(2008) 08 MP CK 0004

In the Madhya Pradesh High Court

Case No : W.A. No. 522 of 2008

Subhash Roy APPELLANT

Vs

Coal India Ltd. and Others RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2009) 2 MPJR 71

Hon'ble Judges : Sanjay Yadav, J;Dipak Misra, J

Bench : Division Bench

Judgement

Sanjay Yadav, J.

Challenge in this writ Appeal filed u/s 2(1) of Madhya Pradesh Uchcha Nayayalaya (Khand Nyapeeth Ko Appeal) Adhiniyam, 2005, is to an order dated 17-4-2008 passed by learned single Judge in W.P. No. 14003/2007, whereby the challenge to an order of transfer of appellant passed on 13/17th September, 2007 was nullified on the ground that the same is neither malicious nor without an authority but in administrative exigency.

The facts in nutshell are that the appellant is a senior Dumper Operator, non-executive Cadre post, in the service of Northern Coal Fields Ltd. a subsidiary of Coal India Ltd. for short NCL) and was posted at Bina Project NCL Singrauli. By order dated 13-11-2006, the appellant was transferred to Mahanadi Coal Field Ltd., Sambalpur, another subsidiary of Coal India Ltd. The appellant questioned the same in W.P. No. 17186/2006 (S) filed before this court on the ground that it was passed by an officer who was not having any authority to do so and that the petitioner was singled out with mala fide intention because of the exposure by the appellant of unfair practice of the management. The said writ petition was dismissed on 14-12-2006 for want of territorial Jurisdiction. However, on challenge in Writ Appeal No. 58/2007, the said order was reversed when the Writ Appeal was allowed on 19.6.2007. The Division Bench of this Court while declining to advert upon various aspects relating to the conduct of the appellant and the action of the respondents in transferring the appellant, dwelt upon the issue as to whether there has been any kind of power with the Coal India Ltd. to transfer an employee of the appellant''s Cadre serving under one subsidiary company to another subsidiary company and since the documents brought on record were not sufficient to arrive at a conclusion that it was within the power of the Coal India Ltd. to effect such transfer, the matter was remitted to the Coal India Ltd. with a direction that it will dilate upon its power and pass a reasoned order as to on what basis and under what authority it has passed the order of transfer of the appellant to a different company,. Consequent, thereupon, an order was passed on 13/17th September, 2007; whereby the appellant was ordered to be transferred to MCL Sambalpur. This order was subjected to challenge in W.P. No. 14003/2007 (s), wherein it was upheld by the impugned order.

Challenging the order it is urged that the learned single Judge has failed to appreciate the facts that authorities concerned having failed to justify their action in the light of direction by the Division Bench in W.A. No. 58/ 2007 wherein the Coal India Ltd. was directed to dilate upon its power in respect of transferring a person belonging to non-executive cadre from one company to another, the order of transfer was not sustainable. It is further argued that the transfer was not sustainable being passed by way of punishment so much so that he has been singled under the garb of administrative exigency, which is revealed from the note sheet and various correspondence entered into between the officials of NCL and the Coal India Limited. It is therefore, urged that had the learned single Judge appreciated the material brought on record in their right perspective, the transfer of the appellant from one subsidiary to another by Director (Personnel and Industrial Relations) Coal India Ltd. ought to have been interdicted.

The respondents on their turn while relying upon Delegation of powers in favour of Director (P and IR) by Coal India Ltd. have supported the impugned order passed by learned single judge. It is further contended that it was within the power of the Director (P and IR) to transfer the appellant from one subsidiary to another after consulting the concerned subsidiary in conformity with company Rules. Placing reliance on the affidavit filed by Deputy Legal Manage, NCL, it is urged that Coal India Ltd. has its own Board of Directors (in short Board) which have various powers as enumerated in the Memorandum of Association. The board has delegated its power to transfer an employee from one subsidiary company to another subsidiary company in favour of Director (P and IR) by its order dated 15-1-1985 and it was in exercise of such powers that the appellant was transferred from NCL to MCL and since this was, it is contended, in consonance with the order passed by the Division Bench, the learned single judge did not commit any error in negativing the challenge.

Considered the rival submissions and perused various documents brought on record.

The issue which crops up for consideration is whether it was within the competency of the Director (P and IR) to have transferred the appellant from one subsidiary Company to another and whether the appellant has been subjected to mala fide transfer.

However before dwelling upon the aspect of mala fides we propose to dwell upon the issue as to whether it was within the competence of the Director (P and IR) to have ordered the transfer of the appellant from one Subsidiary Company to another. This we do because in an earlier round of litigation, as noted supra, the matter was remitted to the Coal India Ltd. to dilate upon its power and to pass a reasoned order as to on what basis and under what authority it has passed the order of the transfer of appellant to another Company. It is the direction (P and IR) who passes an

order of 13/17-9-2007 purportedly in exercise of the powers delegated to him by the Board under Order No. CILXI(D): 04027:671 dated 15th January, 1985. The relevant provision of the order

ated 15-1-1985, i.e. Delegation of Powers, stipulates the item and the extent of powers delegated in favour of Director (P and IR) and in respect of transfer, full powers are delegated in following terms.

Transfer/accept resignation/confirm employees/sanction officiating, allowances/ increments/''crossing of efficiency bar in consultancy with the concerned Division/ Subsidiaries in conformity with company rules.

The delegation of power in favour of Director (P and IR) by CIL is in exercise of its powers under The Articles an Memorandum of Association of CIL and NCL.

Clause 31 of Articles of Association of Northern Coal Fields Ltd. Interpretation, Annexure "C", filed along with the affidavit dated 4-7-2008 stipulated that the business of the Company i.e., NCL, shall be managed by Board of Directors. Clause 33 (i) (d) stipulates that the Chairman or Vice Chairman on the Managing Director or other Directors shall exercise such powers and discretion in relation to the affairs of the Company may be specifically delegated to them respectively by the Board of Directors and are not required to be done by the Board of Directors of the Company at the General Meeting under the Act. Clause 37 makes a provision regarding powers of President/Coal India Ltd., to issue directions in the following terms:

Notwithstanding anything contained in all these Articles the President/CIL may from time to time issue such directives on instructions as may be considered necessary in regard to conduct of business and affairs of the Company and in like manner may vary and all any such directive on instructions so issued.

Similarly, clause 33(i)(c) of Articles of Association of Coal India Ltd. Interpretation, stipulates that the Chairman, Vice Chairman or the Managing Directors or other Directors shall exercise such powers and discretion in relation to the affairs of the Company as may be specifically delegated to them respectively by the Board of Directors of the Company at the general meeting under the Act.

Thus the delegation of Powers to Director (P and IR) by CIL in respect of transfer in consultancy with the concerned subsidiaries and the exercise of such powers thereof by respective Director (P and IR) cannot be faulted with. However, a close reading of the relevant delegation of powers reveal that such exercise of power has to be ''in Conformity with Rules''.

The transfer of an employee of the Company are governed by the transfer policy brought into existence vide office memorandum No. CIL/C-5A(vi)/50729/CCC/26 dated 26.04.2002, Annexure A/6. The said policy is in respect of Executives and Non-Executives working in sensitive disciplines. The area of operation in the non-executive cadre declared as sensitive are Store Personnel; Security Personal/ Vigilance watchers; Assistants dealing with purchase; Assistants dealing with sales especially Road Sales; Weight Bridge Staff; Loading clerk/loading personnel; Bill clerks, Personnel Officers clerks posted in Collieries, Overseer (C)/ Engineering Assistant (C)/Medical Officer''s clerks posted in collieries; Assistants dealing motor vehicles works; Staff posted in Central Hospitals to look after supply of meals etc. to patients; and take care of the Guest House. The policy further stipulates that the personnel declared on the above listed job should not be allowed to stay in a particular place for more than three years at a time and that they will be rotated within the Company on completion of three years and this relation/ transfer will be regulated in a routine manner and to be mentioned by the Headquarters of the subsidiaries. The policy further moots that on promotion from non-executive cadre to executive cadre they will be transferred to other Subsidiary Companies. No other policy governing transfer of an employee from one subsidiary to another has been brought to the notice of this Court.

The transfer being covered by a policy having the force of rule, it is within the powers of an employee to question his transfer if it is de hors such policy. In the case at hand the learned Single Judge while analyzing the facts in paragraphs 9, 10 and 11 was pleased to hold that the transfer policy has no applicability in the case and then went on to approve the sweeping powers of the Director (P and IR) to transfer a Non-executive from one subsidiary to another. In our considered opinion, a plain reading of Delegation of Powers reveals that the Directors (P and IR) does not enjoy a sweeping powers, but have powers which he has to exercise ''in conformity with the rules'' and no rules, except the transfer policy quoted supra, has been brought on record to indicate the Director (P and IR) can exercise powers of transfer of a non-executive from one subsidiary to another. But that does not mean that a non-executive cannot be transferred from one place to another in administrative exigency which is writ large in the present case.

Thus the respondents have failed to show that the Director (P and IR) was empowered even to transfer a non-executive working in non-sensitive post to another subsidiary. However, we may not be understood to mean that President/ CIL will also not have any power to transfer an employee from one subsidiary to another. Similarly, it is within the power of subsidiary Company to transfer its employee from one place to another in administrative exigency.

Having thus considered we set aside the order dated 13/17.09.2007; however, we have leave it to the President/CIL in case the administrative exigency so demand to transfer the appellant from one subsidiary to another or from one place to another within the NCL. The impugned order passed in W.P. No. 14003/2007 is accordingly set aside.

The appeal is allowed to the extent above. No costs.

