

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**The Hon'ble Justice Sabyasachi Bhattacharyya
And
The Hon'ble Justice Rabindranath Samanta**

W.P.C.T. No.78 of 2021

**Alapan Bandyopadhyay
Vs.
Union of India & Anr.**

For the petitioner	:	Mr. Shyam Divan, Sr. Adv., Mr. Abhratosh Majumdar, Sr. Adv., Mr. Debanjan Mandal, Mr. A.K. Behera, Mr. Soumya Majumdar, Mr. Kunal Vajani, Mr. Sandip Dasgupta, Mr. Subhankar Nag, Mr. Victor Chatterjee, Mr. Kunal Mimani, Mr. Saaqub Siddiqui, Ms. Mahima Cholera, Mr. Gokula Krishnan
For the Union of India	:	Mr. Vikramjit Banerjee, Ld. ASG, Mr. Anirban Mitra, Mr. Sailendra Kr. Tiwari, Mr. H. Bhaskar, Ms. Shruti Agarwal, Mr. Shivam Singhanian
Hearing concluded on	:	27.10.2021
Judgment on	:	29.10.2021

Sabyasachi Bhattacharyya, J.:-

1. The brief facts of the case are:

2. The writ petitioner joined the Indian Administrative Service (IAS) in the year 1987 and thereafter worked continuously with the Government of West Bengal till his superannuation on May 31, 2021.
3. The West Bengal Government made a request to the Central Government seeking agreement for extension of service of the petitioner for a period of three months from June 1, 2021 to August 31, 2021. The Central Government acceded to such request vide letter dated May 24, 2021. On May 25, 2021, the Government of West Bengal ("State Government", for short) issued a notification for extension of the petitioner's service as Chief Secretary, in which post he had been serving immediately prior to his attainment of the age of superannuation, from June 1 to August 31, 2021.
4. On May 26, 2021, the super-cyclone "YAAS" hit parts of West Bengal and Odisha. Despite being in bereavement on the sad demise of the petitioner's younger brother on May 16, 2021 and nephew, Ritwick Sanyal, on May 20, 2021, both due to Covid-19, the petitioner participated in the emergency visits to different cyclone-affected areas of West Bengal which were scheduled by the Chief Minister, West Bengal, starting from May 28, 2021.
5. Incidentally, on May 28, 2021 itself, the Prime Minister of India also planned to visit the cyclone-affected areas of West Bengal, which included a meeting with the Chief Minister of West Bengal at the Kalaikunda Air Force Station in West Bengal. The Chief Minister, accompanied by the writ petitioner (who was the then Chief

Secretary), met the Prime Minister accordingly and handed over a report on the super-cyclone YAAS and discussed relevant matters.

6. Learned senior counsel for the petitioner alleges that thereafter, the Chief Minister took permission from the Prime Minister to excuse herself and the writ petitioner from the meeting to continue her pre-scheduled survey of other cyclone-affected areas of the State of West Bengal.
7. However, in the late evening of May 28, 2021, the State Government received a communication from the Central Government intimating the State that the Appointments Committee of the Cabinet had approved the placement of service of the petitioner with the Government of India and requesting the State Government to release the petitioner with immediate effect to report to New Delhi by 10 AM on May 31, 2021.
8. The petitioner alleges that such decision was taken without the consent of the petitioner and/or the State Government, although the petitioner had all along belonged to the West Bengal Cadre of the IAS and that no empanelment or post was offered to the petitioner at all. Thus, learned senior counsel for the petitioner contends, such order was patently illegal and without jurisdiction.
9. The State Government conveyed its decision not to release the petitioner to the Central Government and issued a notification on May 31, 2021 (the date of superannuation of the petitioner) cancelling the earlier departmental notification dated May 25, 2021 by which the extension of service of the petitioner had been notified.

- 10.** The Chief Minister of West Bengal, in her letter dated May 31, 2021 (annexed at running page 116 of the writ petition), stated inter alia that she, along with the petitioner (then Chief Secretary), had entered the meeting on May 28, 2021 at Kalaikunda Air Base and handed over a report personally to the Prime Minister, after which she “specifically and expressly sought permission” from the Prime Minister for both of them to leave for Digha, their next cyclone-ravaged destination, where a meeting was due and participants were waiting. The Chief Minister’s letter also alleged that the Prime Minister had “expressly permitted” them to take their leave.
- 11.** On May 31, 2021 itself, the Central Government asked the State Government to release the petitioner for reporting to New Delhi on June 1, 2021, to which the State Government responded by informing that the petitioner stood superannuated in the afternoon of May 31, 2021.
- 12.** In the evening of May 31, 2021 itself, after the petitioner’s superannuation allegedly took effect, a Show Cause Notice under Section 51 of the National Disaster Management Act, 2005 was issued by the Ministry of Home Affairs to the petitioner, to which the petitioner replied in writing on June 3, 2021.
- 13.** On June 16, 2021, a major penalty charge sheet was issued to the petitioner by the Union of India, Ministry of Personnel and Public Grievance and Pensions (Department of Personnel and Training) under Rule 8 of the AIS (Discipline and Appeal) Rules, 1969, read with Rule 6 of the AIS (DCRB) Rules. The articles of charge related to the

incident which took place in the meeting at the Kalaikunda Air Force Station on May 28, 2021, mentioned above, which would, in effect, render the statements made by the Chief Minister, in her letter dated May 31, 2021, incorrect.

- 14.** The petitioner submits that he replied to the charge sheet within due time by a written statement filed under cover of his letter dated July 22, 2021, where the issues of maintainability and jurisdiction of the initiation of disciplinary proceedings against the petitioner were also raised, among others.
- 15.** Meanwhile, an Inquiry Authority was appointed on August 31, 2021, which issued a notice dated September 27, 2021, fixing a preliminary hearing on October 18, 2021 at New Delhi. The petitioner allegedly received the notice by speed post on October 1, 2021.
- 16.** Thereafter, on October 7, 2021, the petitioner filed an application under Section 19 of the Administrative Tribunals Act, 1985 (in brief, “the 1985 Act”) before the Kolkata Bench of the Central Administrative Tribunal (CAT), which was registered as O.A. 1619 of 2021. A copy thereof was allegedly served on the respondents on October 8, 2021. The petitioner further states that the next date of hearing before the Inquiry Authority has been fixed on November 2, 2021.
- 17.** Since the Inquiry Authority had refused the petitioner’s request for adjournment, the petitioner, allegedly upon notice to the respondents, mentioned O.A. No. 1619 of 2021 before the Kolkata Bench of the CAT for upgradation and urgent listing before the Vacation Bench. Accordingly the Kolkata Bench, which has been functioning as the

Circuit Bench at Port Blair since October 22, 2021, fixed the matter as Item No. 1 at 3 p.m. on October 22, 2021 for admission hearing.

- 18.** However, learned senior counsel for the petitioner submits, at about 5 p.m. on October 21, 2021, the advocates for the petitioner received a transfer petition bearing P.T. No. 215 of 2021, filed under Section 25 of the 1985 Act, apparently on October 20, 2021, via e-mail. In the said petition, the Union of India had prayed for transfer of O.A. No. 1619 of 2021 from the Kolkata Bench to the Principal Bench of the CAT at New Delhi.
- 19.** The transfer petition was taken up for hearing on October 22, 2021 by the Principal Bench at New Delhi and, allegedly, the present writ petitioner (opposite party in the transfer petition) sought direction to file a comprehensive written objection and took an objection as to maintainability, apart from other arguments on merits. However, the Tribunal passed an order on October 22, 2021 itself, allowing the transfer petitioner finally and directing the Registrar/Registry Office to intimate the order to the Kolkata Bench of the CAT. The Principal Bench further directed O.A. 1619 of 2021 to appear as the first item before it on October 27, 2021 for admission.
- 20.** The present writ petition challenges the said Order dated October 22, 2021 passed in P.T. 215 of 2021 by the Principal Bench, CAT.
- 21.** Although learned counsel for the parties sought to advance arguments on the merits of their respective cases in O.A. 1619 of 2021, such arguments were not entertained by this Court since any observation on the merits of the case would be entirely beyond the scope of the

present writ petition, which relates solely to a challenge to the validity and legality of the transfer order, and findings on merits either way might prejudice the rights and contentions of the parties in O.A. 1619 of 2021 itself.

22. The questions which acquire relevance to decide the present writ petition are as follows:

23. Is the present writ petition maintainable before this court, in view of the impugned order being passed by the Principal Bench situated at New Delhi?

24. Did the Principal Bench act beyond its jurisdiction in passing the impugned order?

25. Was the Principal Bench, CAT justified in law in passing the impugned order on merits?

26. Taking first things first, Article 226 (2) of the Constitution of India reads as follows:

“(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.”

- 27.** The cause of action for filing the present writ petition is the transfer order, which is allegedly in violation of the petitioner's fundamental right to equality before the law, as guaranteed by Article 14 of the Constitution of India, as also the right conferred on the petitioner by Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (for short, "the CAT Rules").
- 28.** Rule 6 of the CAT Rules designates the place of filing an application before the CAT. The petitioner argues that he is governed by sub-Rule (2) of Rule 6 in view of his retirement on May 31, 2021, whereas the respondents contend that sub-Rule (1) of Rule 6 is the governing clause, which confers jurisdiction on the Principal Bench of the CAT at New Delhi to take up the writ petitioner's application under Section 19 of the 1985 Act.
- 29.** Hence, the bone of contention in this writ petition is the petitioner's exclusive legal right to file O.A. 1619 of 2021 before the Kolkata Bench of the CAT, which has allegedly been transgressed by the Principal Bench by arbitrarily transferring the matter to itself.
- 30.** The said application under Section 19 of the 1985 Act was admittedly filed before the Kolkata Bench and fixed for the purpose of admission hearing on October 22, 2021 as the first item to be taken up at 3 P.M. on such date. Thus, as far as the present writ petition is concerned, at least the principal component of the cause of action is the infringement of the writ petitioner's right to litigate before the Kolkata Bench, which took place within the territorial jurisdiction of this court.

- 31.** Although the impugned order was passed by the Principal Bench having its seat in New Delhi, the “cause of action” for the present writ petition cannot be said to be restricted to the legality of the order alone, but primarily the infringement, by such order, of the fundamental and legal rights of the petitioner to litigate before the Kolkata Bench, within the territorial jurisdiction of which he resides and works.
- 32.** That apart, the alleged incident of May 28, 2021, which is the genesis of the show cause notice and the entire litigation, took place in Kalaikunda, situated in West Bengal. Some of the relevant events, such as the alleged issuance of letter by the Chief Minister of West Bengal narrating her version of the event, also took place in Kolkata. In fact, the alleged violation of norms and Rules by the petitioner by leaving the meeting with the Prime Minister, disobeying the direction to report at New Delhi, etc., if any, admittedly happened in West Bengal. As such, the major part of the bundle of facts which comprise the cause of action took place in West Bengal, conferring territorial jurisdiction on this court within the ambit of Article 226 (2) of the Constitution.
- 33.** However, *Sadhan Kumar Kundu –vs- Union of India*, reported at (2012) 4 CHN 186, cited by the Petitioner, is on a subtly different issue since, in that case, the seniority list challenged affected employees in various parts of the country. However, we can very well borrow the ratio of the said judgment in so far as this court having jurisdiction, in the event a

part of the cause of action arises within the territorial jurisdiction of this court, is concerned.

34. The celebrated judgment of *L. Chandra Kumar –vs- Union of India and Others* [(1997) 3 SCC 261] does not help the propositions sought to be advanced by the learned ASG, on behalf of the respondents, much. The instant case does not involve the question as to whether the High Court could usurp the jurisdiction of the Tribunals, but raises the question as to whether the Principal Bench of the CAT, which is not an appellate or revisional authority over the Kolkata Bench of the CAT, was justified in law in arrogating the writ petitioner's application under Section 19 of the 1985 Act to itself *de hors* the law.

35. Hence, the first question formulated above is answered in the affirmative.

36. As far as the second question, pertaining to jurisdiction of the New Delhi Bench, CAT to entertain the petitioner's application is concerned, let us first consider Rule 6 of the CAT Rules, 1987. Sub-Rule (1) concerns officers still in service and designates the present place of posting, alternatively, the place where the cause of action, wholly or in part, has arisen as the places which have territorial jurisdiction. The proviso to sub-Rule (1) allows the applicant, with the leave of the Chairman, to file an application with the Registrar of the Principal Bench, which shall be heard and disposed of by the Bench which has jurisdiction over the matter.

37. Sub-Rule (2), on the other hand, concerns persons who have ceased to be in service by reason of retirement, dismissal or termination of

service, who are given the blanket option to file the application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application.

- 38.** There are two striking distinguishing features between sub-Rules (1) and (2).
- 39.** First, sub-Rule (1) is qualified by the expression “shall ordinarily be filed”. The expression ‘ordinarily’ leaves ample scope for deviation in fitting cases. However, the option conferred by sub-Rule (2) on officers who are no longer in service is unbridled, since its language says “may at his option” file an application before the Bench having territorial jurisdiction over her/his residence.
- 40.** Secondly, sub-Rule (2) has a non obstante clause in the beginning, which precludes the operation of sub-Rule (1), thus screening out the second sub-Rule from being subjected to orders under Section 25 of the 1985 Act, which is applicable only to sub-Rule (1) as per its proviso.
- 41.** Section 25 of the 1985 Act empowers the Chairman of the CAT to transfer cases from one Bench to another. Such power, however, has to read in the context of Rule 6 of the 1987 CAT Rules, made under Sections 35 and 36 of the 1985 Act and, thus, having the force of law.
- 42.** Section 25 provides two modes of exercise of the Chairman’s power to transfer – on the application of any of the parties and *suo motu*. In case of *suo motu* exercise of such power on his own motion, the Chairman is exempt from issuing notice to the parties.

- 43.** However, if such power is exercised on the application of a party, such order can be passed only “after notice to the parties” and “after hearing such of them as he may desire to be heard”.
- 44.** It is well-settled that if a power conferred by a statute is to be exercised by an authority, such exercise has to be in consonance with the modalities provided in the statute itself or not at all.
- 45.** In the present case, the transfer application bearing P.T.215 of 2021 was initiated on the application of the Union of India and, as such, notice to the parties and hearing them was mandatory. The term “desire” used in Section 25 cannot confer unfettered authority on the Chairman to exercise such power according to his whims or fancy but has to be read *mutatis mutandis* with the prior requirement of notice “to the parties”. Thus, it is implicit in Section 25 that notice and hearing must mandatorily be given to the parties and the Chairman’s “desire to be heard” has to be qualified by reason and application of judicial mind.
- 46.** Needless to say, the terms “notice” and “hearing”, as used in Section 25 of the 1985 Act, cannot be hollow clichés, deserving only lip-service, but has to connote a meaningful notice and adequate opportunity of hearing.
- 47.** In the present case, the writ petitioner, who resides in Kolkata, was served with a notice of less than 24 hours in the early evening of October 21, 2021 to appear before the Principal Bench of the CAT, situated in New Delhi, on the very next morning, that is, on October 22, 2021. The extreme alacrity of the Principal Bench did not stop

there, but it went on to hear out and dispose of the entire transfer petition finally, on merits, on the very next day, by refusing to grant the present writ petitioner (opposite party in the transfer petition) reasonable time to come ready with a comprehensive objection, arguments and appropriate citations. Promptness is appreciated, but over-zealousness to cater to the fiat of the Government, be it Central or State, is not, by courts of law as a tradition.

48. The transfer petition was filed on October 20, 2021 and was disposed of on October 22, 2021, with less than 24 hours' notice to the writ petitioner, who lives far off from the Principal Seat at New Delhi, upon refusing even a meaningful, let alone adequate, opportunity of hearing or notice to the opposite party, that is, the present writ petitioner.

49. This shocks the judicial conscience, to say the least.

50. Moreover, the application under Section 19 of the 1985 Act, filed at the behest of the writ petitioner, was at an inchoate, pre-admission stage and could not be said to be "pending" within the purview of Section 25 of the said Act.

51. Again, the Principal Bench had no right to finally transfer the matter to itself without a proper notice and opportunity of hearing to both sides, including the present writ petitioner.

52. Thirdly, the periphery of the exercise of the power of transfer under Section 25 of the 1985 Act has been sufficiently indicated within the contours of Rule 6 of the CAT Rules, 1987. The proviso to sub-Rule (1) of Rule 6 makes the jurisdiction in respect of serving officers subject to Section 25 of the 1985 Act, whereas such restriction is conspicuous

by its absence in the very next sub-Rule, that is, sub-Rule (2). The latter, in addition, is bolstered by a *non obstante* clause, making it immune to sub-Rule (1) lock, stock and barrel, thus excluding the sway of Section 25 of the 1985 Act as well, which finds place in sub-Rule (1) but not (2).

53. On withdrawal of the departmental order dated May 25, 2021 notifying the extension of the petitioner's service till August 31, 2021 by dint of the Order dated May 31, 2021, such extension was nullified, thereby effectively superannuating the writ petitioner on his original date of superannuation itself, that is, May 31, 2021. Sub-Rule (2) of Rule 6 of the CAT Rules is thus applicable to the petitioner, in complete exclusion of sub-Rule (1), including the fetter of subordination under Section 25 of the 1985 Act, as opposed to sub-Rule (1), by virtue of the *non obstante* clause of sub-Rule (2).

54. Hence, the Principal Bench of the CAT acted entirely without jurisdiction in exercising the power conferred specifically on the Chairman by Section 25, which is operative only within the parameters of the 1985 Act, read in conjunction with the CAT Rules, 1987, in particular Rule 6 (2) of the latter, by arrogating to itself jurisdiction which it does not have, in view of the writ petitioner having already exercised his unqualified option under Rule 6 (2) by filing the application under Section 19 before the Kolkata Bench of the CAT, within the jurisdiction of which the petitioner ordinarily resides.

55. Hence, the second question is also answered in the affirmative, in favour of the writ petitioner.

- 56.** Coming to the third question, on the merits of the transfer order under challenge, some aspects relating to jurisdiction, as discussed above, also touch the merits of the adjudication. Apart from the inexplicable hot haste of the Principal Bench to cater to the pseudo-urgency of the Union of India (the urgency, if any, is of the writ petitioner since the Inquiry Authority is bent upon concluding the inquiry prior to the disposal of O.A. 1619 of 2021). The Principal Bench, surprisingly, considered virtually the merits of the dispute between the parties in the O.A. by pre-judging that most the evidence and witnesses would be from New Delhi, even before the matter was admitted. At the pre-admission stage, it was impossible for the Bench to judge (read, anticipate) the weightage to be given to forthcoming evidence and witnesses. The alleged recalcitrance of the writ petitioner on May 28, 2021 took place within the territorial jurisdiction of the Kolkata Bench, the articles of charge against the petitioner were levelled in the teeth of the communication of the Chief Minister herself from Kolkata, which could also be a potentially importance piece of evidence. Other eye-witnesses of the incident, if any, would be available in Kalaikunda in West Bengal, and not in New Delhi.
- 57.** No appropriate notice and/or hearing was given to the writ petitioner, as mandated under Section 25 of the 1985 Act, since the transfer was not in *suo motu* exercise of power by the Tribunal but on the application of the Union of India.

- 58.** The unfettered option of the writ petitioner, having been superannuated, to litigate before the Kolkata Bench under Rule 6 (2) of the CAT Rules was curtailed without rhyme or reason.
- 59.** That apart, it is evident from the impugned order itself that the Kolkata Bench, considering the petitioner's urgency due to the unprecedented restlessness on the part of the respondents to complete the inquiry before the petitioner's O.A. was even taken up for admission and interim orders, had fixed the matter by enlisting it as the first item before it at 3 P.M. on October 22, 2021.
- 60.** Upon coming to know of such fixation of the matter for admission hearing even during the vacation by the Kolkata Bench, the Union of India filed the transfer petition on October 20, 2021 and the Principal Seat disposed of the matter finally, without proper notice and opportunity of hearing worth the name to the writ petitioner, on October 22, 2021 itself, on the very day when the matter was to be taken up on urgent basis by the Kolkata Vacation Bench for admission hearing. In fact, the impugned transfer entailed further delay in hearing of O.A. 1619 of 2021, due to the ensuing transfer of records and associated paraphernalia, which would effectively render the O.A. infructuous.
- 61.** The entire *modus operandi* adopted by the Union of India reeks of mala fides. It is unfortunate that the Principal Bench of the CAT nurtured such efforts by passing the impugned transfer order, thereby paying obeisance to the diktat of the Union of India, which has been repeatedly held by the Supreme Court and various High Courts not to

be a favoured litigant. Rather, the responsibility of meting out justice and serving the cause of justice is on a much higher pedestal for the Union of India than an ordinary individual litigant.

62. The impugned order of the Principal Bench not only violates the legal right conferred on the writ petitioner under Rule 6 of the CAT Rules, 1987, read with Sections 35 and 36 of the 1985 Act, as well as the petitioner's fundamental right of equality before the law, as enshrined in Article 14 of the Constitution, which is the *grundnorm* of the Indian legal fabric, but also leaves a bad taste in the mouth due to the mode of operation of a quasi-judicial (if not judicial) authority and also poses a threat to the federal structure as envisioned by the makers of the Constitution of India.

63. It may be noted here that the reliance placed by the respondents on *Union of India & Anr. –vs- A. Shainamol, IAS & Anr.*, reported at 2021 SCC OnLine SC 962, is entirely misplaced. The Supreme Court, in the said judgment, dealt with the scope of Rule 6, sub-Rule (1), and not sub-Rule (2) of the CAT Rules, 1987, as opposed to the instant case. Moreover, as the cited judgment unfolds, it becomes clear that the decision therein was rendered on the facts of the particular case. Paragraph No. 43 of the said citation, on which the respondents placed much stress, exemplifies the above proposition and does not come in aid to advance the respondents' case in any manner whatsoever.

64. Hence, the third question is answered in the negative, also against the respondents.

- 65.** In such view of the matter, WPCT 78 of 2021 is allowed on contest, thereby setting aside the impugned transfer order dated October 22, 2021 passed by the Principal Bench, CAT in P.T. No. 215 of 2021. The Kolkata Bench of the CAT shall expedite the hearing of O.A. 1619 of 2021 and dispose it of at the earliest.
- 66.** However, it is made abundantly clear that neither the merits of O.A. 1619 of 2021 nor those of the inquiry against the writ petitioner have been entered into at all by this Court. All observations made in this order pertain solely to the short compass of adjudication of the present writ petition and shall not prejudice the rights and contentions of the parties before any forum, legal, quasi-judicial or administrative.
- 67.** There will be no order as to costs.
- 68.** Urgent certified copies, if applied for, shall be made available to the parties upon compliance of requisite formalities. However, both parties, as well as all concerned, shall act on the basis of server copies of this order till such certified copies are obtained.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Rabindranath Samanta, J.)