
(2014) 10 OHC CK 0029
In the Orissa High Court
Case No : WA No. 322 of 2014

Coal India Limited

APPELLANT

Vs

Capt. Hari Sankar Airy

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2015) 120 CLT 316 : (2015) 1 ILR 10 : (2015) 1 LLN 248

Hon'ble Judges : Amitava Roy, C.J.; Akshaya Kumar Rath, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—The decision under scrutiny in the instant appeal has been rendered in W.P.(C) No. 13570 of 2014 whereby the orders dated 22.07.2014/23.07.2014 transferring/relieving the respondent herein to join the Central Coalfields Limited (for short, hereinafter referred to as the "CCL") under the appellants i.e. the Coal India Limited (for short, hereinafter referred to "CIL") have been nullified.

2. We have heard Mr. S.D. Das, learned Sr. Advocate for the appellants and Mr. S.K. Das, learned counsel for the respondent.

3. A brief outline of the pleaded assertions would be essential.

The respondent's version is that he had joined as Security Officer in the CIL in the grade of Officer E/2 on 19.03.1986 and rose in its ranks and, eventually, on his promotion to Grade E/7 as Chief Manager (Security), was posted with MCL, Jagannath area vide order dated 03.05.2012. He was thereafter transferred to MCL headquarters at Burla by office order dated 31.08.2013 and, while functioning as such, by the order impugned transfer order, he was posted to another subsidiary company of the CCL headquarters at Ranchi. He was thereafter released by order dated 23.07.2014. Contending that this transfer was close on the heels of the earlier posting and was further in violation of the transfer policy of the CIL as contained, more particularly in the office memorandum dated 07.01.2009 (Annexure-6) to the writ petition, he sought to

invoke the writ jurisdiction of this Court for its remedial intervention. He pleaded that in terms of the circular/policy of the CIL no employee either in the executive or in the non-executive grade could be transferred if he/she was left with less than two years of service from superannuation. As he was left with one year service before his retirement, he thus could not have been transferred in the face of such circular/transfer policy, which was binding on the authorities of the CIL. Apart from pleading unfairness in action, the respondent also cited health ground of his wife to demonstrate the inconvenience to which the entire family would be subjected to, if the impugned order of transfer/release was not interfered with. Absence of administrative exigency was also pleaded.

4. The appellants (opp. parties in the writ petition) in their counter while stoutly endorsing the validity of the transfer/release order asserted that the respondent was beyond the purview of the circular dated 07.01.2009 and thus was not exempted from being transferred on administrative grounds. Referring to the order/circular dated 26.04.2002 embodying the transfer policy of the CIL qua executives and non-executives thereafter working in sensitive disciplines, the appellants averred that in terms thereof in institutional exigency one could be transferred even if he/she had less than two years of service left. They asserted in categorical terms that the transfer of the respondent in his existing capacity from MCL to CIL was essential in administrative need, and that before deciding on the same, due and conscious consideration of the fact that he was left with less than two years of service before superannuation was made. However, as the administrative requirements of a senior executive in security discipline in CCL on urgent basis was of supervening bearing, the respondent, in view of his experience and efficiency, was identified to be posted there on transfer. The appellants specifically denied the imputation of unfairness in action and asserted that consequent upon the order of transfer/release dated 22.07.2014 he stood released on 27.3.2014. That vis-?-vis the respondent in terms of his appointment order, transfer was a condition of service, was clearly underlined as well.

5. As the above narration recites the essence of the rival pleadings, it is considered unnecessary to refer to the additional facts, which only bear repetition thereof.

6. The learned Single Judge by the impugned judgment/order dated 5.9.2014 held that in view of the order/office memorandum dated 26.04.2002 and 7/9.1.2009 engrafting the transfer policy for the CIL, there was binding on the company and, as the same did not permit transfer of a person having left with two years of service, the impugned order of transfer bereft of any reason justifying the same was thus unsustainable. The appellants were directed to allow the respondent to continue in the former post and to release all consequential benefits.

7. Mr. S.D. Das, Sr. Advocate for the appellants, has insistently argued that it being apparent on the face of the office memoranda dated 26.04.2002 and 7/9.1.2009 that in administrative requirement, the executives and non-

executives working in sensitive discipline can be transferred even they have less than two years of service, the finding to the contrary is apparently erroneous and is liable to be interfered with. Drawing the attention of this Court to the office memorandum dated 7/9.1.2009 in particular the learned counsel has urged that, as at all relevant time the respondent belonged to E/7 category, he was beyond the purview of exemption as contemplated therein and thus could be transferred by invoking the office memorandum dated 26.4.2002 on administrative grounds. He maintained that the impugned judgment/order is based on an incorrect reading/interpretation of the office memoranda involved and is thus liable to be set aside. The learned counsel underlined that as transfer is an incidence of service, having regard to the limited scope of scrutiny the exercise of the Court's power of judicial review, the challenge made by the respondent ought to have been rejected.

8. Per contra, Mr. S.K. Das, learned counsel for the respondent, has argued that as admittedly the respondent had two years of service left, even in terms of the office memorandum dated 26.04.2002, he should not have been transferred. According to him, the ground of administrative exigency is nonest and that the respondent was sought to be shifted on extraneous consideration thus rendering the impugned transfer arbitrary and illegal. He urged as the learned Single Judge had on objective consideration of the pleaded facts and the documents on record, more particularly the transfer policy of the CIL set at naught, the impugned order of transfer and release, no interference is warranted.

9. We have carefully considered the rival versions. That the respondent is in transferable service and is liable to be transferred is evident from his appointment order. This is not disputed by him as well and rightly. The relevant extracts from the office memorandum dated 26.04.2002 and 7/9.1.2009 are quoted herein below:

"OFFICE MEMORANDUM

Dated 26.4.2002

In pursuance of the decision of the Board of Directors of Coal India Limited in its 195th meeting held on 30th April, 2001 at Kolkata, the "Transfer Policy" in respect of Executive under common Coal Cadre and in respect of Executives & Non-executives working in sensitive disciplines are hereby amended as under:

General:

- 1) Transfers should normally be programmed during the beginning and end of the academic year.
- 2) Executives who have less than 02 years service left are not to be transferred normally. They may be given a posting of their choice if vacancy is available, keeping in mind the administrative requirement.
- 3) Transfer of executives posted in projects are to be covered by the Government

guidelines on the subject.

4) Transfer & posting of executives trained specially should be in line with their specialization.

5) Large scale transfer is to be avoided, but at least 10% of the executives satisfying the criteria laid down hereunder be transferred each year.

6) Transfer on "Administrative Ground" may be effected at any time.

xx xx xx xx xx

OFFICE MEMORANDUM

Dated 7.1.2009

In pursuance of the decision in the 247th meeting of the Board of Directors of Coal India Limited held on 11th December, 2009 at Delhi, the "Transfer Policy" circulated vide Office Memorandum No. CIL/C5A (vi)/50729/CCC/26 dated 26.4.2002 under the heading "General" are hereby amended as follows:

i) Executives on promotion from E5 to M1 grade (except those posted in CMPDIL, IICM and Coal Videsh) and from non-executive to executive cadre except in Survey Discipline will be transferred out of the Company. However, such executives in D5 grade who have spent less than one year at the existing company and get promoted to M1 grade will be exempted from transfer. Those having less than two years of service will, also be excluded from this provision.

xx xx xx xx

This also supersedes the existing "Transfer Policy" in vogue under the heading "General" circulated vide O.M. No. CIL/C5A(vi)/50729/CCC/18 dated 22.4.2003 & O.M. No. CIL/C5A(vi)/50729/CCC/182 dated 23.11.2005. Other terms and conditions of the above mentioned O.Ms. dated 26.04.2002, 22.04.2003 and 23.11.2005 shall remain unchanged."

10. A conjoint reading of the above texts would evince that the benefit of exemption from transfer as contemplated in the office memorandum dated 7/9.1.2009 is not extendable to the respondent, who at the time of his transfer was in E/7 grade. This comprehended, as the language clearly indicates, the executives in E5 having less than two years of service left. It is also apparent that this office memorandum makes applicable the one dated 26.04.2002, so much so that the terms and conditions beyond it (office memorandum dated 7/9.1.2009) and as contained in the office memorandum dated 26.04.2002 would remain unchanged.

11. Though clause (2) of the office memorandum dated 26.04.2002 postulates that executives who have less than two years service left are not to be transferred normally, but can be given a posting of their choice, if vacancy is available, keeping in mind the administrative requirements, Clause (6) enjoins that transfer on "Administrative Ground" may be effected at any time. Thus

unless the transfer policy of the CIL thus per se excludes or exempts any executive from the purview of transfer, the same can be ordered and effected on administrative ground at any point of time. The transfer policy of the CIL thus stipulates administrative ground to be of prime consideration in transferring an executive/non-executive, more particularly working in sensitive disciplines even if left with less than two years service. Admittedly, at the time of respondent's transfer, he was serving as Chief Manager (Security)-E/7 grade at MCL headquarters.

12. In our comprehension, he was thus not exempted from being transferred even on administrative grounds as per the order/memorandum dated 26.04.2002 and 7/9.1.2009. The finding to this effect, as arrived at in the impugned judgment/order, thus cannot be sustained. As would be evident from the extract from the official records (appended to the counter of the appellants in the writ proceedings), the fact that the respondent in the writ proceedings had less than two years service left and that in terms of the memorandum dated 26.04.2002 as an executive he was not liable to be transferred normally, was consciously taken note of by the concerned authorities. It was, however, emphasized that, in view of the administrative exigencies, his transfer from MCL to CCL was warranted and this decision thus was approved. Want of application of mind, as alleged by the respondent, by the authorities of the CIL in making the impugned order of transfer is thus belied by the contemporaneous official records.

13. There is no material on record to even suggest that the respondent on transfer has been lowered in status or rank or that any condition of his service has been adversely affected. That his transfer had been on administrative exigencies is patently borne out by the records. Transfer being an incidence of service, as it is, the same can be interfered with only if it is repugnant to any statutory norm or is vitiated by mala fide. The consideration in the office memorandum dated 26.04.2002 sparing the executives left with less than two years service from being transferred normally is understandably supersedable by the demand of administrative requirements and the latter factor in case of an interface has to be accorded primacy.

14. In that view of the matter, in absence of any overwhelming material on record to suggest that the ground of administrative requirements, as consistently cited by the CIL justifying the respondent's transfer is non-existent, we are constrained to hold that no interference with the impugned decision of posting him out from the MCL to CCL is warranted, in the facts and circumstances of the case.

15. We find ourselves in respectful disagreement with the findings recorded in the impugned judgment/order, which is thus set aside.

16. The appeal succeeds.

The appellants will be at liberty to act in terms of the impugned order of transfer and release.

Akshaya Kumar Rath, J.

I agree.