

**IN THE HIGH COURT AT CALCUTTA**

**(Civil Appellate Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Subrata Talukdar  
and  
The Hon'ble Justice Krishna Rao**

**MAT 316 of 2022**

**With**

**IA No. CAN 1 of 2022**

**Dr. Mahuya Ghosh**

**Versus**

**Union of India& Ors.**

Mr. Pratik Majumdar  
Mr. Abdul Mullick

.....For the Appellant

Mr. Rajarsi Basu

.....For the Respondent Nos. 1 & 2

Mr. Vivekananda Bose  
Ms. Deblina Chattaraj  
Mr. Ratikanta Pal

.....For the Respondent Nos. 3 & 5

Heard on : 18.04.2022

Judgment on : 22.04.2022

**Krishna Rao, J.:-**

1. This appeal is directed against the order passed by the Hon'ble Single Judge in WPA 2045 of 2022 dt. 22.02.2022.
2. The appellant was appointed as Scientist Grade-I in Indian Jute Industries' Research Association (hereinafter referred as IJIRA) on 04.05.2009 in Geo-Textiles Cell posted at Kolkata.
3. The IJIRA Council of Management has taken a resolution and decided to shift the Geo-Textiles Cell & Soil Testing Laboratory of IJIRA from Kolkata to Guwahati for better utilization of human resources as well as Capital Assets and accordingly *vide* Order dt. 26.08.2021 the appellant was transferred to IJIRA-NERC, Guwahati as Scientist Grade-I and as In-charge, Geo-Textiles Cell, IJIRA-NERC, Guwahati.
4. In the order of transfer, the respondents have directed the appellant to report for duty at NERC Guwahati on 31.08.2021 in the best interests of the organization and for transfer of the appellants' service as per IJIRA staff manual and the appointment letter of the appellant.
5. On receipt of the order of transfer dt. 26.08.2021, the appellant had made representation to the Director IJIRA intimating that in the present circumstances of Covid-19 pandemic and related "Work from Home" guidelines and restrictions imposed on travel by the Government, the appellant would be unable to report to Guwahati Office of IJIRA-NERC until the restrictions due to Covid-19 pandemic are lifted completely. The appellant further stated that the appellant would be able to join Guwahati Office of IJIRA-NERC without prejudice to her rights and contentions only after the Covid-19 related

ban is lifted. The appellant had also stated that she is a patient of hypertension and high blood pressure and under regular medication and requested to allow her continue to work at IJIRA Kolkata office until then.

6. On receipt of the representations submitted by the appellant, the respondents have sent the reply to the appellant on 01.09.2021 which reads as follows:-

*“In response to your letter dated 31.08.2021 addressed to the Director, IJIRA,  
I would like to convey the views of IJIRA management as stated below:*

- *Your referred government order has been relaxed under the present circumstances. IJIRA is governed by the Council of Management.*
- *The apprehension raised in your letter can be clarified by yourself through several instances and news available in public domain.*
- *As for the information available and personal experiences, there is no such restriction imposed presently for inter and intra state movements especially for those who have been vaccinated. From the official records it is found that you have already been vaccinated.*

*Moreover, you also have been granted one-week preparatory time for joining duty at NERC Guwahati vide our letter No. IJIRA/DIR/7927 dt. 31/08/2021 which has been sent to you through email yesterday. You are, hereby directed to comply with the official order dated 26.08.2021 and report to IJIRA NERC Guwahati office on or before 7<sup>th</sup> September, 2021.”*

7. On 01.09.2021, the respondents have also informed the appellant that the IJIRA management has taken necessary steps for shifting the materials to IJIRA NERC Guwahati. In spite of several directions the petitioner has not complied with the order of transfer and filed the writ petition before the Hon'ble Single Bench and the Hon'ble Single Bench has refused to grant any order of stay and directed the parties

to exchange Affidavits. Being aggrieved with the order dt. 22.02.2022, the petitioner has filed the instant appeal.

8. Learned Counsel for the appellant submits that on 03.09.2021, the appellant had preferred an application under the Right to Information Act, 2005 to the Deputy Director IJIRA seeking details of the order/transfer of the Ministry of Textiles regarding shifting of assets to Guwahati.
9. On 01.10.2021, the respondents have replied to the appellant/ writ petitioner informing, *inter alia*, that shifting the equipment does not violate the terms and conditions of the sanction letter of the project and the Ministry of Textiles is in the loop with regard to the information and steps taken regarding shifting of equipment from Kolkata to Guwahati.
10. The Ld. Counsel for the appellant further submits that on 19.10.2021, the appellant made an application under the Right to Information Act to the Jute Commissioner seeking information as to whether it is legal on the part of the Principal Investigator to make Provisional Booking in the year 2021 for a Ministry of Textiles sponsored Research and Development Project which has not been provided extension beyond 28.02.2019.
11. Learned Counsel for the appellant further submits that the appellant has also sought for information as to whether IJIRA has sought for any approval for shifting Capital Assets to Guwahati.
12. Learned Counsel for the appellant also submits that the Jute Commissioner has not supplied the information and accordingly the

appellant had preferred an appeal before the Appellate Authority and in the said order it is categorically stated the Office of the Jute Commissioner was not aware of any request by IJIRA for shifting of Capital Assets (procured using R & D grant under the project) from IJIRA, Kolkata to IJIRA NERC, Guwahati.

13. Learned Counsel for the appellant submits that the Office of the Jute Commissioner received a communication from the Ministry of Textiles on 02.11.2021 for comments on IJIRA's letter dt. 01.09.2021 seeking approval for shifting of equipment to NERC, Guwahati and the matter is under consideration.
14. Learned Counsel for the appellant points out that till date the necessary approval required for shifting of Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati is pending consideration before the Office of the Jute Commissioner and, until such approval is granted, IJIRA cannot shift its Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati.
15. Learned Counsel for the appellant has argued that unless and until IJIRA obtains necessary approval from the Ministry of Textiles to shift its Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati, the appellant could not have been transferred to Guwahati.
16. Learned Counsel for the appellant submits that the order of transfer of the appellant to Guwahati solely depends on the approval being granted by the Ministry of Textiles allowing IJIRA to shift its Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati and till date no approval has been granted by the Ministry to shift the Geo-

Textiles Cell and Soil Testing Laboratory to NERC, Guwahati. Hence, the order of transfer of the appellant is vitiated.

17. Mr. Vivekananda Bose, Ld. Counsel appearing on behalf of the Respondent nos. 3 and 5, IJIRA, submits that shifting of the Geo-Textiles Cell and shifting of Capital Assets are two different actions and, in the facts of this case, such shifting does not warrant the approval of the Ministry of Textiles.
18. Learned Counsel for the respondents submits that there exists a Geo-Textiles Cell both at Kolkata as well as Guwahati along with Soil Testing Laboratories attached to them. Only for the purpose of better utilization of Capital Assets lying idle at Soil Testing Laboratory in the Geo-Textiles Cell in Kolkata, the same are proposed to be shifted to the existing set-up at the IJIRA-NERC Office at Guwahati.
19. Learned Counsel for the respondents submits that such decision is a policy matter connected to the internal administration of IJIRA which is independent of any approval from the Ministry of Textiles.
20. Learned Counsel for the respondents further submits that only in case of transfer in the nature of sale, alienation and/or such encumbrance of the right, title and interest in the Capital Assets obtained by Sanction/Grant of the Ministry of Textiles, Government of India, the prior approval of the Ministry of Textiles is necessary.
21. Learned Counsel for the respondents further submits that in the instant case IJIRA is only shifting its Capital Assets for better utilization from its Kolkata to the Guwahati Office, which is not in the

nature of transfer by way of sale, alienation or encumbrance in favour of a third party.

22. Learned Counsel for the respondents further submits that the appellant has been transferred to NERC, Guwahati as In-Charge of the said Unit in terms of her service, employment conditions and as per the rules and regulations of the Organization.
23. Learned Counsel for the respondent nos. 1 & 2 submits that the transfer of the appellant from one place of posting to another is a condition incorporated in her Letter of Appointment which is accepted and not denied by the appellant. Therefore, such transfer is to be dealt by IJIRA through its own Manual and the Government of India exercises no role whatsoever in the regular administration of IJIRA. Learned Counsel for the respondent nos. 1 & 2 further submits that IJIRA has its own rules relating to recruitment conduct etc. of its employees which is independent of any control by the Ministry of Textiles.
24. Learned Counsel for the respondent nos. 1 & 2 points out that IJIRA is given grants to conduct Research and Developmental work and the funds which are given by the Government are audited by the CAG.
25. Learned Counsel for the respondent nos. 1 & 2 further submits that the relationship of IJIRA and its employees are purely one of personal service without exercise of any control by the Ministry Textile, Government of India.
26. Considered the rival submissions of the parties, pleadings and the documents available on record.

27. The appellant was appointed as Scientist Grade I in IJIRA under Geo-Textiles Cell with effect from 04.05.2009 and was posted at Kolkata. In the order of appointment it is categorically mentioned that in the first instance, the station of the appellant will be at Kolkata but IJIRA reserves the right to transfer the appellant to any place in India in organizational interest.
28. *Vide* order dt. 26.08.2021, the appellant was transferred from Kolkata Head office to IJIRA NERC, Guwahati for better utilization of human resources as well as Capital Assets. In the order of transfer it is also categorically mentioned that the appellant will be acting as In-Charge Geo-Textiles Cell, IJIRA-NERC, Guwahati. It is further stated in the order of transfer that in the best interest of the organization the transfer of the appellant is affected as per IJIRA Staff Manual and as per the order of appointment of the appellant.
29. The main contention of the appellant for challenging the order of transfer is that unless and until IJIRA obtains necessary approval from the Ministry of Textiles to shift its Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati, the appellant could not be transferred to Guwahati.
30. After the order of transfer dt. 26.08.2021, the appellant had made representations to the Director, IJIRA in which the appellant has taken the ground that due to Covid-19 pandemic and the guidelines and the restrictions imposed by the Government of India, the appellant was unable to report for duty to Guwahati until the restrictions due to Covid-19 pandemic are lifted completely. In the

said representation, the appellant has further admitted that the appellant will join Guwahati Office of IJIRA NERC, Guwahati without prejudice to her rights and contentions only after the Covid-19 related ban are lifted.

31. The IJIRA has taken a decision in its meeting held on 05.02.2021 which reads as follows:-

**“Decision:** *The Council approved the proposal and directed IJIRA management to shift geotextile cell to NERC, Guwahati. The IJIRA management may initiate the process of transferring the necessary assets in soil testing laboratory and required experienced manpower from Kolkata to Guwahati. It was also decided that since NERC is expanding, it needs and administration head for smooth day to day functioning of NERC, Guwahati. Hence, Mrs. Taniya Addya, HR & Admin Officer may be transferred to NERC for effective management of NERC, Guwahati.”*

32. The respondents have further taken a decision in their 212<sup>th</sup> meeting held on 25.03.2021 which reads as follows:-

*“As per the decision of the Council in its 212<sup>th</sup> meeting held on 25<sup>th</sup> March, 2021, Ms. Taniya Addya, HR & Admin Officer has been transferred to NERC as In-Charge along with Ms. Mahuya Ghosh, Scientist to handle the activities of IJIRA. Activities at NERC and its focus on JGT and testing services for civil activities were commented by the Special Committee of the Council of Management as step in right direction to make NERC self-sustainable. The Director, IJIRA placed before the Council letters and emails sent by Ms. Mahuya Ghosh and Ms. Taniya Addya to withdraw/reconsider their transfer orders. None of these two employees have reported at NERC Office till date, the Council was briefed. This status has been brought to the notice of Special Committee and the matter was deliberated in its meeting held on 6<sup>th</sup> December, 2021. The Special Committee has recommended to IJIRA Council of Management that for better utilization of infrastructure created through Public fund, it is utmost essential that geotextile cell starts functioning at NERC actively. The Director further briefed to the Council that the NJB has approved a project on geotextile for NE Region in principle. IJIRA has asked to modify the proposal and submit to NJB by 30<sup>th</sup> January, 2022. Moreover, Th. Basanta Singh, In-charge, NERC is going on deputation to Manipur Handloom and Handicraft Development*

*Corporation (MHHDC) in January, 2022 initially for three years. For smooth functioning of NERC, it is required that Ms. Taniya Addya and Ms. Mahuya Ghosh join NERC without any further delay.”*

33. As per the details submitted by IJIRA to this Court on Affidavit, the following equipments are available at NERC-IJIRA for Soil Testing at Guwahati:-

**EQUIPMENTS AVAILABLE AT NERC-IJIRA FOR SOIL TESTING: (GUWAHATI)**

| <i>Sl. No</i> | <i>Equipment</i>                                                                                                                     | <i>Parameters</i>                                                                                       |
|---------------|--------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------|
| 1             | Plastic Limit Set                                                                                                                    | To determine plastic Limit of soil                                                                      |
| 2             | Compaction Test by Light Compaction &<br><br>Compaction Test by heavy compaction<br><br>(Standard Proctor Apparatus)                 | To determine the strength and deformation behaviour of soil before designing a soil retaining structure |
| 3             | Casagrande Appartus                                                                                                                  | For Liquid limit Determination                                                                          |
| 4             | Oven                                                                                                                                 | For Moisture Content Determination                                                                      |
| 5             | CRB Hand operated, with Accessories                                                                                                  | For CBR value determination for virgin soil sample                                                      |
| 6             | Portable California Bearing Ratio tester (Equipment for virgin soil sample collection for determination of California Bearing Ratio) | For CBR value determination for virgin soil sample                                                      |
| 7             | Sieve Shaker hand Operated                                                                                                           | For sieving                                                                                             |
| 8             | Sets of sieve for Grain size distribution with L & P                                                                                 | For coarse grain soil only                                                                              |
| 9             | Rapid Moisture Meter                                                                                                                 | To perform water content test instantly on site                                                         |
| 10            | Sand pouring cylinder for field density determination                                                                                | To determine dry density of the soils sample                                                            |

34. From the decision of IJIRA, it reveals that the IJIRA Management has initiated process of transferring the necessary assets in Soil Testing Laboratory and required experienced manpower from Kolkata to Guwahati and it was also decided that since NERC is expanding, it

needs capable administration for the smooth day to day functioning of NERC, Guwahati. Also, IJIRA in its 212<sup>th</sup> meeting held on 25.03.2021 decided that since one Basanta Singh, In-Charge, NERC, Guwahati is going on deputation to Manipur Handloom and Handicraft Development Corporation (MHHDC) in January, 2022 initially for three years and for smooth functioning of NERC, it is required that one Ms. Taniya Addya, HR and ADMN Officer along with the appellant, Senior Scientist Gr-I, should join NERC on transfer.

35. The respondents have accordingly transferred the appellant for smooth functioning of the day-to-day affairs of IJIRA NERC, Guwahati and moreover, already some equipments are available at Guwahati and the same was functioning and thus the contention raised by the appellant that unless IJIRA obtains necessary approval from Ministry of Textiles to shift its Geo-Textiles Cell and Soil Testing Laboratory to NERC, Guwahati, the appellant could not have been transferred to Guwahati is not sustainable under law.

36. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government Servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

37. In the case of *Shilpi Bose (Mrs.) and Ors. v. State of Bihar and Ors.*, AIR 1991 SC 532, the Hon'ble Supreme Court held as follows:-

*4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of malafide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.*

38. In *N.K. Singh v. Union of India and Ors.*, (1994) 6 SCC 1988, Hon'ble Supreme Court reiterated that scope of judicial review in matters of transfer of a Government Servant to an equivalent post without adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides or violation of any specific provision.

39. In the instant case neither the act of the respondents is malafide nor there is violation of any specific provision. As per the order of transfer, the appellant is transferred to Guwahati for better utilization of human resources as well as IJIRA own Capital Assets.

40. In view of the above findings, this Court holds that the Hon'ble Single Bench has not committed any error by passing the impugned order and thus the order does not require any interference.

**MAT 316 of 2022** with **IA No. CAN 1 of 2022** stand thus **dismissed**.

As the appeal has been decided on merits, the writ petition being **WPA 2045 of 2022** is stand **dismissed**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**I agree.**

**(Subrata Talukdar, J.)**

**(KrishnaRao, J.)**