

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA



O.A. 350/01286/2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Vinay Kumar Upadhyay,
Son of Shri Yagya Nand Upadhyay,
Aged about – 41 years,
Working as Junior Hindi Translator in the
Office of the Regional Director,
Eastern Region, Ministry of Corporate Affairs,
3rd Floor, 234/4 A.J.C. Bose Road,
2nd M.S.O. Building, Nizam Palace,
Kolkata – 700 020
And residing at – Flat No-D-105,
Greenland Park, Sonarpur Station Road,
Kolkata – 700 103.

..... Applicant.

VS.

1. Union of India,
Service through the Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, "A" Wing, 5th Floor,
Dr. Rajendra Prasad Road,
New Delhi – 110 001.
2. The Under-Secretary,
Ministry of Corporate Affairs,
Shastri Bhawan, "A" Wing, 5th Floor,
Dr. Rajendra Prasad Road,
New Delhi – 110 001.
3. The Regional Director,
(Eastern Region),
Ministry of Corporate Affairs,
3rd Floor, 2nd M.S.O. Building,
Nizam Palace, 234/4, A.J.C. Bose Road,
Kolkata – 700 020.
4. The Registrar of Companies,
(Eastern Region),
Ministry of Corporate Affairs,
3rd Floor, 2nd M.S.O. Building,
Nizam Palace, 234/4, A.J.C. Bose Road,
Kolkata – 700 020.
5. The Assistant Director,
In the office of the Regional Director,
(Eastern Region),
Ministry of Corporate Affairs,
3rd Floor, 2nd M.S.O. Building,
Nizam Palace, 234/4, A.J.C. Bose Road.

Kolkata – 700 020.

..... Respondents.

For the Applicant : Mr. P.C. Das, Counsel
For the Respondents : Mr. C.R. Bag, Counsel
Mr. U.P. Bhattacharyya, Counsel

Date of order: 14.1.16

ORDER

Heard Ld. Counsels for the parties.

2. The applicant is aggrieved by an order dated 17.9.2014 issued by Assistant Director whereby and whereunder, the applicant who is serving in the post of Junior Hindi Translator (All India Seniority Group) in the office of the Registrar of Companies, Regional Director (Eastern Region) has been transferred from Kolkata to Cuttack along with post.

3. The transfer has been challenged on the following grounds inter alia :

(I) The transfer from Kolkata to Cuttack is in violation of the Transfer Policy and office memorandums issued by the Ministry of Corporate Affairs from time to time in this respect. The Junior Hindi Translator is a Group – B post.

(II) The office memo dated 03.02.2012 in respect of transfer policy issued by the Under-Secretary to the government of India, Ministry of Corporate Affairs. Clearly stipulates the for transferring a person who belongs to all India Seniority Group, a particular committee is there in respect of transfer and posting and a fixed tenure is prescribed. The applicant belongs to All India Seniority Group. Therefore, an appropriate committee should have decided in respect of transfer and posting as per the policy.

(III) Under-Secretary to the Government of India, Ministry of Corporate Affairs issued an office memo dated 22.02.2013 which states as follows:

"3.2 Intra-region rotational transfer of Group B and C – Where there are more than one office at a station, RDs are required to regularly rotate Group B and C employees who have completed continuous five years in a single office, to other offices in the same station. Where there is only one office at a station, such inter-station rotational transfers may take place on regular promotion or on direct recruitment to a higher post."

4. The admitted facts that could be culled out from the pleadings the parties are as under:

(i) The transfer has been effected with the post, which means not only the incumbent but also the post has been transferred from one region to another.

(ii) The O.M. would 22.02.2013 issued by Government of India Ministry of Corporate Affairs debar inter region transfer of Group 'B' & 'C' without willingness. It would read as under:

"3.1 No inter region transfer of Group B and C without willingness Group B or C employee shall not be transferred generally outside the region, unless they are promoted (or directly recruited) to a cadre/post, where All India Seniority List is maintained. In that case, the transfer will be governed by policy applicable to the new post.

3.2 Intra region rotational transfer of Group B and C Where there are more than one office at a station RDs are required to regularly rotate Group B and C employees who have completed continuous five years in a single office, to other offices in the same station. Where there is only one office at a station, such inter-station rotational transfers may take place on regular promotion or on direct recruitment to a higher post."

(iii) Further Transfer Policy circulated vide O.M. dated 31.12.2013, issued by Government of India Ministry of Corporate Affairs would require transfers to be routed through a committee. It would mandate the following: (extracted with supplied emphasis for clarity)

"Sub: Transfer Policy for Indian Corporate Law Service (ICLS) and feeder cadres -reg

In continuation of the Transfer Policy for the Indian Corporate Law Service officers and feeder cadres dated 19.01.2012, and in compliance of the directions of the Hon'ble Supreme Court in Writ Petition (civil) No. 82 of 2011 dated 22.11.2013, it has been decided that there shall be two Committees for recommending the transfer of Indian Corporate Law Service officers and all other posts of Group-B where All India seniority list is maintained centrally – one for all officers up to the level of JAG grade and the other for all officers of SAG and above grades. The composition of such committees is given below:-

Transfer Committee 'A' (TC-A)

- (i) For members of ICLS in Senior Administrative Grade (SAG) and above: (where Transfers are approved by the Minister-in-Charge)
- Secretary, Ministry of Corporate Affairs – Chairman
 - Additional Secretary, MCA
 - Joint Secretary, MCA
 - Senior-most ICLS officer posted in Delhi

Transfer Committee 'B' (TC-B)

- (ii) For members of the ICLS in the Junior Administrative Grade (JAG) and below: (where transfers are approved by Secretary)
- Additional Secretary, MCA – Chairman
 - Joint Secretary, MCA
 - Joint Secretary, MCA
 - Senior-most ICLS officer

2. The recommendations of the Committees will ordinarily be accepted by the authorities competent to approve the proposals. Where the competent authority decides to depart from the recommendations, reasons for such departure will be recorded by such authority."

In the instant case the transfer although issued post 31.12.2013, was not routed through any legally constituted committee and thus violated the provisions of the OM supra.

5. The respondents made a tenuous effect to justify the transfer citing the provisions of Transfer Policy of ICLS circulated on 3.2.2012. They placed the following provisions:

"Delegated powers to Regional Directors

5.1 The Regional Directors are authorized to transfer Group B and Group C officers within their region, as per this policy, in a fair and just manner and keeping the sanctioned and actual strength of all the offices in their control.

5.2 The Regional Directors are also empowered to order temporary transfers of JTS level ICLS officers **for a period not exceeding 6 months** in order to cope with emergent situations arising out of unforeseen circumstances and in the interest of official work. During this 6 months, the temporarily transferred JTS officer shall continue to draw his salary from his last office, where he is permanently posted by MCA Headquarters."

They submitted that the Regional Directors were duly authorized to transfer the Group 'B' & 'C' officers within their region and the applicant was transferred within the region by the Regional Director, which was within his competence.

6. I have given my anxious considerations to the materials on record. The aforesaid provisions have been carefully noted. In my considered opinion, once the authorities changed their policy of transferring officers through individual officers, and consciously decided, in the wake of Hon'ble Apex Courts' Judgment, to constitute a committee to decide transfer, the individual officers who earlier were vested with the power would be divested of their powers to transfer due to such change in policy from the date it became effective.

Therefore the transfer of applicant by Regional Director was not in order. The transfer being ordered after 31.12.2013 had to be routed through a placement committee which being not done in the way Hon'ble Apex Court prescribed could not be done in some other way.

7. Moreover the Regional Director would not have the power to transfer the post. Transfer of a post would be a policy decision which could be taken only by the highest authority. No such policy is brought on record despite opportunity rather it is admitted at the bar that no such policy was taken at the highest level.
8. In such view of the matter the transfer, so far it related to the applicant is quashed.
9. Liberty would be with the respondents to act in accordance with law.
10. O.A. is accordingly disposed of. No costs.

(Bidisha Banerjee)
Member, (J)

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