

ORIGINAL JURISDICTION

Mr. Justice N. Nagaresh

W.P.(C) No.34698 of 2025

2025 November 5

Sunil Kumar M. . .

Petitioner

v.

Kerala State Road Transport Corporation & others . . . Respondents

Petitioner, who is employed as an Inspector in the Kerala State Road Transport Corporation (KSRTC) and working at the Vaikom Unit, has approached High Court seeking to quash transfer order and to declare that the transfer given to him from Vaikom Depot of KSRTC to the Kattappana Depot is illegal, malice in law and issued by way of punishment. Petitioner contended that if the transfer is intended to punish the employee, it may be said that the transfer has been made not in the interest of administration but for the purpose of punishing him, in which case, the transfer order would be malafide. Dismissing the writ petition, the Court;

Issue for Consideration

Whether a transfer imposed while disciplinary proceedings are contemplated should necessarily be treated as punitive in nature?.

Service—When an employee is transferred because his presence is harmful to the smooth running of the organisation, the element of punishment is absent—In every case of errant behaviour of a subordinate, the superior is not bound to hold a departmental enquiry and impose punishment.

Held:

The word “punishment” necessarily denotes or signifies some offence or wrong committed by the person who is punished. The punishment involves the idea that penalty is inflicted because of commission of a wrong. In ordinary parlance, punishment means any kind of suffering. But, when an employee is transferred because his presence is harmful to the smooth running of the organisation, the element of punishment is absent. The idea is to keep the organisation clear of internal obstruction. In every case of errant behaviour of a subordinate, the superior is not bound to hold a departmental enquiry and seek punishment. He is free to resort to other ways of running his department smoothly. In the present case, the fact remains that there is an allegation of misbehavior to a woman employee by the petitioner. There are earlier instances of complaints against the petitioner. Though a preliminary enquiry report has come, which indicates that there is no evidence available to come to a conclusion of the guilt of the petitioner, the said preliminary enquiry report is not the final material on the basis of which a disciplinary authority decides whether to proceed with the enquiry or not. A preliminary enquiry report will

be only one of the materials available to the disciplinary authority to decide as to the requirement of initiating departmental proceedings. (Paragraph 18, 19 and 21)

Case Law Cited:

- (1) (2009) 2 S.C.C. 592—*Distinguished*.
- (2) 1994 (1) K.L.T. 326; (3) 2023 (4) K.H.C. 35—*Referred*.

List of Keywords:

Transfer, punitive, Disciplinary proceedings, Administrative ground.

Case Arising From:

Writ Petition filed under Article-226 of Constitution of India.

Appearance of Parties:

<i>Sri. V. Premchand and Sri. Mahadev M.J.</i>	..	for petitioner
<i>Sri. Deepu Thankan, S.C., KSRTC</i>	..	for respondents

JUDGMENT

The petitioner, who is employed as Inspector in the Kerala State Road Transport Corporation (KSRTC) and working at the Vaikom Unit, has filed this writ petition seeking to quash Ext.P8 and to declare that the transfer given to him from Vaikom Depot of KSRTC to the Kattappana Depot is illegal, malice in law and issued by way of punishment.

2. The petitioner states that while discharging his duties at Vaikom Depot, he submitted Ext.P1 complaint dated 24.02.2025 against one T. Haseena, who is a Conductor at Vaikom Depot. The said T.Haseena was regularly posting defamatory messages in the WhatsApp group against the petitioner alleging that he has been behaving inappropriately towards women employees. Ext.P1 complaint against Haseena was addressed to the Chairman and Managing Director. However, no action was taken on the petitioner's complaint. Ext.P3 information obtained by the petitioner indicated that proceedings are being initiated against the said T.Haseena.

3. The petitioner submits that as a counterblast to Ext.P1 complaint filed by the petitioner, the said T.Haseena filed Ext.P4 complaint dated 26.04.2025 before the 2nd respondent-Chairman and Managing Director. T.Haseena alleged that the petitioner is behaving in a bad manner towards her and the petitioner has refused to give leave to the complainant. A preliminary enquiry was ordered in respect of Ext.P4 complaint. The petitioner was summoned and was directed to give explanation to Ext.P4 complaint. The petitioner requested the Enquiry Officer to provide him the copy of the complaint and the statement of T.Haseena so that he can give a proper reply. The petitioner was not given a copy of complaint nor the statement given by the complainant.

4. Later, the petitioner was summoned to an Adalat to consider the complaint of the woman Conductor. The petitioner was informed that if he doesn't go to the Court

challenging the said proceedings, the issue will be given a quietus by issuing a warning memo. While so, the Administrative Officer of KSRTC has issued Ext.P8 memorandum transferring the petitioner from Vaikom Depot to Kattappana Depot on administrative grounds. The petitioner submits that Ext.P8 is illegal and has been issued as punishment.

5. Counsel for the petitioner, relying on the judgment of this Court in **Dinamony v. Dt. Superintendent of Police, Kollam** [1994 (1) K.L.T. 326], argued that if the transfer is intended to punish the petitioner, it may be said that the transfer has been made not in the interest of administration but for the purpose of punishing him, in which case, the transfer order would be malafide.

6. The counsel for the petitioner also relied on the judgment of the Hon'ble Apex Court in **Somesh Tiwari v. Union of India and others** [(2009) 2 S.C.C. 592] to contend that the order 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. 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 view of punishment, the same is liable to be set aside being wholly illegal.

7. The counsel for the petitioner pointed out that Ext.P8 memorandum though states that the transfer is on administrative grounds, refers to a proceeding under No.S001-VL01/52/2025/ADM-KSTRC-HQ. The said proceedings dated 11.06.2025 relate to the contemplated disciplinary enquiry. Therefore, it is evident that the petitioner is being transferred by way of punishment and as a consequence of filing of complaint by one of the women Conductors.

8. The counsel for the petitioner further submitted that a preliminary enquiry was conducted in respect of the complaint made by the said woman Conductor and the Officer who made the preliminary investigation has categorically found that there is no material available on record to come to a conclusion that the complaint filed by the woman Conductor is *bonafide*. When the preliminary enquiry revealed nothing against the petitioner, the order of transfer was unwarranted and it can only be treated as a punitive transfer.

9. Standing Counsel entered appearance on behalf of the KSRTC and resisted the writ petition. The Standing Counsel submitted that a complaint was received from a woman Conductor against the petitioner alleging inappropriate behaviour towards her. When the said Conductor applied for leave, the petitioner misbehaved with the lady. The Conductor filed complaint.

10. The petitioner was required to give a statement. The petitioner refused to give statement. There were earlier complaints also against the petitioner from other staff in the KSRTC. Therefore, taking into consideration the larger interest of the KSRTC Depot, Vaikom, it was decided to transfer the petitioner.

11. Standing Counsel further pointed out that the administrative transfers of the staff of the KSRTC are governed by a Long-Term Settlement, 2021 entered into between

the KSRTC and staff Associations. Clause 11 of the Long-Term Settlement, 2021 provides for transfer on administrative ground due to disciplinary issues. When transfer is imposed on administrative grounds, the transferred staff on completion of six months of duty at the transferred station will be entitled to have a review of the transfer.

12. Standing Counsel further submitted that the transfer imposed on the petitioner is purely on administrative grounds and it is not by way of punishment. A punishment can be imposed only after a confronted enquiry. A decision will be taken on the conduct of disciplinary enquiry soon. The petitioner can seek for a review of the transfer order after joining the transferred station and completing six months of service.

13. Standing Counsel relied on the judgment of this Court in **Nixy James v. The Kerala State Road Transport Corporation** [2023 (4) K.H.C. 35], wherein, this Court has held that the KSRTC is enabled even under the Transfer Guidelines to effect transfers of its employees on administrative grounds, to maintain a harmonious and working atmosphere at its office.

14. I have heard the learned counsel for the petitioner and the learned Standing Counsel representing the respondents.

15. The petitioner stands transferred as per Ext.P8 order dated 11.09.2025. Ext.P8 specifically states that the transfer is on administrative grounds. Ext.P8 refers to a proceedings dated 11.06.2025, which is undisputedly relate to the contemplated disciplinary proceedings. The petitioner would contend that as the petitioner has been transferred based on the pending complaint and contemplated disciplinary proceedings, it has to be treated as a punitive transfer. The question arising is whether in such circumstances, an order of transfer passed should necessarily be treated as punitive transfer.

16. It is evident from the pleadings that a woman Conductor has filed a complaint against the petitioner alleging misbehaviour. The respondents would submit that there were similar complaints against the petitioner earlier also. Therefore, the respondents decided to transfer the petitioner from Vaikom Depot to Kattappana Depot. The provisions of the Long-Term Settlement, 2021 indeed permits transfer on administrative grounds due to disciplinary issues. The question is whether a transfer imposed while disciplinary proceedings are contemplated should necessarily be treated as punitive in nature.

17. This Court had considered the issue in the judgment in **Dinamony v. District Superintendent of Police, Kollam** [1994 (1) K.L.T. 326]. This Court in the judgment held that if the transfer is intended to punish the petitioner, it may be said that the transfer has been made not in the interest of administration but for the purpose of punishing him, in which case, it would be *mala fide*. Therefore, what is to be considered is the meaning of "punitive" and "punishment". To punish means to impose a penalty upon some persons for a fault, offence or violation. Ordinary meaning of the word "punish" is to cause the offender to suffer for the offence or to inflict penalty for the offence.

18. The word "punishment" necessarily denotes or signifies some offence or wrong committed by the person who is punished. The punishment involves the idea that

penalty is inflicted because of commission of a wrong. In ordinary parlance, punishment means any kind of suffering. But, when an employee is transferred because his presence is harmful to the smooth running of the organisation, the element of punishment is absent.

19. The idea is to keep the organisation clear of internal obstruction. In every case of errant behaviour of a subordinate, the superior is not bound to hold a departmental enquiry and seek punishment. He is free to resort to other ways of running his department smoothly.

20. Counsel for the petitioner relied on the judgment of the Hon'ble Apex Court in **Somesh Tiwari** (supra) to contend that the transfer order will be held invalid if it is a punitive transfer. That was a case where an enquiry was initiated against the appellant therein in terms of the allegations contained in an anonymous letter. The Hon'ble Apex Court held that having regard to the directives of the Central Vigilance Commission, no enquiry could have been initiated against the appellant therein, as the complaint was anonymous. The Hon'ble Apex Court also held that it is beyond any doubt or dispute that in the said enquiry the allegations were found to be untrue. In the said factual contest that the Hon'ble Apex Court has held that the transfer imposed on the appellant therein is punitive in nature. The facts of the case are therefore distinguishable.

21. In the present case, the fact remains that there is an allegation of misbehavior to a woman employee by the petitioner. There are earlier instances of complaints against the petitioner. Though a preliminary enquiry report has come, which indicates that there is no evidence available to come to a conclusion of the guilt of the petitioner, the said preliminary enquiry report is not the final material on the basis of which a disciplinary authority decides whether to proceed with the enquiry or not. A preliminary enquiry report will be only one of the materials available to the disciplinary authority to decide as to the requirement of initiating departmental proceedings.

22. In this case, the Long-Term Settlement, 2021 contemplates transfer on administrative grounds due to disciplinary issues. If a transfer order is issued while disciplinary proceedings are contemplated or pending, that itself will not make the transfer order punitive. Ext.P8 transfer order does not cause any stigma to the petitioner.

In the afore facts of the case, I find no merit in the writ petition. The writ petition is hence dismissed.

Result of the Case:

Dismissed.

Headnote prepared by A.R.
