



**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH**

No. O.A. 350/00829/2017

Date of order: 12.06.2019

**Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Mr. N. Neihisial, Administrative Member**

Vinay Kumar Upadhyay  
Son of Shri Yagya Nand Upadhyay  
Aged about 44 years, residing at Flat No-D-105  
1<sup>st</sup> Floor, Greenland Park, Sonarpur Station Road  
Kolkata – 700103 and at present working as  
Jr. Hindi Translator in the office of the Regional Director  
Eastern Region, Ministry of Corporate Affairs  
3<sup>rd</sup> Floor, 234/4 A.J.C. Bose Road, 2<sup>nd</sup> Building  
Nizam Palace, Kolkata – 700020.

... Applicant

-Versus-

1. Union of India service through the Secretary  
Ministry of Corporate Affairs, Shastri Bhawan  
'A' Wing, 5<sup>th</sup> Floor, Dr. Rajendra Prasad Road  
New Delhi – 110001.
2. The Under-Secretary, Ministry of Corporate Affairs  
Shastri Bhawan, 'A' Wing, 5<sup>th</sup> Floor  
Dr. Rajendra Prasad Road, New Delhi – 110001.
3. The Regional Director, Eastern Region  
Ministry of Corporate Affairs, 3<sup>rd</sup> Floor  
2<sup>nd</sup> M.S.O. Building, Nizam Palace, 234/4  
A.J.C. Bose Road, Kolkata – 700020.

... Respondents

For the Applicant : Mr. P.C. Das & Ms. T. Maity

For the Respondents : Mr. R. Halder

ORDER (ORAL)

Per Ms. Bidisha Banerjee, Member (J):

Heard learned counsel for the parties.

2. It is evident that this is second journey of the applicant to this Tribunal. In the instant O.A., the applicant has challenged a transfer order dated 31.05.2017 which has been issued by Regional Director transferring him from office of Regional Director (ER), MCA, Kolkata to office of Official Liquidator, High Court Kolkata.

3. In the earlier round, the applicant had preferred O.A. No. 350/01286/2014 and this Tribunal vide its order dated 14.01.2016 had issued clear directions upon the respondent authorities and held as follows:

*"Therefore the transfer of applicant by the 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."*

4. We notice that despite such unambiguous and clear direction, the respondent i.e. Regional Director sought to flout it by issuing fresh order himself, which power to issue even intra-region transfer he did not have, as nothing to that effect was placed before us.

5. Learned counsel for the respondents, however, drew our attention to the Office Memorandum dated 19.05.2017 issued by the

Government of India, Ministry of Corporate Affairs on the subject of 'Intra-regional transfer of Group 'B' and 'C' employees, in his attempts to defend the action the action of the Regional Director, which reads as under:-

"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 transfer may take place on regular promotion or on direct recruitment to a higher post".

6. Learned counsel would submit that in terms of the aforesaid O.M. dated 19.05.2017, the Regional Director was empowered to transfer the applicant Intra-region and was not required to form a committee for the purpose.

7. Learned counsel for the respondents would further submit that the applicant was supposed to join in the place of another and the posting of the applicant vis-à-vis the other employee was simply inter-changed and that both of them have joined their respective places of transfer long back.

8. We note that there is an O.M. dated 22.02.2013 on the subject of 'Policy of inter-region and intra-region transfer/posting of Gr. B and C' which is extracted as under:-

"As per approval of the competent authority, the following para titled - 'inter region and intra-region transfer/posting of group B and C' stands substituted in place of para 3.1 ad 3.2 of existing transfer/placement policy (dt. 03.02.2012, continued for 2013-14

also)---

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.

3.3 Inter region transfer of Group B and C Any Group B or C employee can be transferred by the Ministry, on inter region basis, subject to following conditions:---

- (a) the employee is willing for inter region transfer;
- (b) his/her application is forwarded by concerned RD;
- (c) the transfer is both ways, that is upon his transfer from one office to another, another employee is also simultaneously posted in the post/office vacated by him/her either by transfer from existing staff or from direct recruitment;
- (d) the transfer is as per sanctioned strength of both the affected offices;
- (e) the employee seeking such inter region transfer has completed 3 years on the day of transfer;
- (f) if the transferred employee is holding a post for which regional seniority list is maintained then on his/her transfer to new region, he/she will be placed in the bottom of the regional list.

2. All regional directors are instructed to follow the above policy, on uniform basis, for transfer/placement of Group B and E employees, within their region."

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:

"Sub: Transfer Policy for Indian Corporate Law Service (ICLS) and feeder cadres – req.

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 Committee 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 committee 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)

- (a) Secretary, Ministry of Corporate Affairs-Chairman
- (b) Additional Secretary, MCA
- (c) Joint Secretary, MCA
- (d) 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)

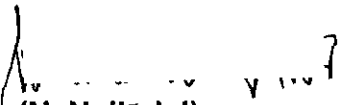
- (a) Additional Secretary, MCA-Chairman
- (b) Joint Secretary, MCA
- (c) Joint Secretary, MCA
- (d) Senior-most ICLS officer.

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

The OM's make it imperative to issue transfer orders through placement committees. No exception has been carved out for intra region transfer. The OM dated 19.5.2017 (supra) cited by the respondents cannot be read in isolation. It only extracts a portion of OM dated 22.2.2013, detailed supra.

9. We are afraid, we cannot agree with the proposition of the respondents that the Regional Director duly exercised his power which was available by virtue of O.M. dated 19.05.2017. The transfer being not routed through a placement committee as required to be done in terms of the OM dated 22.02.2013 is a nullity in the eye of law. Accordingly, we quash the office order dated 31.05.2017 at least in regard to the transfer of the applicant and give liberty to the applicant to act in accordance with law.

10. O.A. is accordingly allowed. No costs.

  
(N. Neelgopal)  
Administrative Member

  
(Bidisha Banerjee)  
Judicial Member