/-, in his possession, in other words, he had inflated his private cash, in anticipation of illegal gratification to be obtained from the passengers in the course of his duty, in the said train. Thus, in view of the serious irregularities, he was suspended from duty on 26.8.2014. However, the order of suspension could not be served on him, since he reported sick, at the Railway Health Unit and returned to duty only on 01.11.2014.

12. Referring to the circulars of the Railway Board, dated 30.10.1998 and 02.11.1998, learned Senior Counsel appearing for the petitioners submitted that the Board has decided to transfer the 2nd respondent to Salem Division. Placing reliance on Section 226 of the Indian Railway Establishment Code, Volume I, he submitted that ordinarily, a railway servant shall be employed throughout his service on the railway or railway establishment to which he is posted on first appointment and shall have no claim as of right for transfer to another railway or another establishment. In the exigencies of service, however, it shall be open to the President to transfer the railway servant to any other department or railway or railway establishment including a project in or out of India.

13. Learned Senior Counsel further submitted that transfer is an incidence of service and on the facts and circumstances of the case, Railway Administration, as an employer, has every right to transfer an employee and therefore, interference ought not to have been made, unless and until, the order of transfer is actuated by mala fides or on the grounds of incompetence or contrary to the rules. He further reiterated

that during decoy check, the 2nd respondent was found to have committed certain irregularities and therefore, the order of transfer is necessitated. In support of the above contentions, he relied on decisions in **Chief Engineer (Personnel), TNEB v. K.Raman** reported in **1985 (I) LLJ 164 (Mad) : 1984 (2) MLJ 137, Union of India v. S.L.Abbas** reported in **1993 (4) SCC 357** and **Registrar General, Madras High Court of Judicature of Madras v. R.Perachi** reported in **2011 (12) SCC 137.**

14. To sustain the order of the Tribunal, Mr.L.Chandrakumar, learned counsel for the 2nd respondent submitted that the order of transfer is nothing but victimization of the 2nd respondent, who had imposed fine to a relative of Ex-Railway Minister, as stated supra. He further submitted that the order of transfer is punitive. The Tribunal, by considering the decision of this Court in **W.P.No.1282 of 2013, dated 04.10.2013 [P.Karunakaran v. Union of India],** has rightly quashed the inter-divisional transfer. He also submitted that the order of transfer passed, during suspension, is invalid.

15. Learned counsel for the 2nd respondent further submitted that at the time of Vigilance Check, the 2nd respondent was manning coaches S6 and S7 and he had declared Rs.350/- as his personal cash, in the rough journal book. But before boarding the train at Bangalore, he had to part with some money to his friend and he had Rs.100/- on hand and that the same was recorded in the cash check memo and the cash on hand, both personal and transacted, at the time of vigilance check is available, in the cash check memo.

16. He further submitted that the Excess Fare Ticket No.0531657 was issued to the first decoy for an amount of Rs.100/- only, there was no balance due to him, as the said person paid only Rs.100/-, but the petitioners with an ill intention and motive, have stated that 2nd respondent failed to return the balance amount of Rs.80/- to the passenger, after issuing the EFT No.0531657, which is farce. The Vigilance could not found any money, in excess with the 2nd respondent and that the 2nd respondent clearly tallied and accounted the personal cash and E.F.T. Cash, after the check and remitted the same to the government,

thereby, no irregularities were detected in the vigilance check against the 2nd respondent.

17. By way of reply, learned Senior Counsel submitted that the alleged imposition of fine to a relative of an Ex-Minister is nothing to do with the transfer. He submitted that the impugned order of transfer, is based on the Vigilance check and based on the transfer policy.

Heard the learned counsel for the parties and perused the materials available on record.

18. Fact that there was a vigilance check conducted in Train No.15901, Bangalore City to Dibrugarh Express on 25/26th August 2014, based on the alleged information that the Ticket Checking staff, working in Train No.15901, were in the habit of collecting money as Railway fare, but they neither issued receipt for the amount collected nor returned the balance to the passengers and retained the same for their personal gains, is not disputed.

19. According to the 2nd respondent, he was manning coaches S6 and S7 and declared Rs.350/- as his personal cash, in the rough journal book. Before boarding the train at Bangalore, he had to part with some money to his friend and he had Rs.100/- on hand and that the same was recorded in the cash check memo, and the cash on hand both personal, and transacted at the time of vigilance check is available in the cash check memo. Whereas, it is the case of the petitioners that the 2nd respondent had declared Rs.350/- as his personal cash, in the Rough Journal Book. However, during the time of check, he was found to have only Rs.100/- in his possession and according to the petitioners, he had inflated his private cash, in anticipation of illegal gratification to be obtained from passengers in the course of his duty in the said train.

20. Case of the 2nd respondent is that he had issued Excess Fare Ticket No.0531657 to the first decoy for an amount of Rs.100/-, only there was no balance due to him, as the said person paid only Rs.100/-, but the petitioners with an ill intention and motive, have stated that he failed to return the balance amount of Rs.80/- to the passenger, after issuing the EFT No.0531657. On the contrary, it is the case of the

petitioners that when the decoy passenger and the independent witnessed approached the 2nd respondent for accommodation, the 2nd respondent allowed them, allotted accommodation and collected Rs.400/-. The balance amount of Rs.80/- was not returned to the decoy passenger and that the amount was retained by the 2nd respondent.

21. According to the 2nd respondent, vigilance could not found any money in excess with him and that he had clearly tallied and accounted the personal cash and E.F.T. Cash, after the check and remitted the same to the government and thus, he has not committed any irregularity detected, in the vigilance check. According to him, the abovesaid allegations were made, only to victimize him, for imposing fine on a relative of Ex-Railway Minister. Even if it is taken for granted, as true, the same cannot be gone into by this Court, at this juncture.

22. Fact remains that there was a vigilance check. When the matter stood thus, the 2nd respondent has been placed under suspension on 26.08.2014. It is the case of the petitioners that the order of suspension could not be served on the 2nd respondent, as he had reported

sick and returned to duty only on 01.11.2014. Order of transfer is dated 24.11.2014. Order of revocation of suspension is dated 27.01.2015. Thus, it is evident that when the 2nd respondent was under suspension, he has been transferred on 24.11.2014. The order, dated 24.11.2014, transferring the 2nd respondent, was served on him, only on 29.01.2015.

23. Railway Board Circular in No.E(NG) I-98/TR 11, dated 30.10.1998, deals with inter-divisional transfer of staff repeatedly figuring in vigilance cases, and the same is extracted hereunder:

> “The question of effecting inter-divisional transfer of staff repeatedly figuring in vigilance cases and where penalties have been imposed, was discussed in the Conference on Malpractices and Corruption in mass contact areas organised by the Ministry of Railways on 10.07.1998.
>
> 2. It has been decided that the cases of staff who have repeatedly figured in substantiated vigilance cases and where penalties have been imposed, should have reviewed at appropriate level and such staff transferred on inter-divisional basis.”

24. In **Ganesh Din v. Union of India [WP(C) No. 6082/2005, dated 15.3.2005],** the Delhi High Court has considered the validity of a

inter-divisional transfer, pursuant to a policy, dated 02.11.1998, in relation to the ticketing and other staff in mass contact, found to have indulged in malpractices. Contentions have been made to the effect that transfers without completion of the departmental enquiry or notice to show cause are illegal and in violation of principles of the natural justice. After referring to Rule 226 of the Indian Railway Establishment Code (Volume-I), Board's letter No.E(DandA) 65 RG 6-6, dated 25.3.1967, addressed to the General Managers, All Indian Railways and others and Circular No.E(NG) I-98/TR/11, dated 30.10.1998, the Delhi High Court held that Railways have the power and right to effect inter-divisional transfer of ticketing and other staff in mass contact, if found indulging in malpractices.

25. In **W.P.No.1282 of 2013, dated 04.10.2013 [P.Karunakaran v. Union of India],** transfer of the petitioner therein, Deputy Chief Ticket Inspector, was challenged, on the grounds inter alia that the order of transfer was punitive in nature and therefore, without giving an opportunity of hearing, transfer should not have been made. Reliance has been made to the decisions in **C.Ramanthan Vs. Acting**

Zonal Manager, Food Corporatin of India (1980 I LLJ 1), S.Sevugan Vs. The Chief Educational Officer, Virudhunagar District (2006 (2) CTC 468), Somesh Tiward Vs. Union of India and others (2009 (2) SCC 592), Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others (2012 (1) MLJ 289 (SC) = 2011 (12) SCC 137 and an unreported decision made in W.P.Nos.11352 and 17393 of 2009 (K.M.Elumalai Vs. The Superintendent of Prisons, Central Prison II, Puzhal). Per contra, the order of transfer was sought to be sustained, on the grounds that the conduct of the petitioner therein was adverse to the interest of the department. The following decisions have been cited, viz., **Union of India and Others Vs. Janardhan Debanath and Another (2004 (4) SCC 245), Registrar General, High Court of Judicature of Madras Vs. R. Perachi and Others (2011 (12) SCC 137), National Hydroelectric Power Corporation Ltd., Vs. Shri Bhagwan (2001 (8) SCC 574), State of U.P. and another Vs.Siya Ram and Another (2004 (7) SCC 405, State of M.P. and another Vs. S.S.Kourav and Others (1995 (3) SCC 270), Shilpi Bose (Mrs) and Others Vs. State of Bihar and Others (1991 Supp (2) SCC 659).** After referring to the various decisions, at Paragraph 14, the Court in **P.Karunakaran's** case (cited supra), held as follows:

> “**14.** Thus, it is crystal clear that on the date when the transfer order was issued, the suspension order was in force and therefore, there cannot be any doubt to hold that the transfer order, even though styled as an administrative measure, in fact came to be passed only on collateral purpose as a punitive measure. If the affected person challenges the transfer order by contending that it was made as a punitive measure by raising various grounds, the Court can lift the veil to find out as to whether it was made on administrative grounds as stated in the transfer order or as a punitive measure as contended by the affected party.”

It is worthwhile to consider the decisions referred to in **P.Karunakaran's** case (cited supra),

> “**17.** In **C.Ramanthan Vs. Acting Zonal Manager, Food Corporatin of India (1980 I LLJ 1)** , the Hon'ble Division Bench of this Court held at paragraph 7 as follows:-
>
> "7. Courts are chary to interfere with an order of transfer made for administrative reasons . An innocuous order of transfer, which not only on the face of it appears to be one made in order to further the administrative interests of an organisation, but which even on a deeper scrutiny does not pose any irregular or mala fide exercise of power by the concerned authority, is generally upheld by civil courts, as

courts cannot substitute their own opinion and interfere with ordinary orders of transfer of employees of established organisations. But if in a given case, an order of transfer appears to be deliberate attempt to by pass all disciplinary machinery and offend the well known principle of audi alteram partem if ex facie it is clear that the order of transfer was not made for administrative reasons but was made to achieve collateral purpose, then it is open to the Court to crack the shell of innocuousness which wraps the order of transfer and by piercing such a veil, find out the rival purpose behind the order of transfer. No doubt, a normal order of transfer can be misunderstood as a punitive measure. But, if the circumstances surrounding such an order leads to a reasonable inference by a well -instructed mind, that such an order was made in the colourable exercise of power and intended to achieve a sinister purpose and based on irrelevant considerations, then the arm of the Court can be extended so as to decipher the intendment of the order and set it aside on the ground that it is one made with a design and motive or circumventing disciplinary action and particularly when civil servant is involved, to avoid the stringent but mandatory procedure prescribed in Article 311 (2) of the Constitution of India." (emphasis supplied)

18. In **S.Sevugan Vs. The Chief Educational Officer, Virudhunagar District (2006 (2) CTC 468)** , a learned single Judge of this Court held at paragraphs 7 and 8 as follows:-

"7. It is seen from the impugned order of transfer that it is passed on administrative ground, but it appears that the order was passed by way of punishment and based on the complaint against the conduct of the petitioner. If that be so, the petitioner is certainly entitled for proper opportunity to defend himself as to whether the complaints against him by the Public or by the Headmaster is proper or not by way of an enquiry.

8. In these, circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside."

19. In **Somesh Tiward Vs. Union of India and others (2009 (2) SCC 592),** the Apex Court has held at paragraph 16 as follows:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal." (emphasis supplied)

20. In W.A.No. 1138 of 2008 dated 24.4.2009, the Division Bench considered a similar issue and the relevant paragraphs 8 to 13 are extracted hereunder:-

"8.Learned counsel for the appellant submitted that though the order of transfer is stated to be passed on administrative grounds in the counter affidavit filed by the respondents in the writ petition it has been specifically stated that the transfer was effected since the appellant came to adverse notice. He further submitted that before the learned Single Judge some confidential files were shown and based on the averments in the counter affidavit as well as in the confidential files, the learned Judge has declined to interfere with the order of transfer. He further submitted that the respondents cannot resort to an order of transfer if there are complaints against the petitioner but it is open to the Department to proceed against the appellant under the relevant Rules if there is any evidence to prove his alleged misconduct. He in support of his aforesaid contentions based reliance on a decision of Mr.Justice P.Jyothimani reported in 2006(2) CTC 468 **(S.Sevugan v. The Chief Educational Officer, Virudhunagar District)** wherein in paragraph 8 it is held as under:-

"8.In these, circumstances, this Court is of the view that the transfer order passed by way of punishment is without any opportunity to the petitioner and on the face of it, the order of transfer is illegal and the same is liable to be set aside. Accordingly, the impugned order is set aside.

9.Learned counsel for the appellant submitted that the said decision has been followed by Mr.Justice N.Paul Vasanthakumar in the order dated 29.11.2006 passed in W.P.(M.D) No.9401 of 2006. He further submitted that the said order passed in W.P.(M.D.)No.9401 of 2006 has been confirmed by an order dated 09.01.2007 passed by a Division Bench of this Court in W.A.(M.D.) Nos.5 and 7 of 2007. Learned counsel has produced the copies of those judgments also.

10.Countering the said submissions the learned Special Government Pleader submitted that the order of transfer as pointed out by the learned Single Judge can be challenged only when such order of transfer is actuated by malafied or that it is made against any statutory provision of Service Rules. He further submitted that the learned Single Judge has taken note off of the report of the Director General of Police addressed to the Inspector General of Police, West Zone, Coimbatore and has come to the conclusion that there are materials in the hands of the Police to transfer the petitioner to some other range to save the image of the police.

11.We have carefully considered the said submissions made by the learned counsel on either side.

12.Though in the impugned order of transfer it is stated as if the transfer has been effected on administrative grounds, the same has been given a go-by in the counter affidavit filed by the respondents as stated above. As per the averments contained in the counter affidavit the transfer was passed on some adverse remarks/complaints received against the appellant and also on the basis of the report sent by the Director General of Police to the Inspector General of Police, West Zone, and in such circumstances we are of the considered view that the order of transfer passed against the appellant is by way of punishment and that too without giving any opportunity of hearing to the petitioner.

13.To the facts of this case, the aforesaid three decisions squarely apply. But this aspect has not been considered by the learned Single Judge. May be that these points were not argued before the learned Single Judge. But being a question of law the same can be argued before the Division Bench. We are in full agreement with the decisions referred to above. Hence applying the principles laid down therein, we are constrained to interfere with the order passed by the learned Single Judge. Hence the order dated 10.09.2008 passed in W.P.No.4564 of 2008 is hereby set aside and the writ appeal is allowed. However there will be no order as to costs. Consequently the connected MP is closed."

26. Reverting to the case on hand, though vigilance check was conducted in Train No.15901 Bangalore City to Dibrugarh Express on 25/26th August 2014, no charge memo has been framed, till 28.04.2015, when the inter-divisional transfer, dated 24.11.2014 was set aside by the Tribunal. The 2nd respondent was suspended on 26.08.2014, vide proceedings No.M/C.518/VO/338/2014 of the 3rd respondent. The said order is extracted hereunder:

> "Whereas, a disciplinary proceedings against Shri.Rohit Kumar, PF.No.06MAS1050, Sr.TE/BGI/SL/MAS contemplated.
>
> Now, therefore, the undersigned in exercise of the powers conferred by Rule-4 proviso to rule 5(1) of the Railway Servants (Discipline and Appeal) Rules, 1968, hereby places the said Shri.Rohit Kumar, PF.No.06MAS1050,

Sr.TE/BGI/SL/MAS is under suspension with effect from 26.08.2014.

It is further advised that during the period the order shall remain in force, the said Shri.Rohit Kumar, PF.No.06MAS1050, SR.TE/BGI/SL/MAS, under suspension shall not leave the Head Quarters without obtaining the prior permission of the competent authority."

27. Transfer order, dated 24.11.2014, of the Assistant Commercial Manager/I/MAS, Commercial Branch, Chennai Division, Chennai, 2nd appellant herein, reads as follows:

"In terms of COP/MAS Office Order cited above, Shri.Rohit Kumar, Senior Ticket Examiner/BG I/SL/MAS, Chennai Division, (PF.No.6MAS1050), in Pay Band Rs.5200-20200 & Grade Pay Rs.2400, is transferred to SALEM Division on the same Pay Band and Grade Pay on Administrative Grounds, with immediate effect.

The above transfer is ordered subject to the following conditions:-

a) He is eligible for transfer privileges such as Composite Transfer Grant, Joining Time, etc.

b) He should vacate Rly. Qtrs., if in occupation at his present working station immediately on relief provided no prior permission is obtained for retention of the quarters.

c) The senior in the new unit/Division as per para 311 of IREM Vol.I will be decided on conclusion of DAR proceedings contemplated against him.

This has the approval of CCM/PS."

28. Order of revocation of suspension, dated 27.01.2015, passed by the Senior Divisional Commercial Manager, Commercial Branch, Chennai, 2nd respondent herein, is extracted hereunder:

"Whereas, an order placing Shri.Rohit Kumar, MC 2947, PF.No.06MAS1050, Sr.TE/BG-I/SL/MAS, under suspension was made with effect from 01.11.2014.

Now, therefore, the undersigned in exercise of the powers conferred by clause (C) of Sub rule 5 of Rule 5 of the Railway Servants (Discipline and Appeal) Rules, 1968, hereby revokes the order of suspension with effect from 27.01.2015 to carry out his interdivisional transfer order."

29. In **Union of India v. S.L.Abbas** reported in **1993 (4) SCC 357,** at Paragraphs 6, 7 and 10, the Hon'ble Apex Court held as follows:

"6. An order of transfer is an incident of Government Service. Fundamental Rule 11 says that "the whole time of a Government servant is at the disposal of the Government which pays him and he may be employed in any manner required by proper authority". Fundemental Rule 15 says that "the President may transfer a government servant from one post to another". That the respondent is liable to transfer anywhere in India is not in dispute. It is not the case of the respondent that order of his transfer is vitiated by mala fides on the part of the authority making the order,- though the Tribunal does say so merely because certain guidelines issued by the Central Government are not followed, with which finding we shall deal later. The respondent attributed"mischief"to his immediate superior who had nothing to do with his transfer. All he says is that he should not be transferred because his wife is working at shillong, his children are studying there and also because his health had suffered a set-back some time ago. He relies upon certain executive instructions issued by the Government in that behalf. Those instructions are in the nature of guidelines. They do not have statutory force.

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate

authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.

....

10. The said observations in fact tend to negative the respondent's contentions instead of supporting them. The judgment also does not support the Respondents' contention that if such an order is questioned in a Court or the Tribunal, the authority is obliged to justify the transfer by adducing the reasons therefor. It does not also say that the Court or the Tribunal can quash the order of transfer, if any of the administrative instructions/guidelines are not followed, much less can it be charactrised as malafide for that reason. To reiterate, the order of transfer can be questioned in a court or Tribunal only where it is passed malafide or where it is made in violation of the statutory provisions."

30. While testing the correctness of an order of transfer, the Hon'ble Supreme Court in **Union of India and Others Vs. Janardhan Debanath and Another** reported in **2004 (4) SCC 245,** at Paragraphs 12 and 14, held as follows:

"12. ......Transfers unless they involve any such adverse impact or visits the persons concerned with any penal consequences, are not required to be subjected to same type of scrutiny, approach and assessment as in the case of dismissal, discharge, reversion or termination and utmost latitude should be left with the department concerned to enforce discipline, decency and decorum in public service which are indisputably essential to maintain quality of public service and meet untoward administrative exigencies to ensure smooth functioning of the administration.

14. The allegations made against the respondents are of serious nature, and the conduct attributed is certainly unbecoming. Whether there was any mis-behaviour is a question which can be gone into in a departmental proceeding. For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was mis-behaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by learned counsel for the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated. The question

whether respondents could be transferred to a different division is a matter for the employer to consider depending upon the administrative necessities and the extent of solution for the problems faced by the administration. It is not for this Court to direct one way or the other."

31. The Hon'ble Supreme Court in **Registrar General, Madras High Court of Judicature of Madras v. R.Perachi** reported in **2011 (12) SCC 137,** after considering several decisions and on the facts and circumstances of the case, at Paragraph 31, held as follows:

"31. As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the concerned unit. That is desirable from the point of view of the administration as well as that of the employee. The complaint with respect to the first respondent was that he was dominating the administration of the District Judiciary, and the District Judge had reported that his retention in the district was undesirable, and also that departmental enquiries were pending against him and other employees, with respect to their integrity. In the circumstances the

> decision of the then Chief Justice to transfer him outside that district could not be faulted.”

32. Reverting to the case on hand, though allegations and counter allegations have been made, against each other, the fact remains that vigilance check has been conducted, is undisputed. Suspension has been ordered on 26.08.2014, contemplating disciplinary proceedings. He has been directed not to leave Headquaters, without obtaining any prior permission from the authority.

33. As per the Railway Servants (Discipline and Appeal) Rules, the non-gazetted railway staff, against whom, a disciplinary case is pending or is about to start, should not normally be transferred from one Railway/division to another Railway/division, till after the finalisation of departmental/criminal proceedings, irrespective of whether the charges merit imposition of a major or a minor penalty. However, if the employee is is under suspension and an investigation is likely to take some time and the authority competent to revoke suspension is of the view that the presence of the Railway servant may prove detrimental to the collection of evidence, etc., or that he may tamper with the evidence, the

competent authority may transfer him on revocation of the suspension. Reading of the abovesaid Rules makes it clear that a person can be transferred on revocation of suspension.

34. In the case on hand, the order, dated 27.11.2014, transferring the 2nd respondent, is stated to be on administrative grounds. Though the said order, dated 24.11.2014 does not mention that the 2nd respondent was under suspension, it cannot be disputed that transfer has been effected was during suspension. Conclusion of this Court is fortified by an order, dated 27.01.2015, by which, suspension made effect from 01.11.2014, has been revoked, in exercise of the powers conferred by clause (C) of Sub rule 5 of Rule 5 of the Railway Servants (Discipline and Appeal) Rules, 1968.

35. Though the inter-divisional transfer order, dated 24.11.2014 and revocation order, dated 27.01.2015, are stated to have been served only on 29.01.2015, on the grounds, inter alia that the 2nd respondent reported sick at Railway Health Unit and returned to duty only on 01.11.2014 and therefore, it could not be served, the fact remains that

transfer has been effected, only during suspension, cannot be disputed. Decision made in **P.Karunakaran's** case (cited supra), is squarely applicable to the facts of this case. There is no infirmity in the order of the Tribunal.

36. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

[S.M.K., J.] [G.C., J.]
19.07.2016

Index: Yes/No
Internet: Yes/No
skm

S.MANIKUMAR, J.,
and
G.CHOCKALINGAM, J.

skm

To

The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai 600 104.

W.P.No.26022 of 2015

19.07.2016