

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

Present:-

The Hon'ble Justice Madhuresh Prasad

And

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T. 349 of 2024

Jaya Pandey

Vs.

Union of India & Ors.

For the Petitioner : Mr. Harish Mohan

For the Respondents : Mr. Rajdeep Majumdar, Id. DSG,
Mrs. Sushmita Saha Dutta,
Mrs. Sarda Sha.

Judgment on : May 22, 2025.

Madhuresh Prasad, J.:

1. The writ petitioner has put to challenge the order dated 15.05.2024 whereby and whereunder the Central Administrative Tribunal, Kolkata Bench ("Tribunal" for short) has dismissed O.A. No. 1579 of 2023 filed by the petitioner.

2. Heard the learned Counsels for the parties.

3. The petitioner a Junior Hindi Translator ("JHT" for short) posted at the office of the Coal Controller's Organization ("CCO" for short) at Kolkata was transferred to the office of the CCO in the process of distribution of manpower of the office on recommendation of the

Departmental Placement Committee ("DPC" for short). The petitioner was decided to be transferred with immediate effect by office order dated 01.12.2023 issued by the respondent NO. 3. Being aggrieved by a transfer order, the petitioner approached the Tribunal by way of the O.A. claiming plural remedies as follows:

"9. Relief(s) Sought:

In view of the above-mentioned facts and grounds this Hon'ble Tribunal may graciously be pleased to pass an order or direction to the respondents:

(a) To declare the post of Coal Controller as non-existent w.e.f. 19.06.2022.

(b) To quash and set aside M/o Coal OM No.18/12/2020-BA/ESTT dated 22.08.2023 (Annexure-8) regarding additional charge of Coal Controller given to Respondent No.2.

(c) To declare all the orders/directions/policy decision issued by the Order of unauthorized and non-existent Coal Controller beyond 18.06.2022 as void ab initio.

(d) To quash and set aside the CCO Office Order dated 28.11.2022 (Annexure-11) regarding restructuring of CCO.

(e) To quash and set aside CCO Office Order dated 22.09.2022 (Annexure A-13) regarding constitution of Departmental Placement Committee for recommending transfer/posting of officers/officials of CCO.

(f) To quash and set aside the Order of Transfer of the applicant issued vide CCO Delhi Office Order dated 01.12.2023 (Annexure A-14) regarding transfer of the applicant.

(g) To direct Respondent No.1 to initiate disciplinary action against Respondent No.2&3 for playing fraud with Hon'ble Minister of Coal.

(h) To grant all consequential benefits with cost.

(i) Any other order(s) as the Hon'ble Tribunal deems fit and proper."

4. Based on petitioner's contentious before the Tribunal it is submitted on behalf of the petitioner that the office of the respondent No. 2 seized to exist as it is deemed to have automatically lapsed with effect from 18.06.2022 on account of the post remaining vacant for more than 2 years in view of one Office Memorandum dated 12.04.2017 issued by the Department of Expenditure in the Ministry of Finance, Government of India. Since the office of the CCO was not in existence, the petitioner claimed that an additional charge of the post of CCO given to respondent No. 2 was unsustainable. The various orders/ policy decisions, restructuring/ redistribution of manpower of the office of the CCO and constitution of a DPC for recommending transfer posting by the CCO were all put to challenge in one O.A. filed by the petitioner challenging the transfer order dated 01.12.2023 issued by the third respondent with approval of the second respondent.

5. By making such allegations and claiming declaratory relief to this extent from the Tribunal, the petitioner sought to assail the transfer order dated 01.12.2023.

6. The petitioner also prayed for a direction upon the respondent No. 1 to initiate departmental action against the second and third respondents.

7. The learned Counsel for the respondents appeared and opposed the relief claimed by the petitioner in the O.A. firstly on the ground that the plural remedies claimed in the O.A. are barred in view of the provisions contained in Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 ("1987 Rules" for short), which reads:

"10. Plural remedies.-

An application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another."

8. The respondents also set out in detail in their reply filed before the Tribunal the manner in which the Ministry of Coal, vide letter dated 16.07.2021 had conveyed approval for setting up of the new office of the CCO at New Delhi. Thus, the CCO had circulated the manpower strength existing at its office in Kolkata, Dhanbad and Delhi expecting that an increase in requisite strength of manpower for its office in Delhi. On the basis of recommendations of one Shri A.N. Sahay committee the Ministry of Coal vide a letter dated 07.09.2021 conveyed its in principle approval of the committee with request to the office of the CCO to send a restructuring proposal to the Ministry. The CCO forwarded a proposal accordingly. In order to assure optimum utilization of manpower the office of the CCO proposed distribution of manpower between CCO and other field offices. The Ministry of Coal examined the proposal and returned the proposal by giving a remark that such distribution is an administrative matter of the CCO. The

communication dated 04.02.2022 is enclosed as Annexure R-7 to the reply filed by the respondents.

9. The respondents also stated that the station of the office of the CCO was changed from Kolkata to Delhi vide DOPT advertisement dated 10.03.2022 regarding filling up of the post of the Coal Controller. It is also the stand of the respondents that major operative works of the CCO have been shifted from CCO Kolkata to Delhi vide several office orders dated 18.10.2021, 03.02.2022 and 25.03.2022.

10. The respondents further contended that revised manpower distribution in CCO Delhi and other offices is contained in the office order dated 28.11.2022 wherein all sanctioned posts of JHT including the petitioner's post have been shifted from CCO Kolkata to CCO Delhi. The CCO Kolkata thus, has no post of JHT.

11. We find that the justification for transferring the petitioner to Delhi in the above terms made by specific averments in the reply filed before the Tribunal have not been specifically denied or disputed by the petitioner in her rejoinder. The petitioner has only made a general denial.

12. The petitioner has lodged complaints against respondent No. 3 on 20.10.2023 and 17.10.2023 alleging that she has designated herself as a Deputy Director in the CCO Delhi. She has requested that respondent No. 3 should not communicate with her directly “...**but through AD (OL) of CCO.**” She has also represented to the Coal

Ministry in this regard and claimed that respondent No. 3 should not use an unauthorized designation of Deputy Director CCO in her communication. In these two complaints the petitioner's grievance was only with respect to respondent No. 3. In fact, in her second complaint dated 17.10.2023, she has requested the Coal Ministry that any communication of respondent No. 3 be sent to her routed through AD (OL) of CCO. Till such time the petitioner had no complaint whatsoever against the CCO (respondent No. 2).

13. Upon consideration of the above material we find that the undisputed and undenied averments made by the respondents in their reply insofar as shifting of the office of the CCO, redistribution of manpower and transfer of the petitioner by a duly constituted DPC are *prima facie* acceptable. We further find that plural remedies prayed for in her O.A. are in fact questioning policy decisions. The Tribunal thus has rightly refused to interfere in the matter on the ground of the petitioner claiming plural remedies contrary to the provisions contained in the 1987 Rules.

14. We also find that the petitioner's assail to the transfer order is not based on any of the legally recognized grounds for assailing a transfer, to an equivalent post, such as the order being contrary to any statutory provision, or tainted by *mala fides*. The law insofar as the challenge to a transfer order stands settled by now that transfer is an incident of service and that Court should exercise restraint while interfering in the matter of transfer. The administrative authorities are

entitled to a reasonable amount of discretion and latitude in the matter of transfer in the exigencies of administration and that no employee has a right to continue at a particular place posting. In the present case as per disclosure made by the respondents in their pleadings, the petitioner has been posted at Kolkata for about 2 decades prior to the issuance of the transfer order. The law is clear that it is for the authorities to decide whether a transfer is necessary in public interest and efficiency in the public administration.

15. Another ground urged by the petitioner relevant for the present dispute is the petitioner's allegation that she made complaints against the respondent No. 3 in the months of October and November 2023 and that thereafter the transfer order has been issued on 01.12.2023. We examined this allegation with reference to the facts and circumstances emerging for the records, noted above. We find that the office of the CCO has been shifted from Kolkata to Delhi. There was no post of JHT existing in CCO Kolkata since 28.11.2022. Thus there was no question of continuance of the petitioner as JHT at the office of the CCO Kolkata. The two complaints have been made by the petitioner against the third respondent nearly one year thereafter in October and November 2023. The transfer order dated 01.12.2023 is a composite order transferring four officials to the office of CCO Delhi. Two of whom were posted at CCO Kolkata and two at CS office in Dhanbad. It is apparent from the perusal of the office order that the same is issued to augment the manpower strength at the office of CCO Delhi after

shifting of the office of the CCO, consequent upon restructuring and redistribution of manpower. In absence of any concrete material we are not inclined to accept the allegation of *mala fide*.

16. Insofar as reliefs (a) – (e) and (g) are concerned, we find that being aggrieved by the transfer order dated 01.12.2023, the writ petitioner who is an employee serving in the office of the CCO has brought into question the very existence of the office of the CCO, and the policy matter regarding shifting, restructuring and redistribution of manpower of the office of the CCO. The relief claimed in reliefs (a) – (e) and (g) are nothing but a desperate collateral attack of the writ petitioner on the appointment of respondent No. 2 as CCO; and the very existence of the office of the CCO which cannot be permitted.

17. The existence and authority of the CCO cannot be questioned by the applicant in such a manner by way of a collateral attack. If at all there is an issue regarding existence of the CCO and authority of the respondent No. 2, the same was required to be taken up diligently for being considered and determined in appropriate proceedings.

18. We find that till such time the petitioner made the second complaint dated 17.10.2023 against respondent No. 3. she was claiming that respondent No. 3 cannot correspond with her directly but was required to communicate through the AD (OL) of CCO. However, immediately after issuance of the transfer order dated 01.12.2023, she has filed the O.A. challenging the existence and

authority of the CCO also. Insofar as the Court's view regarding the collateral challenge to the existence and authority of respondent No. 2 not being maintainable, we consider it profitable to extract relevant paragraphs from a decision of the Apex Court in the case of **Gokaraju Rangaraju vs. State of Andhra Pradesh** reported in **(1981) 3 SCC 132**.

“14. The de facto doctrine has been recognised by Indian courts also. In Pulin Behari v. King-Emperor [(1912) 15 Cal LJ 517, 574 : 16 IC 257 : 16 Cal WN 1105 : 13 Cri LJ 609] Sir Asutosh Mookerjee, J., after tracing the history of the doctrine in England observed as follows:

“The substance of the matter is that the de facto doctrine was introduced into the law as a matter of policy and necessity, to protect the interest of the public and the individual where these interests were involved in the official acts of persons exercising the duties of an office without being lawful officers. The doctrine in fact is necessary to maintain the supremacy of the law and to preserve peace and order in the community at large. Indeed, if any individual or body of individuals were permitted, at his or their pleasure, to collaterally challenge the authority of and to refuse obedience to the Government of the State and the numerous functionaries through whom it exercised its various powers on the ground of irregular existence for defective title, insubordination and disorder of the worst kind would be encouraged. For the good order and peace of society, their authority must be upheld until in some regular mode their title is directly investigated and determined.” (emphasis ours)

19. In view of consideration above we are of the opinion that the order of the Tribunal passed in O.A. No. 1579 of 2023 dismissing the Original Application requires no interference.

20. The writ petition is dismissed.

21. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Madhuresh Prasad, J.)

I agree.

(Supratim Bhattacharya, J.)