

(2000) 08 MP CK 0049

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 208 of 2000

Sarvjit Singh

APPELLANT

Vs

Coal India Limited and others

RESPONDENT

Date of Decision : 16-08-2000

Acts Referred:

Citation : (2001) ILR (MP) 1692 : (2001) ILR (MP) 169 : (2001) 1 MPHT 95

Hon'ble Judges : Bhawani Singh, J;A.K. Mishra, J

Bench : Division Bench

Advocate : Shri K.C. Ghildiyal, for the Appellant;

Final Decision : Dismissed

Judgement

A.K. Mishra, J.—The petitioner/appellant had challenged the order of his transfer dated 8-12-1988 before the learned Single Judge of this Court. The petitioner was transferred from Northern Coalfields Limited to Mahanadi Coalfields Limited, both subsidiaries of Coal India Limited.

2. The writ petition has been dismissed by the impugned order dated 30th June, 2000. Hence this L.P. A. has been filed assailing the order of transfer and also the order passed by the learned Single Judge.

3. The case of the petitioner is that while he was posted as Assistant Survey Officer with Northern Coalfields Limited, Amlohri Project, the Chief General Manager developed an aversion for him. On 3-10-1996 he was transferred from Amlohri Project to Central Excavation Training Institute. In the year 1998 the petitioner was posted to Nigahi Project and thereafter to Mahanadi Coalfields Limited, Sambalpur by the impugned order. The petitioner further submitted that strength of Mine Surveyors was much less than the authorised strength, hence his transfer was not in administrative exigency and the transfer of the petitioner is violative of the transfer policy (Annexure P-10) ie. memo dated 4-5-1994. It is alleged that the transfer is outcome of ill-will and malice harboured by the respondent No. 3.

4. In the return filed by the respondents, the above averments have been denied. Transfer to Mahanadi Coalfields Limited, Sambalpur is not an outcome of malice. The petitioner was not put to any harassment as alleged. The petitioner was transferred to C.M.P.D.I.L. on the request made by the in-charge of the institute for training period of three years to train surveyors at the institute. Thereafter, the petitioner had joined back at his original place of posting. It is submitted that transfer has been effected on administrative exigency and there is no violation of the policy.

5. The learned counsel for the petitioner has strenuously urged that the transfer is violative of the policy as contained in office memorandum dated 4-5-94. He placed reliance on para 6 of the said office memorandum which provides that transfer on administrative ground may be effected at any time. Para 6 (a) provides that Executives of M-1 grade and above who have been working in the same company for more than 10 years either in the same capacity or in different capacities, be transferred to another company. In case of promotions/appointments to executive cadre from non-executive cadre, the incumbent will be posted in another company. Executives holding identified sensitive posts, shall be transferred out of company on completion of five years. The exigencies as provided in paras 6 (a), (b) and (c) do not curtail the right to transfer in the case of administrative ground at any time. Inter-company transfers on administrative ground may be effected at any time. Paras 6 (a), (b) and (c) provides additional exigencies where transfer has to be necessarily effected. There are certain other exigencies provided in Para 6 for within company transfers. Guidelines are also provided for within company transfers. We find that the transfer having been made on administrative ground, may be effected at any time on inter-company basis. When the transfer can be effected from one company to other, and there is no bar on transfers, within company and to subsidiaries of Coal India Limited, we find no reason not to uphold the right of Coal India Limited to transfer an employee from one subsidiary to another subsidiary. We find no bar under the policy for such transfers. It is also settled law that violation of a policy is not justiciable by Court of law. However, we find no such violation in the instant case.

6. As to the second submission raised by the learned counsel regarding malice and ill-will harboured by the respondent No. 3, we do not find any sufficient material on record to sustain such a plea. The petitioner can in no way be a competitor to Chief General Manager, hence the allegation that petitioner's personal competence is not to the liking of the Chief General Manager cannot be presumed to be a ground sufficient to infer malice. Transfers and attachments are incidents of service and an employee cannot assail them until and unless it is actuated with malice. Merely because there are certain vacancies still in the Northern Coalfields Limited, transfers cannot be held to be not based on administrative exigencies. Employer are the best judges to use skill and qualifications of an employee properly. It is not the case of the petitioner that Mahanadi Coalfields Limited is having surplus staff and there is no work available for him at the place where he has been transferred.

7. We find no merit in the present appeal. The same is dismissed in limine.

8. L.PA. dismissed.