

13.04.2021
Item No. 01
Ct. No. 04
PG

M.A.T. 470 of 2021
With
I.A. no. CAN 1 of 2021

Tarun Kumar Mitra
Vs.
National Insurance Company Limited & Ors.

Mr. Biswaroop Bhattacharya
Mr. Pratik Majumder.....for applicant/appellant

Mr. Ranjay De.....for respondents

This application has been listed under heading 'To Be Mentioned' at instance of Court on noticing incorrect particulars of application printed in order dated 9th April, 2021. By said order the application was directed to be listed under heading 'Specially Fixed Matter'. As such, parties are present and they want the application be dealt with upon the correction made.

Particulars of application given as "IA No. CAN 1 of 2019" should be read as "IA no. CAN 1 of 2021". The correction be deemed to have been incorporated in said order.

The application having had been moved on 9th April, 2021, there was record of proceeding in order made. We reproduce relevant text of said order:

“Applicant/writ petitioner wants stay of operation of order dated 7th April, 2021 whereby no interim order was passed. Mr. Bhattacharya, learned advocate appears on his behalf and submits, the transfer order was made condition precedent to revocation of suspension. The transfer was from Khidderpore, Kolkata to his employer’s office in Malda. He draws attention to Transfer and Mobility Policy for Supervisory, Clerical and Subordinate Staff (TMP). Clause 5.7 therein limits distance of transfer to maximum of 200 Kms. Distance between Khidderpore and Malda is more than that. He submits, in appeal arising from his client’s earlier writ petition, coordinate Bench by order dated 22nd January, 2019 entitled his client to make new application seeking revocation of transfer. The application was made. By letter dated 30th April, 2019 the application was rejected. His client challenged the transfer order and said letter by the writ petition. By said letter, respondents asserted amendment to TMP. The amendment was notified by notice dated 31st December, 2010, not disclosed. Mr. De, learned advocate appears on behalf of respondents and is aware of said notice.

Applicant will produce copies of notice dated 31st December, 2010 on adjourned dated for our perusal. Mr. De will be hard on applicant’s contention for stay of operation of impugned order.”

Notice dated 31st December, 2010 has been produced by Mr. Bhattacharya on copy given to Mr. De. There is no dispute that the notice is annexure-V referred in respondents’ letter dated 30th April, 2019, impugned in the writ petition. As such, it cannot be said to be additional evidence produced.

We have heard Mr. De on his contention that TMP does not apply to applicant’s case. His contention is based on following extract from his clients’ said letter dated 30th April, 2019:

“So far as your contentions about transfer policy are concerned, you ought not to have made incorrect statement about the Transfer and Mobility Policy (TMP).

The relevant circular regarding amendment in TMP for supervisory, clerical and subordinate staff is being enclosed herewith for your ready reference (Annexure V).”

This, we have ascertained on repeated queries, is the statement, on which the contention is based. In other words, there is no other statement in said letter saying specifically that TMP does not apply to applicant.

Para 5.7 in TMP is reproduced below:

“5.7 Transfer of an employee from one station to another shall ordinarily be restricted to a radius of 150 kms from his present station of posting. However, in exceptional circumstances, where the requirement or need of the Company are not found to be met by restricting a particular transfer to a radius of 150 kms, The General Manager (Personnel) may approve transfer of an employee beyond the radius of 150 kms but not beyond 200 kms.

Provided that where, for the purpose of fulfilling organizational requirements, the Competent Authority considers it absolutely necessary to transfer employees between two stations, say A and B, located beyond a distance of 150 kms. (or 200 kms., as the case may be), such transfer shall be effected by involving an intermediary station(s), say C, i.e. transferring one employee from A to C and then another employee transferred from C to B, so as to ensure that the distance between A and C and also between C and B is not more than 150 kms (or 200 kms., as the case may be).”

Amended para 5.7, notified by notice dated 31st

December, 2010 is reproduced below:

“5.7 Transfer of an employee from one station to another shall ordinarily be restricted to a radius of 150 kms. from his present station of posting. However, in exceptional circumstances, where the requirement or need of the Company are not found to be met by restricting a particular transfer to radius of 150 kms., the General Manager (Personnel) may approve transfer of an employee beyond the radius of 150 kms but not beyond 200 kms.:

Provided that where, for the purpose of fulfilling organizational requirements, the Competent Authority considers it absolutely necessary to transfer employees between two stations , say A and B, located beyond a distance of 150 kms. (or 200 kms., as the case may be), such transfer shall be effected by involving an intermediary station(s), say C, i.e. transferring one employee from A to C and then another employee from C to B, so as to ensure that the distance between A and C and also between C and B is not more than 150 kms. (or 200 kms., as the case may be)”.

We have not been shown transfers in tandem, of applicant transferred to a place in between and from that in between place, another person was transferred to Malda for fulfilling organizational requirements. Fact is applicant was transferred from Khidderpore to Malda. This is in breach of para 5.7, as amended.

There will be interim order in terms of prayer (q) of the writ petition till 10th May, 2021. The consequences will bear on respondents’ action, pursuant to applicant having joined in Malda. As such, it is made clear that thereby the suspension stood revoked.

Parties will be at liberty to mention to first Court for early hearing on themselves having exchanged affidavits or otherwise. Extension of interim order must be had from the first Court.

We have dealt with the application and by it the appeal itself, on consent obtained from the parties. As such, all formalities are dispensed with.

The application and appeal are allowed as above and disposed of.

(Arindam Sinha, J.)

(Suvra Ghosh, J.)