(2014) 03 CAL CK 0078

In the Calcutta High Court

Case No : W.P. Nos. 653 and 693 of 2013

Vineet Singh APPELLANT

Vs

Coal India Limited RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Citation : (2014) 2 CALLT 21 : (2015) 2 CHN 56

Hon'ble Judges : D. Datta, J

Bench : Single Bench

Advocate : Debasis Kundu and Mr. R.M. Barik, Advocate for the Appellant; R.N. Majumder and Mr. Nikhil Roy, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dipankar Datta, J.—W.P. 653 of 2013 dated June 28, 2013 and W.P. 693 of 2013 dated July 17, 2013 involve common parties. While the former writ petition was presented by the petitioner apprehending transfer from his present place of posting, the latter was presented after the petitioner received the order of transfer. The writ petitions have been heard together and shall stand disposed of by this common judgment and order. The petitioner is the Deputy Manager (Sales and Marketing) of Coal India Limited (hereafter CIL), respondent No. 1, a post in E-4 grade, and is currently posted in Kolkata. He is aggrieved by the order dated March 11, 2013 issued by the General Manager (Personnel), CIL, whereby he has been sought to be transferred to the Western Coalfields Limited in his existing capacity/grade till further orders.

2. According to Mr. Kundu, learned advocate representing the petitioner, the order of transfer has been issued mala fide and it has penal consequences.

3. It would be necessary at this stage to notice the background facts. Disciplinary proceeding was initiated against the petitioner by the Director of Marketing, CIL in terms of Rule 29 of the Conduct, Discipline and Appeal Rules, 1978 on March 7, 2005. Such proceeding culminated in an order dated February 5, 2009,

whereby the petitioner was penalized by lowering of one grade for a period of two years and on expiry of such period he would be placed at the bottom of the grade from which he was lowered, without restoring seniority. Before such order of penalty, however, the petitioner along with 19 other Deputy Managers in E-4 grade were promoted as Sales Manager, in E-5 grade but by an order dated May 15, 2008, the petitioner was informed of cancellation of his promotion to E-5 grade and that he had been reverted to his substantive post i.e. in E-4 grade. A writ petition challenging such order dated May 15, 2008 was filed by the petitioner seeking withdrawal/cancellation thereof. The writ petition was disposed of on February 10, 2009 by me. Since the petitioner could not dispute that disciplinary proceeding was pending against him on the date he was granted promotion from E-4 to E-5 grade and the respondents had taken a plea that vigilance clearance was erroneously issued overlooking the fact of pendency of the disciplinary proceeding against the petitioner, the order dated May 15, 2008 was not interfered. However, the petitioner was directed to be granted benefits for the period he discharged duty in E-5 grade consequent to the order of promotion and it was further directed that the financial benefits that had already been released should not be called back. The petitioner was granted the liberty to question the legality and propriety of the order of the disciplinary authority in appropriate proceedings and it was observed that if ultimately the petitioner succeeds in dislodging the order of the disciplinary authority, he shall be entitled to reap the benefit of the recommendation of the Departmental Promotion Committee, Availing the liberty granted by the Court, the petitioner preferred a departmental appeal on March 5, 2009 before the Chairman, CIL. The appeal was not decided for years and it was as late as on March 25, 2013 that the appellate authority dismissed the appeal and confirmed the order of penalty. Upon disposal of the appeal, the Senior Manager (Personnel) by his office order dated June 21, 2013 conveyed to the petitioner that the two years period during which his grade would stand lowered as a result of the penalty imposed by the disciplinary authority having expired on February 4, 2011, his designation/grade is restored to Manager (S & M) in E-5 grade and that he shall be placed at the bottom of E-5 grade with effect from February 5, 2011.

4. It was at this stage that the petitioner learnt of the transfer order dated March 11, 2013 referred to above. Since the transfer order had not been served on him, the former petition was filed. On July 9, 2013, it was directed by way of an interim order that the petitioner shall not be forced to join the transferred post till July 12, 2013. Subsequent orders granted limited extension and ultimately by the interim order was extended on August 2, 2013 till August 20, 2013. By that time the latter petition had been presented.

5. On consideration of both the writ petitions on August 16, 2013, I recorded my prima facie satisfaction that the transfer of the petitioner was a measure of penalty; if indeed his integrity is doubtful, the matter ought to have been inquired into. The interim order was extended and affidavits were called for.

6. The affidavit-in-opposition of the respondents disclosed in paragraph 13 that inclusion of the petitioner''s name in the list of officers having doubtful integrity was one the grounds for his transfer. Accordingly I had called upon Mr. Majumdar, learned advocate for the respondents to disclose the criteria for inclusion of the names of officers of CIL and its subsidiary companies in such list as well as the source of power of the respondents to prepare such list. In compliance with such order, Mr. Majumdar placed before the Court Office Memorandum dated October 28, 1969 on the subject "Scheme for preparation, maintenance and custody of lists of public servants of gazetted status of doubtful integrity", copies of which were forwarded to the Chief Vigilance Officers of Ministries/Departments. Relevant portions from the said scheme are reproduced hereunder:

7. The said scheme was forwarded to the Officer-on-Special Duty (Vigilance), CIL by the Under-Secretary to the Government of India vide a communication dated March 19, 1984.

8. It further appears from the records that the name of the petitioner was included in the list of officers of doubtful integrity for three years from 2009 as well as for the year 2012 vide note dated September 4, 2012 of the Chief Manager (E & M)/Vigilance, CIL on the ground that watch still needs to be maintained on the petitioner.'' The petitioner''s name is also included in the list for the year 2013 on the same ground. Since the documents that were produced did not show that the Central Bureau of Investigation (hereafter the CBI) was consulted prior to continuing the petitioner''s name on the list of officers having doubtful integrity beyond the initial period of 3 (three) years and despite conclusion of disciplinary proceedings against him, I had called upon Mr. Majumdar to enlighten me on this aspect. A note received by Mr. Majumdar from the Senior Manager (E & M)/Vigilance dated November 28, 2013 was placed before me which is to the following effect:

The above matter was heard by the Hon''ble Justice *** at High Court, Calcutta on 26.11.2013. The Hon''ble Justice directed the Learned Counsel for the Respondents to get instruction from, the Respondents whether Central Bureau of Investigation was consulted to retain the name of Officers of Doubtful Integrity beyond a period of 03 (three) years from the year of inclusion of such Officers in the list of ODI and to furnish the records/documents in the matter.

In this context, it is to state that Regular informal meetings as well as one formal Annual meeting is held with CBI every year to discuss several matters including:

1. Preparation of List of Officers for ''Agreed List'',

2. Consultation for retaining the names of Officers of Doubtful Integrity beyond a period of 03 (three) years,

3. Review the on-going vigilance cases,

4. Discussion on the cases referred by CBI to Vigilance Division, CIL and cases referred by CVC/Ministry of Coal to CBI, where Officers of Coal India Limited are

involved,

5. Cases of Prosecution Sanction,

6. Areas vulnerable to corruption and actions needed,

7. Proposed joint actions,

8. Any other matter which needs discussion.

However, no formal records/minutes of the meeting is drawn and retained at both the sides keeping in view sensitivity and confidentiality of the matter. The formal annual meeting took place on 13.09.2012 & 11.03.2013. The dates of informal meetings are not readily available. The issue of retention of names of Officers of ODI list was discussed in these meetings.

9. According to Mr. Kundu, it is clear that the directives issued by the Government of India in relation to continuance of the name of an officer in the list of officers having doubtful integrity have not been followed at all. There are no records that the CBI has been consulted, and no cogent reason has been recorded for continuing the name of the petitioner on the list. It is further contended that keeping a watch on the officer is not contemplated as a ground for continuing his name in the list. That apart, it has also been argued that the petitioner is not holding a sensitive post requiring his transfer and, therefore, it was prayed that the impugned transfer order may be quashed.

10. Mr. Majumdar, per contra, contended that it is the prerogative of the employer where and when to post its employees. Transfer is an incident of service and an employee is expected to abide by it, failing which he would expose himself to consequences. In view of the fact that the petitioner is still on the list of officers having doubtful integrity and transfer is contemplated in terms of the directive of the Government of India as contained in the scheme, the petitioner cannot have any reason to feel aggrieved. He has, accordingly, prayed for dismissal of both the writ petitions.

11. Having regard to the above, it has to be examined whether the petitioner could be transferred to the Western Coalfields Limited or not on the ground that he continues to remain on the list of officers having doubtful integrity.

12. In the note dated November 28, 2013 that has been forwarded to Mr. Majumdar for being placed before the Court, the Senior Manager (E & M)/ Vigilance has referred to meetings, both informal and formal, that are held with the CBI every year and has also indicated the areas of discussion; however, strangely enough, it is mentioned in such note that no formal records/minutes of the meeting is drawn and retained at both the sides keeping in view sensitivity and confidentiality of the matter. No reasonable person would believe such a plea. If indeed records/minutes in respect of sensitive and confidential matters are not to be maintained or drawn up, that would most certainly be a breeding ground for corruption, for, it would allow anyone the liberty to act according to

his wish and not according to the collective decision taken in the meeting. Should a charge of disobedience be levelled, the delinquent officer may well take advantage of the situation and go scot-free. The plea of non-maintenance of records and not drawing up the minutes compels me to observe that those who attended the meetings must be held to have exposed themselves to gross dereliction of duty.

13. However, for the present, I am of the firm view that the plea has been raised as a cover up for not consulting the CBI in regard to continuance of the petitioner''s name in the list of officers having doubtful integrity. I am also of the view that maintaining watch on the petitioner is not contemplated in the scheme as a ground for continuing an officer''s name in such list and in the absence of cogent reason for continuing his name in the list, particularly when there has been no complaint of alleged corrupt practice indulged in by him subsequent to the order of penalty that was imposed, is sufficient ground for holding that the jurisdictional fact to order an transfer on the basis of the transfer policy relating to sensitive posts was absent and the order of transfer has been issued mala fide.

14. In the result, the impugned order of transfer dated March 11, 2013 stands set aside in the peculiar facts of the case where the respondents have indubitably twisted facts. Since the petitioner has also alleged that he has been posted in a sensitive discipline but for performing non-sensitive jobs (Office Memoranda dated November 14, 1976 and November 15, 2013 have been referred to), the Chairman-cum-Managing Director, CIL shall consider afresh the desirability of placing the petitioner under transfer without being influenced by the actions taken by the officers superior to the petitioner who, I am constrained to hold, did not act reasonably and with fairness.

15. Before parting, a word or two about the note dated November 28, 2013 of the Senior Manager (E & M)/Vigilance. I hope and trust that the Chairmancum-Managing Director, CIL shall personally look into the matter and if the said note represents the actual state of affairs, he shall seek suitable explanations from the officers concerned for not maintaining the records/drawing up the minutes of the meetings with the personnel of the CBI relating to the matters of discussion in the informal and formal meetings and immediately insist on maintenance of records as well as drawing up of minutes of the meetings so that no order is issued against the interest of any employee based on decisions which are not to be found in the records. The writ petitions stand disposed of. There shall be no order as to costs.

Photocopy of this judgment and order duly countersigned by the Court Clerk shall be retained with the records of W.P. 693 of 2013.

Urgent photostat certified copy of this judgment and order, if applied for, may be furnished to the applicant at an early date.

Later:

Prayer for stay of operation of the order, made by Mr. Roy, is considered and refused.

