

18.12.2020
Item No.24
Crt. 24
b.r

In the High Court at Calcutta
Constitutional Writ Jurisdiction

W.P.A. No. 8187(W) of 2020

Subhajit Samajder
-vs-
The West Bengal State Electricity Distribution
Company Limited & Ors.

Mr. Arnab Saha
..... for the petitioner.

Mr. Srijan Nayek
Mr. S.S. Koley
..... for the WBSEDCL.

Supplementary Affidavit filed by the petitioner be retained with the record.

The petitioner is aggrieved by an order of transfer dated 23rd September, 2020 whereby he has been transferred in the interest of the Company from Alipurduar Region to the Hydel Project Headquarters in Jalpaiguri with immediate effect.

The petitioner submits that he is a physically handicapped person. The place where he has been transferred is not properly equipped with a ramp so that he can move and work freely.

The petitioner claims to have made a representation to the Chairman and the Managing Director highlighting his grievances but the copy of the alleged representation which has been annexed to the writ petition does not show the proof of service of the said letter nor does it show the

date on which the same was served upon the said authority.

The petitioner relies upon the Transfer Policy of 2017 for Employees' of the West Bengal State Electricity Distribution Company Limited. According to the said policy a Divisional Engineer (Electrical) may on promotion, be transferred to the Division/Region/Zone/Project/Hydel /other offices only after completion of three years of service at a particular place of posting.

The petitioner has annexed document to show that he was transferred for the last time in April, 2018 and he has not yet completed the minimum three years in the present place of posting from where he has been transferred once again.

The petitioner also relies upon the provision in the said policy which mentions that the employees under the differently abled category may be considered for posting at a place nearby to their residence preferably within the home district.

The petitioner submits that he is the resident of the district of Alipurduar and he has been transferred to a place which is not his home district. The petitioner also alleges that the transfer order is premature, malicious and prays for setting aside the same.

It appears from the supplementary affidavit filed by the petitioner that the release order was served upon the petitioner on 7th October, 2020 whereby he has been

released in the afternoon on 7th October, 2020 with the direction to report for further duty to the post of Chief Engineer (Electrical), Hydel Head Quarter, WBSEDCL. The petitioner submits that his salary has been withheld from the month of November, 2020.

Learned advocate representing the respondents submits, upon instruction, that the petitioner has been transferred in the interest of the Company in accordance with the West Bengal State Electricity Board Employees' Service Regulations. According to Regulation 26, the competent authority has the right to transfer any employee from one post, Section, Department etc. without assigning any reason thereof except (i) by way of punishment pursuant to disciplinary proceeding under Regulation 62 or (ii) written request.

Learned advocate submits that the transfer of the petitioner is not at all punitive and the same has been made in the interest of the Company. The Company intends to utilize the service of the petitioner. It has been submitted that the petitioner used to conduct surprise site inspection of different Boards to verify safety compliance. The petitioner moves for his official work at the site level and during site inspection he was always self-sufficient in his free movement and never complained of any difficulty. He always used to conduct site inspections without the help of any person. The petitioner also conducted inspection physically at tough areas and also various

meter rooms of the bulk consumers. He used to perform his site duties like any other regular employees of WBSEDCL.

The respondent's primary contention is that transfer is an incidence of service and it is the employer's prerogative as to the place where his employee's service would be required.

The respondents rely upon the following judgments delivered by the Hon'ble Supreme Court in the matter of Gujarat Electricity Board & Anr. vs. Atmaram Sungomal Poshani reported in AIR 1989 SC 1433, Mrs. Shilpi Bose & Ors. vs. State of Bihar & Ors. reported in AIR 1991 SC 532 and the matter of J.K. Bansal vs. Union of India & Ors. reported in (2005) 7 SCC 227 on the aforesaid provision.

The learned advocate for the respondents further submits that the petitioner is the resident of Jalpaiguri and the place where he has been transferred presently is approximately 35 kms. away from his residence. Previously, the petitioner was posted at a place which is approximately 135 kms. away from his residence.

The transfer policy which the petitioner has relied upon clearly mentions that an employee of any category may prefer an appeal to the authority of the Company for transfer from one place to another place on the condition of medical ground.

The petitioner's primary contention is that the place where he has been transferred is not equipped to permit him to move around freely.

It has been submitted that the respondent authority will take all necessary steps to ensure that there is no difficulty on the part of the petitioner to perform his duty in the transferred place of posting.

It has further been submitted that in the event, there is any difficulty, the petitioner may approach the competent authority for necessary relief and the same will be considered by the authority in accordance with law.

Upon hearing the submissions made on behalf of both the parties, it appears that the provision in the transfer policy, which the petitioner is relying, speaks of transfer on promotion. In the instant case the transfer of the petitioner is not on promotion.

The period of stay of three years at a particular place of posting is not necessarily a mandatory one because the regulations of the Company permits the authority to transfer an employee without assigning any reason thereof, provided the same is not punitive.

In the present case the transfer of the petitioner does not appear to be a punitive one.

If the petitioner is genuinely aggrieved with the order of transfer he may approach the competent authority giving details of the difficulties which he feels may stand in the way of working freely and properly at his transferred

place of posting. In the event, such an application is made before the appropriate authority, the same shall be considered strictly in accordance with law at the earliest, preferably within a period of seven days from the date of making such application.

WPA No. 8187 of 2020 stands disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties after usual legal formalities.

(Amrita Sinha, J.)