
(2013) 07 CAL CK 0115
In the Calcutta High Court
Case No : WPCT No. 203 of 2013

The Andaman and Nicobar Administration and Others APPELLANT
Vs
Shri Newazesh Ali and Another RESPONDENT

Date of Decision : 12-07-2013

Acts Referred:

Citation : (2013) 4 CHN 388 : (2013) 4 WBLR 119

Hon'ble Judges : Subhro Kamal Mukherjee, J; Murari Prasad Shrivastava, J

Bench : Division Bench

Advocate : Mohammed Tabraiz, for the Appellant; Pathik Chandra Das and Arul Prasanth for the Respondent No. 1, Gopala Binu Kumar for the Respondent No. 2 and Santosh Kumar Mandal and Satish Chandra Mishra for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—This is an application under Article 226 of the Constitution of India, against an order dated May 24, 2013 passed by the Central Administrative Tribunal, Calcutta Bench, in O.A. No. 44/AN/2013. By the order impugned, the Central Administrative Tribunal granted stay of the operation of the order of transfer of the respondent No. 1/applicant in the original application.

2. In the Andaman and Nicobar Administration, there are four posts of Superintending Engineer. The respondent No. 1 is presently holding the post of Superintending Engineer, Construction Circle No. 1. He is holding the post nearly about six years.

3. He, now, by an order dated May 17, 2013, is transferred from the post of Superintending Engineer, Construction Circle No. 1 to the post of Superintending Engineer (Planning).

4. We are informed that both the offices are in the same building in the town of Port Blair.

5. The respondent No. 1/applicant is aggrieved. He made a representation to the Lieutenant Governor of these islands on May 21, 2013.
6. Curiously, on the very next day, he approached the Central Administrative Tribunal, challenging the order of transfer.
7. By the order impugned, the Central Administrative Tribunal, granted stay of the operation of the order of transfer.
8. Mr. Pathick Chandra Das, has strenuously argued that his client is the only Superintending Engineer, and, therefore, he cannot be replaced by a junior officer.
9. This respondent No. 1/applicant is a Superintending Engineer. He is not transferred to any junior post. Moreover, the person, who is asked to take charge, is, also, an officiating Superintending Engineer.
10. Mr. Pathick Chandra Das is of the opinion that the order of transfer dated May 17, 2013 is illegal inasmuch as under the transfer policy the transfer orders must be issued before April 30 of every year.
11. The transfer is not only an incident of service, but a condition of service as well and it is necessary too in public interest and efficiency in public administration. No government employee of a public undertaking has any legal right to be posted forever at any particular place or place of his choice. Unless an order of transfer is shown to be an outcome of malafide exercise or stated to be in violation of statutory provisions prohibiting such transfer, the Court or the Tribunal normally cannot interfere with such orders, as if the Court or the Tribunal is the appellate authority and is substituting its own decision for that of the management.
12. The guidelines as referred to by Shri Pathick Chandra Das cannot have same force as that of the statute. Moreover, whether there existed administrative exigency or not is not a matter for the Court, but is a matter for the Administration.
13. Unless, an aggrieved employee is able to establish either the order of transfer being tainted with malafide or the same being in arbitrary exercise of such powers by disclosing necessary facts or materials, which can reveal such action to be malafide or arbitrary and, further, that the action is in violation of the statutory provisions, the question of interference by the Court against such order of transfer does not arise.
14. Ordinarily, an employee, who has been transferred should, subject to just exceptions, join at his transferred place/post immediately.
15. The legal position regarding interference by Court in the matter of transfer is too well settled. The respondent No. 1/applicant's transfer neither suffers from violation of any statutory rules nor it can be described as mala fide.
16. Therefore, in our view, the Tribunal ought not to have stayed the operation of

the order of the transfer dated May 17, 2013, which is annexed as annexure P-1 at page 51 of this writ petition.

17. The order impugned passed by the Tribunal is, therefore, set aside.

18. However, we request the Tribunal to consider the application on merits uninfluenced by our observation, if any, and, to consider the prayers in accordance with law.

19. We express no opinion on the merits of the main original application.

20. The writ petition is, therefore, allowed.

21. We make no order as to costs.

22. Mr. Pathick Chandra Das, learned Advocate appearing for the respondent No. 1/applicant, in the original application, prays for stay of the operation of our order. We have considered his prayer carefully. The prayer is rejected. Urgent certified photocopy of this order be supplied to the learned advocates appearing for the respective parties upon completion of usual formalities.

Murari Prasad Shrivastava, J.

I agree.