

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01248/2020

Date of order: 27.01.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
 Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shambhu Chandra Mandal,
 Son of Late Kamal Krishna Mandal,
 Aged about 57 years,
 At present working as UDC under Superintendent
 Archaeologist (I/C) in the Kolkata Circle, Kolkata,
 at present residing at HB Town, Road No. 4,
 Post - Sodpur, P.S. - Khardah,
 Dist. - 24 Parganas North,
 Kolkata - 700110.

..... Applicant.

-Versus-

1. Union of India,
 Through Secretary,
 Govt. of India,
 Ministry of Culture, 'C' Wing,
 Shastri Bhawan,
 New Delhi - 110115.
2. Director General,
 Archaeological Survey of India,
 Dharohar Bhawan,
 24, Tilak Marg,
 New Delhi - 110001.
3. Regional Director (ER),
 Archaeological Survey of India,
 Currency Building,
 1, B.B.D. Bag,
 Kolkata - 700001.
4. Superintending Archaeologist (IC)
 Archaeological Survey of India,
 Kolkata Circle,
 C.G.O. Complex, Saltlake,
 Kolkata - 700064.

..... Respondents.

For the Applicant : Mr. C. Sinha, Counsel

For the Respondents : Mr. R.K. Ganguly, Counsel

O R D E R (Oral)

Dr. Nandita Chatterjee, Administrative Member:

Aggrieved with his order of purported transfer from Kolkata to Raiganj, the applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

- "a) To set aside and quash impugned Office Order dated 12.11.2020 issued by the Regional Director, (ER), Archaeological Survey of India as regard applicant is concerned.
- b) To set aside and quash impugned Office Order No. 403/ Admn. dated 24.11.2020 issued by the Superintending Archaeologist (I/C), Archaeological Survey India, Kolkata circle, Kolkata.
- c) To direct the respondents to allow the applicant to continue in his present place of posting at the Kolkata Circle.
- d) Any other order or orders as the Hon'ble Tribunal deems fit and proper."

2. Heard both Ld. Counsel, examined pleadings and documents as well as those produced during hearing by Ld. Counsel for the respondents.

3. The submissions of Ld. Counsel for the applicant, in brief, is that, the applicant has been transferred from Kolkata to Raiganj vide orders dated 12.11.2020 and stood as released on 24.11.2020. The applicant alleges that the said transfer order has not been routed through a Placement Committee violating the ratio of the Hon'ble Apex Court in ***T.S.R. Subramaniam & ors. v. Union of India & ors.*** reported in ***(2013) 15 SCC 732.***

The applicant would also aver that the transfer order has been issued in mid-academic session which violates judicial pronouncements

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in this regard, and, also that, it has discriminated against the applicant while retaining others but singularly moving him away from Kolkata.

Further, although the applicant had represented against such transfer at Annexure A-6 to the O.A., the same is yet to merit the consideration of the respondent authorities prior to his release from Kolkata.

In support of his claim, the applicant has advanced the following grounds:-

- (i) That, the instant order of transfer, not having been routed through a Placement Committee, is violative of the Hon'ble Apex Court's mandate in **T.S.R. Subramaniam (supra)**.
- (ii) That, the said order having been issued in mid-academic session, is bad in law.
- (iii) That, the applicant has been discriminated against without disturbing his juniors.
- (iv) That, there is no transfer policy in the respondent organization.
- (v) The applicant, being 57 years old, ought not to have been disturbed as he is closing on his superannuation.

4. The respondents, per contra, would argue as follows:-

That a notification was issued by the Ministry of Culture on 27.8.2020 whereby six new Circles were created by bifurcating the existing circles (Annexure R-1 to the reply). By such orders, one Raiganj Circle was carved out from Kolkata Circle as a new Circle. Further to the same, on 30.9.2020, the Director Administration, ASI, had reallocated posts from existing Circles to the newly created Circles as per annexure

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R-3 to the reply, and, that, inter alia, one UDC post and three LDC posts were reallocated from the existing Kolkata Circle to the newly created Raiganj Circle, and, that, vide the said order (at Annexure R-3 to the reply) the RDs/SAs/SA(I/C)s were to take necessary steps for ensuring that the new Circles are made fully functional including bifurcation of budget allocation, new DDO code etc.

Hence, the respondents would argue that the posting of the applicant, being consequent to reallocation of one UDC post from Kolkata Circle to Raiganj Circle is not a transfer in the strict sense of the term and, therefore, standard transfer policies and as well as recommendations of Transfer and Placement Committee is not applicable in the case of the orders, so impugned.

In response to the applicant's allegation that he has been discriminated against, the respondents have clarified that the applicant has been working continuously for the last 29 years in Kolkata, first as a LDC, and, thereafter, as a UDC. As regards other three UDCs working in Kolkata, one post stands vacated on the grounds of VRS of one Shri Ratan Chandra Tarafder and the other two UDCs have been transferred to Kolkata only in May, 2018 and June, 2018 respectively. Hence, the applicant being the senior most and experienced UDC, his services were considered essential for setting up the newly created Raiganj Circle. On 7.12.2020, i.e. during pendency of this O.A., the respondents had replied in response to the representation of the applicant, and, such response was brought on record by Ld. Counsel for the respondents during hearing.

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5. The moot issue to decide on this matter is whether the movement of the applicant as per Annexure A-2 to the O.A. was a transfer as averred by the applicant or a reallocation, as urged by the respondents.

6. Ld. Counsel for the applicant would allege that the said order of 12.10.2020 is indeed a transfer, as because the following has been stated in the context of the applicant (emphasis supplied):-

“
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OFFICE ORDER

“ In pursuance of the Director General, Archaeological Survey of India, New Delhi Office Order communicated vide letter No. I-11014/1/2020-Planning, dated 30/09/2020 and subsequent Office Order No. A.22011/7/2020-Admn.I dated 10/11/2020 the following Upper Division Clerk & Lower Division Clerks are hereby **transferred** to newly created Raiganj Circle, Raiganj with immediate effect:-

Sl. No.	Name & Designation	Present Place of Posting	New Place of Posting
01	Shri Shambhu Chandra Mandal, UDC	Kolkata Circle	Raiganj Circle
xx	xx	Xx	Xx

xxxxx

Sd/-
(Madan Singh Chouhan)
Regional Director (ER)”

Ld. Counsel would, therefore, agitate that having been described as a ‘transfer’, such transfer could only have been made on the recommendations of the Transfer and Placement Committee, and, in compliance with extant transfer policy guidelines, if any.

Ld. Counsel for the applicant would also assail Annexure A-4 to the O.A., wherein, vide orders dated 24.11.2020, the applicant stood relieved of his duties from 30.11.2020.

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7. We would hereafter proceed to examine, at the outset, the notification at Annexure R-1 to the reply dated 27.8.2020, whose preamble reads as follows (emphasis supplied):-

“NOTIFICATION

CREATION OF CIRCLES

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With the approval of the competent authority, Archeological Survey of India hereby establishes the following new Circles by **bifurcation** of its existing Circles.”

Thereafter, at Annexure R-2 to the reply, vide order dated 31.8.2020, a total of 18 Superintending Archeologists/Dy. Superintending Archeologists in ASI were posted on “transfer” from existing Circles to the newly created Circles.

Vide Annexure R-3 to the reply, directions were issued for allocation of posts to the newly created Circles along with allocation of funds, and, vide Annexure R-5 to the reply, the Regional Directors/Superintending Archaeologists/Superintending Archaeologists (I/C) of ASI were authorized to fill up the posts at Srl. No. 9 to 18 at Annexure A-1 to the O.A. The post of UDC was enlisted at Srl. No. 15 of the said list and, accordingly, we would infer that the Regional Director was the competent authority for reallocating the post of UDC from the parent Circle to the newly created Circle.

8. As furnished during hearing, the respondents have responded to the applicant's representation as follows:-

[Signature]

**"F.No RD/ER/02/18/Adm. - 463
Government of India
Archaeological Survey of India
Office of Regional Director (ER)"**

**Currency Building,
1, B.B.D. Bag,
Kolkata - 1
Dated: - 07/12/2020**

Sub: - Cancellation of transfer order and release order under reference-reg.
Ref: - Your letter dated - 01/12/2020

With reference to the subject cited above, this in response to your letter is addressed to the undersigned dated - 01/12/2020, in this connection this is to inform you that the staff has been reallocated to the newly created Raiganj Circle from the strength of Kolkata Circle vide Director (Adm.), ASI, New Delhi Office Order communicated vide letter no. 1-11014/1/2020-Planning, dated- 30/09/2020 and there was no separate strength reallocated to Raiganj Circle Keeping in view of the seniority, you have been selected for posting. Since a senior and experienced UDC is very much inevitable for discharging the official work of newly created Raiganj Circle. Therefore, this office is not in a position to consider your request at present.

**Sd/-
(Madan Singh Chouhan)
Regional Director (ER)"**

Upon perusal of the same it transpires that the competent respondent authority, namely, the Regional Director, had clarified as follows:-

(i) That, the staff from Kolkata has been reallocated to the newly created Raiganj Circle vide authorization dated 30.9.2020 (Annexed as R-3 to the reply) and also, that, as no separate strength of UDCs has been sanctioned for the Raiganj Circle, one post of UDC has accordingly been reallocated from Kolkata to Raiganj Circle. Further, the applicant being the seniormost and most experienced, was found suitable for discharging duties in connection with setting up of a new Circle. We therefore decipher that the Raiganj circle was carved out of Kolkata Circle as a new Circle and as per

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Annexure A-1 to the O.A., inter alia, one post of UDC and 3 posts of LDCs were reallocated from Kolkata to Raiganj circle.

Kolkata, however, being the parent circle, would remain as the headquarters in the background of such bifurcation.

Hence, any movement from Kolkata Circle to Raiganj Circle along with the post, was intended to be a posting upon reallocation and not as a transfer per se.

9. The New Oxford English Dictionary, 1993 Edition, defines "transfer" as a change of place of employment within the organization."

The concept of transfer has been summed up in a judgment of a three Judge Bench of the Hon'ble Apex Court in **V. Jagannadha Rao v. State of A.P. (2001) 10 SCC 401**,

"xxxxxx

Transfer in relation to service reduced to simple terms means a change of place of employment within an organization. It is an incidence of public service and generally does not require the consent of the employee. In most service rules, there are express provisions relating to transfer. Though definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre. A government servant is liable to be transferred to a similar post in the same cadre which is a normal feature an incidence of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. No transfer is made to a post higher than what a government servant is holding. In other words, it is generally a lateral and not vertical movement within the employer's organization."

Supplementary Rule 2(18) to the Fundamental Rules defines transfer at the following terms:

"Transfer means the movement of a Government servant from one headquarter station in which he is employed to another such station either-

- (a) To take up the duties of a new post, or
- (b) In consequence of change of his headquarters."

In **U.M. Anigol v. State of Mysore, 1974 (2) SLR 110 (Mys.)**, 1974 (2) SLR 110 (Mys.) the Hon'ble court observed as follows:-

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"It is clear from the said definition that a Government servant can be said to have been transferred only when he is posted to a post outside his former headquarters. If a Government servant is moved and posted in different posts within the same headquarters, he cannot be said to have been transferred from one post to another."

The Hon'ble Court has also, in ***State of UP v. Ram Naresh Lal, AIR 1970 SC 1263*** cautioned that;

"The basic jural relationship of employer and employee is not affected in any manner by transfer."

10. In the instant case, we find there was no change of Headquarters for the applicant concerned, rather he was only moved and posted to Raiganj Circle which was very much controlled by his Headquarters, Kolkata Circle, and, accordingly, following the ratio in ***U.N. Anigol v. State of Mysore (supra)*** he could not be said to have been transferred in the conventional sense of the term.

Accordingly, the orders of the respondent authorities dated 12.11.2020 and 24.11.2020 do not call for any judicial intervention. The challenge to the orders fails to succeed.

11. We note, however, that the applicant is nearing superannuation. Hence, he may be posted only for one year in Raiganj Circle and such time period should suffice for completing the initial works in setting up of a new Circle.

After expiry of one year, the applicant is at liberty to pray for returning back to his headquarters at Kolkata. If so represented, the respondents shall post him at Kolkata and arrange for suitable substitution in the Raiganj Circle.

12. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member
SP

(Bidisha Banerjee)
Judicial Member