

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(APPELLATE SIDE)**

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Ananda Kumar Mukherjee**

FMA 474 of 2021

With

CAN 1 of 2021

Dr. Chaitali Roy

-Vs-

Union of India & Ors.

For the Appellant	: Mr. Soumya Majumdar Mr. Sunil Kumar Gupta Mr. Dipanjan Biswas Advocates
For the Respondent Nos. 2 and 3	: Mr. Sahasransu Bhattacharyya Mr. Sukanta Chakrabarty Advocates
For Union of India	: Ms. Chandreyi Alam (Gupta) Ms. Runi Mukherjee Mr. Partha Ghosh Advocates
Heard on	: 12.05.2022
Judgment on	: 02.08.2022

Subrata Talukdar, J.:- The short question which arises in this appeal pertains to the fact as to whether the Hon'ble Single Bench by its Judgement and Order dated 3rd February 2021 was correct in upholding the action of the respondents to transfer the appellant/the writ petitioner from a

Technical to an Administrative Cadre. The respondents are 'State' within the meaning of Article 12 of the Constitution of India being governed by the policies framed by the Department of Science and Technology, Government of India.

The Hon'ble Single Bench, *inter alia*, held that the transfer of the writ petitioner/ the present appellant to an Administrative Post in the Purchase Department of the Bose Institute (for short referred to only as *the Institute*) is *ad hoc* and temporary. The Hon'ble Single Bench further held that a specialized scientific institute like the present Institute may require the appointment of technical officers on the administrative side in the interests of overall administrative convenience. The Hon'ble Single Bench also held that the writ petitioner's pay, allowances, seniority and service benefits continue to be protected in her transferred place of posting in the Purchase Department of the Institute from her previous post of Senior Laboratory Assistant (SLA).

Mr. Soumya Majumder, Learned Counsel appearing for the writ petitioner/the present appellant, submits that the Hon'ble Single Bench gravely erred in not applying the correct law to the facts of this case. It is submitted that the appellant was appointed wholly on the Technical side in the position of a Junior Laboratory Assistant (for short *JLA*). The appellant was also promoted on the Technical side to the position of Senior Laboratory Assistant (for short *SLA*). Both the initial appointment and the promotion of the appellant were therefore completely within the Technical Cadre of the Institute.

It is argued that the order of transfer has resulted in a change in the service condition of the appellant by displacing her from her cadre of appointment on the Technical side to an altogether new cadre on the Administrative side. Such order of transfer is therefore *ex facie* illegal.

Reference is drawn to the Rules and Regulations of the Institute which clearly distinguish between the Technical and the Non-technical cadre. It is submitted that on the Technical side the Cadre strength relevant to *JLA* includes in the ascending order, Technical Officer (A), Technical Officer (B) and Technical Officer (C).

It is further submitted that the Rules and Regulations of the Institute provide an altogether separate channel for the Administrative Cadre beginning with the post of LDC and ascending to the post of Cashier.

Mr. Majumder places strong reliance on the governing Memorandum of Association (MoA) of the Institute. It is submitted that the staff of *the Institute* has been broadly divided into three categories namely, Research Staff; Administrative and other Non-Research Staff; and Subordinate (Class-IV) Staff. The appellant lays particular emphasis on Chapter III of the Staff Pattern of the Institute of which Clause 3.1.0 speaks of Classification of Posts according to their respective functions.

The provisions relating to Classification of Posts in terms of Paragraph 3.1.0 (*supra*) indicate the following Groups of Posts namely, Group-I: Head of Institution-the Director; Group -II: Academic Staff; Group-III: Administrative Staff; Group-IV: Technical Staff; and Group-V: Auxiliary Staff. The duties of the Technical Staff and the Administrative Staff are

clearly divided in Note III (c) and (d) respectively of Clause 3.1.0 of Chapter III (*supra*) connected to Classification of Posts.

It is submitted that the *Essential educational qualification* for being appointed on the Technical side of the Institute is to be a Science Graduate with seven years of experience in laboratory work. The *Desirable* qualification pertains to the ability to record scientific data and maintaining scientific instruments. The post of *JLA* is to be filled up by direct recruitment with the *Essential* qualification of a Science Graduate with experience in laboratory work and the *Desirable* qualification of a Diploma in laboratory techniques with basic knowledge of electrical circuits.

It is therefore pointed out by Mr. Majumder that the offer of appointment of the appellant has been given on purely the Technical side to the post of *JLA* and is governed by the rules of *the Institute* requiring her assessment, promotion and all other incidents of service which are applicable to the Technical side exclusively. In support of his submissions, Learned Counsel for the appellant relies heavily on a decision of this Hon'ble Court reported in 1982 2) CLJ 416, *In Re: Ranajit Basu Vs. State of West Bengal and others* delivered by *Sabyasachi Mukherjee J.* (as His Lordship then was) with particular mention of *Paragraph 17* of the said judgement which reads as follows:

“The general principles that can be deduced from the decisions and the provisions and the rules are, that an employee (1) cannot be transferred out of his cadre or establishment against his wish (2) when appointment is made to a specified post or a specified group of posts, no transfer can be justified

merely because the pay is not being affected, (3) the government servant cannot be asked to perform duties which were never expected of him when he was recruited and (4) expectations of future promotions cannot be wiped off by moving a Government servant around. A cadre is the strength of a service or part of a service sanctioned as a separate unit. The assembly Secretariate staff clearly form such a separate unit even if it is assumed or presumed that they form part of the West Bengal General Service. The petitioner's appointment was as a Bengali Reporter there. He was not recruited as a member of the West Bengal General Service and then given a post in the service. His special qualification for the post, it was submitted a news reporter was not the same thing as a Bengali Reporter of the Assembly Secretariate. The order of the Speaker cannot be described as an order of transfer, The order cannot best be considered to be an order of deputation of foreign services. There cannot be any deputation even under Rule 97 without the consent of the employee concerned. In any event, Rules 97 to 116 of the West Bengal Service Rules, Part I have not been complied with."

Mr. Majumder therefore submits that the impugned order of transfer be set aside.

Per Contra, Mr. Sahasransu Bhattacharyya Learned Counsel appearing for *the Institute* and Ms. Chandreyi Alam, Learned Counsel appearing for the Union of India, rely on Paragraph 5.18.0 of the Service Rules. Paragraph 5.18.0 reads as follows:

“5.18.0. Any person in the employ of the Institute may be posted in any of the offices or departments of the Institute or transferred from one Office or department to another, provided, however, it should not prejudicially affect his terms and conditions of service and should not ordinarily be frequent as to cause him hardship. Such postings and transfers shall be made under the orders of the Director in consultation with the Chairman of the Department/ Head of Section concerned. A representation in writing regarding the transfer causing hardship to an employee may be permitted to be made to the Director by the employee concerned.”

The attention of this Court is drawn to the Judgement and Order impugned of the Hon'ble Single Bench which recorded the submission of the Learned Additional Solicitor General that the appellant/ the writ petitioner has been transferred on the Administrative Side in the Purchase Department only for a temporary period.

Learned Counsel for the respondents rely upon the decisions reported in 2009) 15 SCC 178 and 1993) 4 SCC 357 to argue that a Government servant does not enjoy a vested right to remain posted at a place of his choice and administrative exigencies require transfer of the Government servant from one post/place to another. It is argued that there is no enforceable right of a Government employee to resist a transfer made considering the exigencies of public service and the powers of Judicial Review are extremely limited in interfering with such an order of transfer.

Having heard the parties and considering the materials placed the attention of this Court is first drawn to the order of transfer which reads as follows:

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ORDER

The Director, Bose Institute is pleased to accord approval for the transfer/postings with immediate effect in r/o the following officials of Bose Institute with their reporting departments mentioned below against each:

<i>Sl.No.</i>	<i>Name of the official with designation</i>	<i>Dept. transferred from</i>	<i>Dept. transferred to</i>
<i>1.</i>	<i>Ms. Chaitali Roy, Sr. Laboratory Assistant</i>	<i>DPB</i>	<i>Purchase Section under Administration</i>
<i>2.</i>	<i>Mr. Tapas Chakraborty, Duftry</i>	<i>DPB</i>	<i>Purchase Section under Administration</i>
<i>3.</i>	<i>Mr. Purnendu Manna, Duftry</i>	<i>DMM</i>	<i>Workshop</i>

Prof. Shubho Chaudhuri, In-charge, DPB is requested to release Ms. Chaitali Roy and Mr. Tapas Chakraborty from their duties from the division after proper handing over the charge.

Prof. Anup Kumar Misra, Prof. & Head, DMM is requested to release Mr. Purnendu Manna, Duftry from his duties from the department after proper handing over the charge.

Aforesaid officials are directed to properly hand over the charge in their respective departments, and report to Dy. Registrar, Administration, for further instruction.”

To the mind of this Court, the order of transfer dated the 1st of January 2021 does not speak of any temporary posting. The order of transfer also does not speak of any *ad hoc* requirement which may be insisted upon by the Institute as a temporary measure to overcome an immediate shortcoming.

To the further mind of this Court the reasoning recorded in the order of the Hon'ble Single Bench to the effect that the writ petitioner is under an obligation to discharge functions other than that of her area of specialization in an otherwise highly specialized Institute finds no reflection in the order of transfer dated the 1st of January, 2021.

Again, to the mind of this Court, the transfer of the appellant from the Technical side to the Administrative side has the effect of changing the Cadre of the appellant' service. The order of transfer being unconditional in nature therefore prejudicially and fundamentally affects the terms and conditions of the service of the appellant.

The requirement of Clause 5.18.0 mandates that transfer from one Department to another of the Institute should not prejudicially affect the terms and conditions of the service of the transferee and such transfer should be made under orders of the Director in consultation with the Chairman of the Department/ Head of the Section concerned. The language of Clause 5.18.0 makes it abundantly clear that there is a requirement of an application of mind by the transferring authority to the effect that the transfer of the appellant from the Technical side shall not affect the smooth functioning of the Technical side. Furthermore, the transfer exercise must also be of a nature so that exigencies of the movement connected to the Purchase Department require the expertise of a Technical Cadre Officer now in the rank of a *SLA*.

However, from the materials placed connected to the Staff requirements of the Institute, the appellant has demonstrated that there exist availability of personnel on a larger scale on the Administrative side for

filling up posts in the Purchase Department rather than draw from the lesser strength of Staff available on the Technical side.

In the backdrop of the above discussion, this Court is satisfied that the order impugned of the transfer of the appellant/ the writ petitioner is coloured by an illegal alienation from the Cadre of her choice and specialization to which she was specifically recruited by the Institute subject to fulfillment of *Essential* and *Desirable* qualifications.

Accordingly, both the order of transfer dated 1st of January 2021 and the Judgement and Order impugned of the Hon'ble Single Bench dated 3rd of February 2021 stand set aside.

FMA 474 of 2021 with CAN 1 of 2021 stand thus allowed.

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.

(Ananda Kumar Mukherjee, J.)

(Subrata Talukdar, J.)