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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 25th February, 2022

Pronounced on: 7th March, 2022

+ W.P.(C) 1028/2022 & CM APPL.2892/2022 (stay)

ALAPAN BANDYOPADHYAY Petitioner

Through: Mr. Karthikey Bhatt, Advocate

Versus

UNION OF INDIA AND ANR Respondents

Through: Mr. Tushar Mehta, Solicitor General
along with Mr. Vikramjeet Banerjee Additional
Solicitor General with Mr. Kirtiman Singh, Central
Government Standing Counsel with Mr. Waize Ali
Noor, Mr. Taha Yasin and Ms. Srirupa Nag
Advocates for UOI.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE JYOTI SINGH

JUDGMENT

: **Per D. N. PATEL, Chief Justice**

1. Present petition has been filed by the Petitioner assailing the order dated 22.10.2021, passed by the Central Administrative Tribunal (hereinafter referred to as the 'Tribunal'), Principal Bench in P.T. No. 215 of 2021. Petitioner also seeks a direction that Original Application (O.A.) being O.A. No. 1619/2021 filed by the Petitioner be heard and disposed of by the Tribunal, Kolkata Bench.

2. Factual narrative is in a narrow compass and to the extent relevant to the controversy involved in the present petition is that Petitioner joined IAS in 1987 and was allocated the West Bengal Cadre. Petitioner superannuated

on 31.05.2021 and at the time of his superannuation was working as the Chief Secretary of the State of West Bengal.

3. On 26.05.2021, a cyclone named as 'YAAS' had hit parts of West Bengal and Odisha. On 31.05.2021, a Show Cause Notice was issued by the Ministry of Home Affairs to the Petitioner for abstaining himself from a crucial review meeting chaired by the Hon'ble Prime Minister on 28.05.2021, for assessing loss of life and property and damage to the infrastructure caused by the cyclonic storm. On 16.06.2021, a major penalty charge sheet was issued to the Petitioner by the Respondents herein, for not attending the aforesaid meeting on 28.05.2021, as well as for not apprising the Hon'ble Prime Minister about the hardships and sufferings faced by the people of West Bengal, amongst other allegations mentioned in the statement of Articles of Charges and imputation of the alleged misconduct or misbehaviour.

4. Charge sheet was issued under Rule 8 of the All India Services (Discipline and Appeal) Rules, 1969 read with Rule 6 of All India Services (DCRB) Rules. Petitioner replied to the charge sheet by filing his written statement. On 31.08.2021, orders were issued appointing the Inquiring Authority and the Presenting Officer. Vide notice dated 27.09.2021, the Inquiring Authority scheduled a Preliminary hearing for 18.10.2021.

5. On receipt of the hearing notice, Petitioner filed an application under Section 19 of the Administrative Tribunal Act, 1985 (hereinafter referred to as '1985 Act'), being O.A. No. 1619/2021, challenging the charge sheet dated 16.02.2021 and the consequential orders thereto appointing the Inquiring Authority, etc. The Original Application (O.A.) was fixed on 22.10.2021, before the Tribunal, Kolkata Bench. However, in the meantime,

Respondents herein filed a Transfer Petition before the Tribunal, Principal Bench, under Section 25 of the 1985 Act, seeking transfer of the O.A. filed by the Petitioner, from Kolkata Bench to the Principal Bench at New Delhi.

6. Vide order dated 22.10.2021, the Tribunal, Principal Bench allowed the Transfer Petition and directed listing of the O.A. 1619/2021 for admission, on 27.10.2021. Order was challenged by the Petitioner by filing a writ petition being W.P.C.T. No. 78/2021, before the Calcutta High Court under Article 226 of the Constitution of India.

7. On 27.10.2021, Notice was issued by the Tribunal, Principal Bench in O.A. No. 1619/2021. Notice was accepted on behalf of the Respondents and time was granted to file reply. The matter was adjourned to 12.11.2021. The Calcutta High Court vide judgment dated 29.10.2021, allowed the writ petition filed by the Petitioner and set aside the order of the Tribunal, Principal Bench, passed in the Transfer Petition.

8. Respondents herein, challenged the judgment dated 29.10.2021, before the Hon'ble Supreme Court in SLP(C) No. 18338/2021, primarily on the ground that the Calcutta High Court lacked the territorial jurisdiction to entertain a challenge to an order passed by the Principal Bench, New Delhi. Vide judgment dated 06.01.2022, the Hon'ble Supreme Court allowed the SLP and set aside the judgment of the Calcutta High Court on the ground of lack of territorial jurisdiction. Liberty was, however, granted to the Petitioner herein to assail the order passed by the Principal Bench in the Transfer Petition, before the Jurisdictional High Court. It is in these circumstances that the Petitioner has approached this Court, filing the present writ petition.

9. Learned counsel for the Petitioner contended that the Transfer Order was passed in violation of the principles of natural justice in as much as the Transfer Petition was listed for the first time on 22.10.2021 and despite requests made on behalf of the Petitioner, no opportunity was granted to file objections/reply to the petition or produce the relevant judgments. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Union of India vs. Alapan Bandyopadhyay, Civil Appeal No.197/2022, arising out of SLP(C) No.18338/2021*** and of this Court in ***State of Gujarat vs. R.S. Yadav & Anr., 2002 SCC Online Del 198.***

10. It was further contended that the power under Section 25 of the 1985 Act was exercised in violation of principles governing the provisions of the Section itself. The grounds of transfer raised by the Respondents herein, as evident from the Transfer Petition, were that the concerned Department of Union of India is located at New Delhi, the officers who are to defend the matter are also posted at New Delhi, the charge-sheet was issued from New Delhi and the Departmental Inquiry is being held at New Delhi. Thus, it was urged that the cause of action has arisen within the jurisdiction of the Principal Bench of the Tribunal. It was contended by learned counsel for the Petitioner that none of these grounds could be valid grounds in the eyes of law for transferring the original application to New Delhi. Union of India has presence throughout the Country and has all the resources at its disposal to defend the case anywhere in India. In any event, the O.A. was not filed in any remote corner of the Country but in another Metropolitan City of Kolkata. The location of the office or situs of the Government cannot be a valid consideration to consider the plea of transfer. Besides, the documents proposed to be relied upon in support of the charges, though maintained in

Delhi can be transmitted to Kolkata and the sole witness referred to in the list of witnesses is based in West Bengal.

11. It was next contended that Petitioner was entitled to file the O.A. before the Kolkata Bench of the Tribunal under Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter, referred to as 1987 Rules), which deals with the place of filing the applications. Under Rule 6(1), an application shall ordinarily be filed by an applicant before a Bench of the Tribunal within whose jurisdiction the applicant is posted for the time being or where the cause of action, wholly or in part, has arisen. Rule 6(2), however, notwithstanding anything contained in sub-Rule (1) gives the right to a person who has ceased to be in service by way of retirement, dismissal or termination to file an application with the Registrar of the Bench, within whose jurisdiction such person is ordinarily residing at the time of filing the application. Petitioner is a retired person and has been throughout residing in Kolkata, including at the time of filing the O.A. and thus had the right to file the O.A. before the Kolkata Bench of the Tribunal under Rule 6(2) of the 1987 Rules. In any event, the alleged incident giving rise to the charge-sheet took place wholly within the State of West Bengal and Petitioner was all along an officer of the West Bengal Cadre. This statutory right of the Petitioner cannot be taken away by an arbitrary exercise of power under Section 25 of the 1985 Act. Reliance was placed on the judgment in ***Mukesh Kumar Meena vs. Principal Commissioner of Income Tax and Anr.***, 2021 SCC OnLine Raj 1656.

12. The last plank of the argument on behalf of the Petitioner was that the Central Government lacked the jurisdiction and competence to initiate disciplinary proceedings as 'Government' under Rule 2(c) of the All India

Services (Discipline and Appeal) Rules, 1969 is the Government of West Bengal, since the applicant was serving in connection with the affairs of the State Government.

13. Per contra, it was contended by Mr. Tushar Mehta, learned Solicitor General of India that the Transfer Petition was filed by the Respondents under Section 25 of the 1985 Act, seeking transfer of O.A. No.1619/2021 from Kolkata Bench to the Principal Bench of the Tribunal, as the Principal Bench has the jurisdiction to deal with the subject matter of the O.A. It was specifically pleaded that the Department of the Union of India concerned with the matter was located at Delhi and the officers defending the matter were also posted at Delhi. Importantly, the charge-sheet was issued in Delhi and the inquiry is also being held at Delhi. Therefore, the cause of action has arisen at New Delhi. Further, in times of the on-going Pandemic, it is convenient to defend the matter at Delhi as the records are maintained at the offices at Delhi.

14. It was further argued that it is wrong for the Petitioner to contend that principles of natural justice were violated. Advance service of the Transfer Petition was done on the Petitioner. Hearing was through video conferencing mode in which the Petitioner was duly represented by a team of counsels, who advanced detailed submissions, both in facts and law and have been recorded in the impugned order.

15. It was the contention of the learned SG that the impugned order dated 22.10.2021 is an administrative order, passed by the Chairman of the Tribunal exercising powers under Section 25 of the 1985 Act. It has been held by the Hon'ble Supreme Court in ***All India Institute of Medical Sciences vs. Sanjiv Chaturvedi and Ors., (2020) 17 SCC 602*** that the power

under Section 25 to transfer cases from one Bench to another is essentially an administrative power of the Chairman of the Tribunal, who is an entity distinct from the Tribunal and exercises administrative powers and such other powers as are expressly conferred on him under the Act. The order impugned herein is purely an administrative order and not a decision or a judgment on the judicial side. Reliance in this regard is placed on certain provisions of the 1985 Act.

16. It was also contended that power of the Chairman under Section 25 of the 1985 Act to transfer a case is similar to the power of 'Master of Roster', which is an administrative function. It was held by the Hon'ble Supreme Court in ***Campaign for Judicial Accountability and Reforms vs. Union of India, (2018) 1 SCC 196***, that while on the judicial side, the Chief Justice of India is only the first amongst the equals, however, as far as the Roster is concerned, the Chief Justice is the Master of the Roster and he alone has the prerogative to constitute the Benches of the Court and allocate cases to the Benches, so constituted.

17. It was further contended that the standard of judicial review of a 'decision' or 'judgement' under Section 14 read with Section 19 of the 1985 Act, cannot be the same as the standard of judicial review of an administrative order passed by a Chairman under Section 25 of the 1985 Act. Further, in a judicial review of an administrative decision, merits of the decision cannot be examined nor can the decision be substituted and the Courts can only exercise a limited jurisdiction of examining the decision making process. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Tata Cellular vs. Union of India, (1994) 6 SCC 651*** in this regard.

18. We have heard learned counsel for the Petitioner and learned Solicitor General of India as well as the Additional Solicitor General and examined their rival contentions.

19. In so far as the contention of the Petitioner that opportunity of hearing was not granted to the Petitioner when the Transfer Petition was heard, is concerned, the same is devoid of merit. Perusal of the impugned order clearly reflects that the Petitioner was duly represented by a team of counsels including a senior counsel who had, as recorded in the order, ‘vociferously argued’ and objected to the transferring of the O.A. The contentions of the Petitioner have also been recorded in paras 6 and 7 of the impugned order. Moreover, a plain reading of Section 25 shows that there is no requirement for giving the parties a chance to file a formal written reply and the provisions of the Section only require a notice to the parties and a hearing, which was done in the present case. In fact, under Section 25, the Chairman can on his own motion, without any notice, transfer any case pending before one Bench for disposal to another Bench. Section 25 is extracted hereunder for ready reference :-

“25. Power of Chairman to transfer cases from one Bench to another

On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman may transfer any case pending before one Bench, for disposal, to any other Bench.”

20. Para 14 of the impugned order further reflects that the factors which weighed with the Chairman, in addition to the urgency of the matter, were that the disciplinary proceedings were initiated by the DoP&T at Delhi

and the Inquiry Officer after being appointed at Delhi, was conducting the Inquiry proceedings at Delhi. Thus, the cause of action has arisen at New Delhi and no error can be found with the impugned order.

21. Learned counsel for the Petitioner strenuously argued that under Rule 6(2) of the 1987 Rules, it is the statutory right and option of the Petitioner, being a retired person, to file an O.A. before the Kolkata Bench, as he was ordinarily residing in West Bengal at the time of filing the O.A. No doubt, Rule 6(2) gives an option to the applicant who has ceased to be in service, to file an application before a Bench, within whose jurisdiction such person is ordinarily residing at the time of filing of the application. This is explicit from a plain reading of sub-Rule (2) of Rule 6 and needs no elaboration or interpretation. However, the question that arises is whether this right of an applicant can control or regulate the administrative powers of a Chairman under Section 25 of the 1985 Act. In our opinion, the answer can only be in the negative.

22. As rightly argued by Mr. Mehta, the power of a Chairman of the Tribunal under Section 25 of the 1985 Act is purely an administrative power to transfer cases from one Bench to another, which can be exercised on an application by any party or even on his own motion in a given case and where the facts and circumstances so warrant. As held by the Hon'ble Supreme Court in ***All India Institute of Medical Sciences (supra)***, the Chairman of a Tribunal is an entity distinct from the Tribunal and the administrative powers to transfer a matter are different and separate from the decision making powers on the judicial side. Therefore, it may not be wrong to hold that the administrative powers are akin to the power of the Master of

Roster, who alone has the prerogative to constitute the Benches and allocate cases.

23. The contention that the right of an applicant under Rule 6(2) will control or override the power of the Chairman under Section 25, in our view, is wholly misconceived. If this proposition is to be accepted, it would result in a situation where in no case, an O.A. filed by an applicant, who has ceased to be in service, invoking Rule 6(2) at a place of his choice, would be open to transfer to another Bench, by the Chairman. This would make Section 25 redundant and subservient to Rule 6(2), which could not have been the intent of the Legislature while enacting Section 25 of the 1985 Act. The wide powers conferred on the Chairman to transfer a matter can be clearly understood from the provisions of the Section whereby the Chairman has been conferred the power to transfer a matter from one Bench to another, on his own motion, without any application from any party. Being a purely administrative function, in our view, it is neither regulated nor controlled by the provisions of Rule 6(2) of the 1987 Rules. Thus, we have no hesitation in holding that while the Petitioner has the option to approach the Bench at a place where he was ordinarily residing at the time of filing the application, however, the Chairman of the Tribunal has the administrative powers to transfer the matter to another Bench, *albeit* for sound reasons and after notice to and hearing the parties to the *lis*.

24. We also find merit in the contention of the Respondents that the scope of judicial review of an administrative decision is extremely limited and can only be exercised to scrutinize the decision making process. In ***Tata Cellular (supra)***, the Hon'ble Supreme Court has culled out the principles

delineating the scope of judicial interference and relevant paras from the judgment are as under :-

“77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- 1. Whether a decision-making authority exceeded its powers?*
- 2. Committed an error of law,*
- 3. committed a breach of the rules of natural justice,*
- 4. reached a decision which no reasonable tribunal would have reached or,*
- 5. abused its powers.*

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness.*
- (iii) Procedural impropriety.*

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

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94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.*
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.*

Based on these principles we will examine the facts of this case since they commend to us as the correct principles.”

25. Examined from the touchstone of the aforesaid principles propounded by the Hon'ble Supreme Court, the impugned order, in our view, passes muster on all the above counts. At the cost of repetition, the impugned order has been passed within the four corners of Section 25 of the 1985 Act, which confers power on the Chairman to transfer cases from one Bench to another, after hearing the parties concerned. Due notice was given to the Petitioner and the counsels representing him were duly heard, before the order was

passed. The order records the contentions of both the parties and has recorded reasons for transferring the petition from the Kolkata to the Delhi Bench of the Tribunal. This Court finds no infirmity in the exercise of the administrative power, either on the procedural aspects or on the merits. Being purely an administrative power of the Chairman, it is not for this Court to substitute its decision or wisdom for that of the Chairman as no illegality, arbitrariness or infirmity has been found in the decision making process.

26. In so far as the arguments of the Petitioner with respect to the competence of the Central Government to issue the charge-sheet and/or initiate disciplinary proceedings against the Petitioner, are concerned, this Court is not adjudicating on the said issue as it is not the subject matter of the Transfer Petition. The issue will be decided as and when the O.A. is decided by the Tribunal.

27. For all the aforesaid reasons, this Court finds no reason to interfere with the impugned order.

28. The writ petition is accordingly dismissed along with the pending application.

29. It is made clear that this Court has not expressed any opinion on the merits of the disciplinary proceedings, including the competence of the Central Government to issue the charge-sheet.

CHIEF JUSTICE

JYOTI SINGH, J

MARCH 7th, 2022

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