

Government of West Bengal

1/22116/2018

Labour Department

I.R. Branch,

**N. S. Buildings, 12th floor, Block - A
1, K. S. Roy Road, Kolkata – 700 001.**

**No. Labr./570/(LC-IR)/
22015(16)/386/2018.**

Date, Kol., the 2nd August, 2018.

O R D E R

WHEREAS under the Government of West Bengal, Labour Department Order No. 692/IR/IR/11L-130/05 dated 25.05.2018 the Industrial Dispute between M/s, DTDC Courier and Cargo Ltd., DTDC Bhavan, Raghunathpur, VIP Road, Kolkata- 700 059 and Kolkata Shops and Commercial establishment employees union, 55, Biplobi Rash Behari Bose Road, Meheta Buildings, Block-B, 2nd floor , Kolkata – 700 001 regarding the issue mentioned in the said order , being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said First Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By Order of the Governor



**Deputy Secretary to the
Government of West Bengal**

No. Labr./570/1(5)/(LC-IR)/

Date, Kol., the 2nd August, 2018.

Copy with a copy of the Award, forwarded for information and necessary action to :-

- 1) M/s, DTDC Courier and Cargo Ltd., DTDC Bhavan, Raghunathpur, VIP Road, Kolkata- 700 059.
- 2) Kolkata Shops and Commercial Establishment Employees Union, 55, Biplobi Rash Behari Bose Road, Meheta Buildings, Block-B, 2nd floor, Kolkata- 700 001.
- 3) The Assistant Labour Commissioner , West Bengal In-Charge, Labour Gazette.
- 4) The Labour Commissioner, West Bengal, ,New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata – 700 001.
- 5) The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's Website.



Deputy Secretary

(Contd.. 2)

(2)

No. Labr./570/2(2)(LC-IR)/

Date, Kol., the 2nd August, 2018.

Copy forwarded for information to :-

- 1) The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No.1021/L.T Dated 25.05.2018.
- 2) The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata-700 001.

Deputy Secretary.


02/8/18

In the matter of an industrial dispute between M/s. DTDC Courier and Cargo Ltd., DTDC Bhavan, Raghunathpur, VIP Road, Kolkata-700 059 and Kolkata Shops and Commercial establishment employee's union, 55 Biplobi Rash Behari Bose Road, Meheta Buildings, B-Block, 2nd Floor, Kolkata-700 001.

(Case No. VIII-63/2017)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI TANMOY GUPTA, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

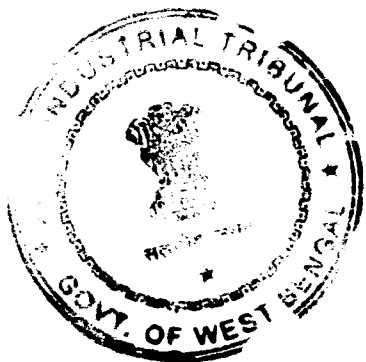
The instant proceedings arose out of an order of reference vide G.O. No. 692-IR/IR/ IIL-130/-5, dated 04.07.2007 by which the appropriate Govt. referred an industrial dispute between M/s. DTDC Courier and Cargo Ltd., DTDC Bhavan, Raghunathpur, VIP Road, Kolkata-700 059 and Kolkata Shops and Commercial establishment employee's union, 55 Biplobi Rash Behari Bose Road, Meheta Buildings, B-Block, 2nd Floor, Kolkata-700 001 for adjudication.

The issues specified in the said order of reference for adjudication are as follows:

I S S U E (S)

1. Whether the order of transfer dated 12.07.2004 of Sri Ajoy Bagani transferring him from Kolkata to Cochin is justified?
2. Whether the management is justified by not allowing Sri Ajoy Bagani to continue to work in Kolkata office from 13.07.2004 on the fact his representation against transfer order of his personal ground?
3. What relief, is he entitled to?

The case as made out by the union for the workman named above in the written statement is that the company named above is a well reputed and widely known concern engaged in courier service and earning huge profit and growing day by day due to the hard labour and skilful performance of the labours/workmen engaged under it. Though the company is a flourishing and well profit earner, but very much unfair and exploitative to it's workmen. The company has little regards to observe the provisions of industrial laws and specifically those are enacted for the welfare of the workmen. The workman of the instant case is victim of the aforesaid unfair labour practice of the company. At the time of his appointment under the said company as a driver, he was issued with an appointment letter comprising some illegal, unjustified, unfair and absurd terms and conditions. The applicant/workman vehemently objected to the said illegal terms and conditions but he had to succumb under the pressure and threat of loss of employment. The workman had all along been very much sincere, hard working and left no stone unturned to satisfy his supervisor, by rendering best of his services during the tenure of his employment but the management of the company instead of paying any return of his diligent service abruptly issued a letter dated 12.07.2004 directing him to go and join in their Cochin branch forthwith. Not a single word was used in the said letter regarding his accommodation in



such a remote and distant place. No offer was given to him regarding the conveyance expenses for going to Cochin. The said order of transfer is highly illegal, unjustified and issued in arbitrary manner without complying the minimum precondition and pre-requisite of transferring a person from one place to another. The said letter of transfer was issued with malafide intention only to victimise the poor workman. The said order of transfer came to the workman as bolt from the blue and obviously he could not be able to accept the said capricious transfer order and requested the company to withdraw/not to give any effect of the said transfer vide his representation dated 12.07.2004 addressed to the company narrating therein his genuine difficulties to carry out the said order of transfer. The workman also informed the matter to the union which is an omnibus Trade Union of which he is a member and in turn the union made a representation on 22.7.2004 to the company demanding withdraw of the said illegal transfer order. The management of the company instead of paying any heed to the reasonable demand of the workman/ union took an adamant stand and continued to press the workman to go to Cochin without considering his genuine grievance and difficulties which will lead the life of workman toward misery and extreme uncertainty as a consequential effect of the said unjustified transfer order. The management of the company started creating unlawful pressure upon the workman to accept the said transfer order and disallowed the workman simultaneously w.e.f. 13.7.04 to resume his normal duties in his usual working place at Kolkata as a measure of victimisation. The union then brought the matter before the Labour Directorate vide representation dated 05.08.2004 addressed to the Labour Commissioner, Govt. of West Bengal seeking intervention into the matter and the said authority took up the matter for conciliation. At the relevant point of time the monthly salary of the workman was Rs. 3500/-. No fruitful result could come out during such conciliation proceedings due to the unreasonable, unjustified, adamant and non-compromising attitude of the company and thereby compelling the authority to submit failure report u/s 12(4) of ID Act 1047 and subsequently the matter has been referred to this tribunal to adjudicate the issues as framed by the company.

That in course of the desperate bid to victimise the workman concern so taken by the management of the company a so called unfair and sham or domestic enquiry was launched by the company against the workman during the pending of conciliation proceeding without having any information even to the authority. The workman concern, however, appeared before the Enquiry Officer and expressed his inability verbally to participate in the proceeding without having any assistance of lawyer and/or trade union representative. But the said Enquiry Officer did not pay any heed to the said submission. However after 2 or 3 occasions of the said proceedings of the enquiry, no further communication was sent to the workman either by the management or by the Enquiry Officer regarding the matter. The company has acted in highly illegal, unjustified, arbitrary and malafide manner by issuing said order of transfer directing the workman to go and to join their Cochin branch and subsequently disallowing him to resume his normal duty in his usual work place at Kolkata violating the provisions of industrial laws and minimum

principles of social and natural justice. Accordingly, the union in the said written statement filed for the workman has prayed for passing an order holding the transfer order issued by the company transferring the workman from Kolkata to Cochin illegal, and unjustified and also to hold that the disallowing the workman to perform his duty in the office at Kolkata is illegal and unjustified and to direct the company to allow the workman to resume his duties in his previous working place at Kolkata office. Treating continuity of the service of the workman without any break and also to pay to the workman full back wages and other consequential relief.

The company has contested the instant proceedings by filing a written statement containing two parts. In part-A it is contended that the reference is not maintainable: that there neither exists or existed on the date of impugned order of reference any dispute between the company and its workman within the meaning of section 2K of the industrial dispute act 1947: that the union has no locus standi to ventilate the cause of the workman and that this tribunal has no jurisdiction to adjudicate the issues purported to have been mentioned in the order of reference. It is contended further that workman Sri Bagani was appointed on probation in the company's regional office at Kolkata as a driver by the company's letter dated 1st June 1999 containing there some terms and conditions for his service and subsequently he was confirmed with effect from 20th October 1999. It is further stated by the company that the Cochin regional office urgently require personnel in the position of driver and requested the manager (P & A) Kolkata to look into the matter urgently and for this exigency the management had decided to utilise the expertise knowledge in the field of driving of their Kolkata branch and as such the management transferred Sri Ajay Bagani to Cochin branch with effect from 13.07.2004 remaining the terms and conditions of his service as before. On receiving the said order of transfer the workman concern did not join his duties on the plea that transfer order is illegal, unjustified arbitrary and against the principles of natural justice and also took another plea that he had to look after his ailing mother. The company requested the workman by letter dated 16.07.2004 to join and report at his transferred place, but he did not deliberately join and remain absent without any intimation to the company. Even after receiving the said letter dated 16.07.2004 the workman concern did not report his duty and due to the said act, the workman concern was issued with show cause notice dated 28.06.2005. The workman replied by his letter dated 01.08.2005 and as the said reply was not satisfactory, the management issued a chargesheet dated 05.08.05 containing specific allegation and definite charges as the explanation given by the workman on 08.08.2005 was found to be unsatisfactory. The management held a domestic enquiry by appointing an independent Enquiry Officer Sri A. K. Roy according to the principles of natural justice giving all reasonable opportunities when workman to defend his case. The company has stated further that the workman wilfully remained absent which led the Enquiry Officer to hold the enquiry ex-parte.

In Part-B of the written statement the company has denied all the allegation made in the written statement filed by the union for the workman. It is contended that the

workman had the full knowledge about the terms and conditions of his appointment mentioned in the letter of appointment but he wilfully disregarded such terms and conditions. It is stated that on several occasions the workman committed misconduct and when he was asked to show cause he tendered his apology by the writing letters to the company. It is contended further that the transfer order issued to the workman is legal, justified and it was validly made according to the terms and conditions of his service. It is then contended that by letter dated 16.07.2004 the Assistant Manager (P&A) of the company instructed the workman to report to Cochin Branch immediately; otherwise for each day of delay in reporting to the said branch he will be treated as on leave without pay. In spite of receiving the said letter dated 16.07.2004 and 04.08.2004 the workman concern neither reported to Cochin branch nor sent any intimation about his unauthorised absent. Again Mr. Nimesh Paul, Assistant Manager (P&A) Cochin branch instructed the workman to report to Cochin Branch and in case of failure to report to the said branch it would be presumed that he is not interested in continuing the duty with the company and voluntarily abandon the assignment. The Enquiry Officer was appointed following the principles of natural justice and fair play. The workman never raised any protest and/or objections regarding enquiry proceedings. The enquiry was held in compliance with the principles of natural justice. The workman wilfully avoided the participation in such enquiry on same illegal and unjustified plea of his representation by Advocate or his union representation. Opportunity was given to the workman to be represented by his any co-employee of his choice but the failed to avail such opportunity. On that score the company has prayed for passing an award holding purported order of reference is not maintainable and/or answering the issues mentioned in the order of reference in favour of management.

DECISION WITH REASONS

In support of their case the workman examined himself and WW1 and also examined Sri Samarendra Saha as WW2. Besides such oral evidence some documents have been marked as exhibit-1 to 26 for the workman. The company, on the other hand, examined Dilip Kumar Dey as CW1 and Maurice Charles Wheeler as CW2, Gopal Chatterjee and Sabarna Dasgupta as CW3 and 4 respectively. Besides such oral evidence, the company has relied on some documents which have been marked as exhibit-A to H.

Let us now decide the issues mentioned in the instant proceedings on the basis of such oral and documentary evidence adduced by the parties.

Admittedly the workman Ajoy Bagani was appointed to perform the job of driving under the company. WW1 has stated that he used to perform due to driving of the company's vehicle and the company issued to him an appointment letter for driving its vehicle. The letter of appointment has been produced and marked as exhibit-1. It appears from the said exhibit-1 that the company appointed the workman as driver at its Kolkata region office with effect from 01.04.1999 on probation for six months with salary of Rs. 2265/- per month. In said exhibit-1 which was issued on 1st June 1999, it is mentioned that

the service of the workman will be confirmed if his performance during probationary period is found to be satisfactory. Exhibit-2 is the confirmation letter. It reveals that service of the workman was confirmed on 01.10.1999. Exhibit-3 is the transfer order issued on 12.07.2004 in respect of the workman. From the contents of said exhibit-3, it appears that the workman was transferred from Kolkata to Cochin branch on the ground that the management has decided to utilise the expertise of the workman in the field of driving at the Cochin branch of the company. The WW1 has stated that he made a representation to the company with a request to withdraw the said transfer order vide his letter dated 12.07.2004. the said representation has been marked as exhibit-4. The workman has stated that the company by issuing a letter dated 16.07.2004 (exhibit-5) inform him as to the fate of his representation. The workman has stated that he is a member of Kolkata Shops and Commercial Establishment Employees Union and he intimated the said order of transfer to the said union and thereafter the union took up the matter and the union in turn issued a letter dated 22.07.2004 (exhibit-6) to the company in the matter of such order of reference of the workman. Exhibit-7 is a representation submitted by the General Secretary of the said union to the Labour Commissioner which was submitted before the Labour Director on 09.08.2004. Exhibit-8 is a letter issued by Assistant Labour Commissioner, West Bengal (Kolkata North) to the company with a copy to the General Secretary of the said union in the matter of said order of reference of the workman. Exhibit-9 is a letter dated 18.10.2004 issued by the company to the Assistant Labour Commissioner. Exhibit-10 is a letter dated 10.11.2004 submitted by the General Secretary of the said Union to the Assistant Labour Commissioner on the same subject matter. Exhibit-10 is another representation dated 21.04.2005 submitted by the General Secretary of the said union to the Assistant Labour Commissioner.

Instant order of reference made by appropriate Government is dated 04.07.2007. The WW1 has stated that while dispute was pending before the Labour Commissioner, West Bengal, the company issued a show cause letter to him on 28.06.2005. The same has been produced and marked as exhibit-12. Exhibit-13 is the reply to the show cause submitted by the workman to the management of the company. Exhibit-14 is another show cause letter dated 21.07.2005 issued by the company to the workman and exhibit-15 is the reply of show cause submitted by the workman to the management. Exhibit-16 is the chargesheet against the workman. Exhibit-17 is a representation dated 08.08.2005 submitted by the workman to the management. Exhibit-18 is another letter dated 23.08.2005 issued by the management to the workman. Exhibit-19 is the reply submitted by the workman to the management against such letter dated 23.08.2005. Exhibit-20 is a letter issued by the management to the workman intimating him the decision of the company to hold an enquiry into charges labelled against the workman and also informing him that one Sri A. K. Roy has been appointed as an Enquiry Officer to hold such enquiry. Exhibit-21 to 23 are the correspondences made between the workman and the Enquiry Officer.

As discussed earlier in the order of reference the appropriate Government framed three issues for adjudication by this tribunal and those issues have been mentioned in the earlier part of this award. Now it appears that on hearing both sides and on an application filed by the company this tribunal vide order no. 32, dated 17.04.2009 framed two more issues namely: (i) Is the reference maintainable in its present form?

(ii) Whether this tribunal has got any jurisdiction to try the present reference?

After framing those two issues as additional issues, the then Presiding Officer in the self-same order observed that those two issues being preliminary issues will be heard on merits along with other issues. Thereafter recording of evidence of the parties commenced and the same was concluded on 22.05.2017.

From the materials it appears that the parties have led evidences covering all the issues i.e. three issues mentioned in the order of reference and two other preliminary issues as framed by this tribunal. Evidence as adduced by the parties cover all the issues which are find place in the order of reference and the preliminary issues as framed by this tribunal and also covering the point as to the domestic enquiry.

Before discussing and deciding the issues as mentioned in the order of reference, it would be appropriate to decide the aforesaid two preliminary issues framed by this tribunal as stated earlier.

During course of hearing of argument, the Ld. Counsel appearing for the company practically did not ventilate anything as to the maintainability of the instant proceedings and jurisdiction of this court to try the present reference. However, in the written statement filed by the company in Part-A it is contended that there exists/existed on the date of impugned order of reference no dispute within the meaning of section 2 (K) of the Industrial Disputes Act, 1947 and as such order of reference is not maintainable. In this connection it would be appropriate to consider the provision of section 2 (K) of the Industrial Disputes Act which runs as follows:-

“Industrial dispute means any dispute or difference between employers and employees between employees and workmen, or workmen and workmen, which is connected with the employment or such non-employment or the terms of employment or with the conditions of labour, any person”. Considered the evidences as produced by the parties. Admittedly, Ajay Bagani was the workman within the meaning of section 2(s) of the said act being appointed by the company as driver. A dispute was raised by the said workman before the Assistant Labour Commissioner relating to an order of transfer made by the company transferring him from Kolkata to Cochin. Materials on record suggest that the said authority of the labour Department made attempt for reconciliation and such attempt having failed the matter has been referred to this tribunal by the appropriate government by making order of reference setting forth therein the issues to be adjudicate by this tribunal. On careful consideration of the materials of record, I am convinced to hold that there is/was existence of an Industrial dispute within the meaning of section 2(K) of

the Industrial Disputes Act, 1947 and as such the appropriate government is justified in making the instant reference.

Then it is stated in the written statement filed by the company that the union has no locus standi to espouse the cause of the workman. However, no submission is placed on that point by the Ld. Advocate for the company during the course of hearing of argument. Considered the materials on record. It appears from the statement of WW1 that he made a representation to the company with a request to withdraw the order of transfer and when the company vide exhibit-5 informing him as to the fate of such representation, he intimated the same to the union. He has further stated that he is a member of Kolkata Shops and Commercial Establishment Employees Union. He has then stated that said union took up his matter and issued letter (exhibit-6) to the company and thereafter the said union issued a letter (exhibit-7) to the Labour Commissioner requesting him to intervene into the said matter. It further appears from the materials that the Assistant Labour Commissioner heard the management of the company and the said union and the said commissioner having failed to reconcile the matter passed the instant order of reference. The workman has examined one Sri Sourendra Saha, WW2. The said witness has stated that he is an executive member of Kolkata Shops and Commercial Establishment Employees Union for last ten years. The witness has also produced some documents, i.e. membership cum subscription register of 2004 (exhibit-24) of the said union. In the said register the name of 242 persons appearing as member and name of Ajoy Bagani find place in serial no. 41 (exhibit-24/1). He has also produced the minutes book of meeting for the year 2004 of the executive committee of the said union (exhibit-25) and also produced the rules and constitution of the said union. During the cross examination said WW2 has stated that the decision was taken in the executive meeting that union will represent Ajoy Bagani in support of his dispute relating to transfer. On careful consideration of the totality of the materials of record, I am of the view that the workman being a member of the present union at the relevant time and the said union having represented the case of the workman before the appropriate government authority, the said union has certainly the authority to espouse the cause of the workman.

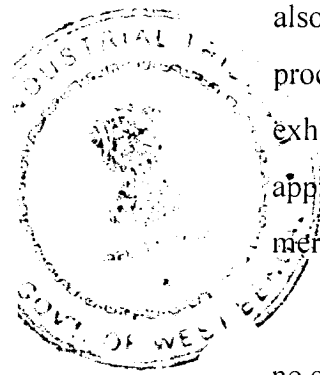
Then in respect of other preliminary point as to whether this tribunal has got any jurisdiction to try the present reference, I answer the same in the affirmative. Because as per notification issued by the Labour Department, Govt. of West Bengal, this tribunal is empowered to adjudicate the issue of Industrial dispute for the district of North 24 Parganas. The regional office of the present company situates at VIP Road, Raghunathpur, which falls within the jurisdiction of North 24 Parganas district. The appointment letter of the workman and impugned order of transfer was issued from the said office of the company.

Those two preliminary issues as framed by this tribunal are thus decided and disposed of accordingly.

Let us now decide the issues mentioned in the order of reference. Admittedly the workman Ajoy Bagani was appointed by the company as driver vide appointment letter dated 01.06.1999 (exhibit-1). It is also an admitted fact that such appointment was confirmed vide letter dated 20.10.1999 (exhibit-2). The WW1 has stated that the company transfer him from Calcutta to Cochin vide letter of transfer dated 12.07.2004 (exhibit-3). He then stated that he made a representation to the company with a request to withdraw the said transfer order vide his letter dated 12.07.2004(exhibit-4). The witness then stated that the company by its letter dated 16.07.2004 informed him about the fate of his representation. The said letter has been marked as exhibit-5. He then stated that thereafter being informed by him the union took up his cause and issued a letter dated 22.07.2004 (exhibit-6) to the company and as the company did not give any relief, the union ventilated the matter to the Labour Commission. The witness has stated that while the dispute was pending before Labour Commissioner, the company issued show cause notice dated 28.06.2005 (exhibit-12) to him. He has proved his reply issued against such show cause notice which is marked as exhibit-13. The witness then stated further about the correspondence made between him and the company which are marked as exhibit-14 to exhibit-16. The witness stated further that the company issued a chargesheet dated 05.08.2005 to him (exhibit-16). His reply to the chargesheet has been marked as exhibit-17. The witness then stated that the company held a domestic enquiry against him by appointing one Enquiry Officer. He has produced some correspondences made between him and the Enquiry Officer.

In the instant case no hearing has been made earlier on the point of validity of domestic enquiry as a preliminary issue. The parties never made any prayer for holding such enquiry on that point and they produced evidence on merits touching the said matter also. During course of hearing enquiry proceedings, enquiry report and enquiry proceedings in original have been produced and marked as exhibit-F, exhibit-G and exhibit-F/1. The parties have led oral evidence also on that point. So, it would be appropriate to decide as to the validity of domestic enquiry before deciding the case on merits.

The workman has stated that at the time of holding enquiry by the Enquiry Officer no opportunity was given to him to engage any lawyer or union member to defend his case. The witness has stated further that he wrote a letter dated 23.01.2006 to the Enquiry Officer expressing his inability to proceed with the said enquiry without the assistance of any lawyer or union representative. Said letter has been marked as exhibit-23. The witness has stated that he participated in the enquiry but the Enquiry Officer did not explain to him under what procedure he would conduct enquiry and the Enquiry proceedings were not read over and explain to him. He has then stated that the Enquiry Officer obtain his signatures on the enquiry proceedings by creating pressure. He has also stated that Enquiry Officer did not give him any opportunity to cross examine the management witnesses. The WW1 during cross examination has denied the suggestion that he did not participate in the

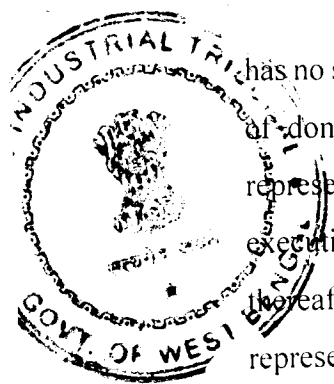


enquiry for consecutive two days. He has also stated that he did not get any information from the Enquiry Officer as to the next date holding enquiry.

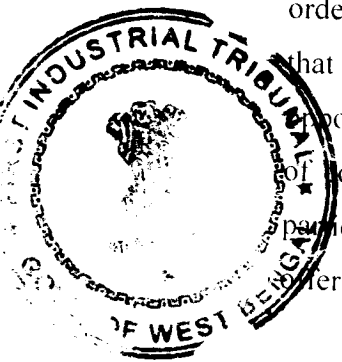
The Ld. Advocate for the company by relying on exhibit-B and exhibit-C argued that the workman was aware about the holding such enquiry. In my considered view those two letters can not come in aid of the company's case. It appears that in obedience to such notices, namely exhibit-B and exhibit-C, the workman participated in the enquiry held on 31.12.2005, 23.01.2006 and 28.01.2006. The same will be apparent from the enquiry proceedings. The workman remained absent on subsequent days of enquiry i.e. on 04.02.2006 on which date all and everything was done by the Enquiry Officer and he completed the enquiry proceedings. It appears from the proceeding report of the Enquiry Officer that the same was recorded in English. There is no note in the proceeding report that after recording such proceedings, the same was read over and explained to the workman in Bengali. In my considered view the workman is justified in answering the question put to him during cross examination before this Tribunal that he was not aware of the next date of holding domestic enquiry. The CW1, Dilip Kumar Dey has produced the document for the company relating to such enquiry which have been marked as exhibit-E, F & G. Out of those documents exhibit-F is the enquiry proceeding and exhibit-G is the enquiry report and exhibit-F/1 is the original enquiry proceedings. During his cross examination he has stated that he can not recollect whether on the last date of enquiry the same was held ex-parte or not. He has also stated that he does not know whether prior to holding the enquiry proceeding ex-parte on the last date, any notice was issued to the delinquent or not. Now while perusing the original proceedings (exhibit-F/1), I find that said CW1 remained present before the Enquiry Officer as company representative. So, such statement made by the witness that he can not recollect whether on the last date the enquiry proceeding was held ex-parte or nor cannot be accepted. In my considered view the witness deliberately made such statement. From the enquiry proceedings dated 04.02.2006 it appears that CW2, Mourice Charles Wheeler deposed for the company before the Enquiry Officer. It appears that in the early part of recording statement of the said witness by the Enquiry Officer, he stated that Ajoy Bagani called him over telephone in the office and informed him that he is not well and unable to attend the enquiry due to sickness. I find that even on getting such information from the witness the Enquiry Officer proceeded to record his statement and concluded the enquiry proceedings on that date. It appears that on previous dates of the proceedings the delinquent remained present and he constantly demanded that he may be given an opportunity to be represented by lawyer or any man of his union to defend him properly. But his prayer was turned down and he was asked to take assistance of his co-workman. In the aforesaid background of the matter the Enquiry Officer should have adjourned the enquiry proceedings on 04.02.2006 when he was informed by the company witness that intimation over telephone was given by the delinquent in the office stating his inability to be present in the proceedings due to his sickness. The said CW2 has denied the suggestion that enquiry was conducted ex-parte due to the absent of delinquent. I fail to understand when his testimony was recorded by the

Enquiry Officer on 04.02.2006 in absence of the delinquent then how he can say so. The said witness has stated that he cannot say whether Enquiry Officer intimated the delinquent specifying the date of holding ex-parte enquiry. CW3 has stated that on account of death of Enquiry Officer the proceedings could not be completed. However, during cross examination he has admitted that in the enquiry proceeding dated 04.02.2006 the Enquiry Officer has stated that "thus, proceeding of enquiry is completed". During further cross examination he has stated that he has no personal knowledge about the enquiry proceeding since he was not present during enquiry. No document has been produced by the company witness to show that the Enquiry Officer has expired. In my considered view when the enquiry was done by the Enquiry Officer who is no less a person than an Advocate which would appear from exhibit-21, the company could very well ascertain as to whether the said Enquiry Officer has actually expired or not. Though the company witness no. 3 has stated in his evidence-in-chief that on account of death of Enquiry Officer the proceeding could not be completed, I find that the company has produced xerox copy of enquiry report of said to have been prepared by the Enquiry Officer on 04.04.2006. I failed to understand as to why the company has not produced in original of such purported enquiry report of the Enquiry Officer. I am of the view that to take clarification on some vital points as discussed earlier in respect of the matter relating to enquiry proceeding, the examination of enquiry officer was very much necessary. But unfortunately, the company has not examined the said Enquiry Officer by making a statement through witness that the Enquiry Officer is dead without producing any authenticated document to substantiate such statement. Nothing has been stated by the company witnesses and nothing has been produced as to what steps has been taken by the company against the workman after such enquiry.

From the materials and other attending circumstances it is clear that the delinquent has no sound educational qualification to understand English and to know the technicalities of domestic enquiry. The Enquiry Officer himself is an advocate and the company representative Mr. Chandan Chatterjee before Enquiry Officer was holding the post of executive HRD and he remained present in the enquiry proceeding on two days and thereafter CW1. Dilip Kumar Dey appear before the Enquiry Officer as company representative and he also holding very important post of the company. In such a situation the Enquiry Officer should have given chance to the workman to engage at least a person having sufficient knowledge as to the technical procedure of the domestic enquiry. Considering the totality of the enquiry proceeding and in view of the earlier discussion. I am of the view that the Enquiry Officer as violate the golden principles of natural justice in holding the enquiry proceeding by not allowing the delinquent to be represented properly and also by way of completing the enquiry proceeding on 04.02.2006 ex-parte even on getting positive information that the delinquent was unable to attend the enquiry proceeding due to his illness on that date. Considering the totality of the matter. I am of the view that enquiry was not done in proper way and manner and as such no reliance can be placed on the same.



Now admittedly the workman Ajoy Bagani was appointed as driver of the company in the year 1999 at the regional office of the company at Calcutta situated at Raghunathpur, VIP Road, and by issuing order of transfer (exhibit-3). He was transferred to Cochin branch from Calcutta. Against which the workman submitted his representation to the management requesting to withdraw the said order of transfer on the ground of his ailing old mother. It is argued by the Ld. Advocate for the company that it has categorically been mentioned in the letter of appointment (exhibit-1) than the service of the workman is transferable to any of the office/division/department of the company at the sole discretion of the company at any time and as such the company has not made any wrong in passing the order of transfer of the workman vide exhibit-3. It is argued for the workman that the said order of transfer is palpably bad in law and the contents of the said order of transfer clearly suggest that the same has been issued to victimise the workman with some malafide intention. He argued further that nowhere in the said letter of appointment (exhibit-1) it has been stated that the workman can be transferred at any place in India. I find that CW1 during cross examination has admitted so. From exhibit-3 it appears that by issuing the same on 12.07.2004 the company transferred the workman to Cochin branch w.e.f. 13.07.2004 with usual terms and conditions. The ground has been taken that said transfer order was made to utilise the experience of the workman in the field of driving at the Cochin branch. WW1 has stated that the company did not offer the railway fare to him for his transfer from Calcutta to Cochin and the company also did not inform him about the accommodation at Cochin. He has further stated that no offer was given to him that he will be paid DA and other allowances at the enhanced rate. CW1 during cross examination has stated that he does not know whether any financial assistance was given at the time of issuance of transfer order to the workman considering the cost of living at Cochin. The witness has admitted that nothing has been mentioned in the transfer order (exhibit-3) that he is given opportunity sufficient time to join his transfer place and there is no mention about payment of conveyance charges in advance. CW2 has stated during cross examination that no particular reporting place was given in the transfer order and the workman was also not offered any accommodation at Cochin.



On perusal of exhibit-1, I find that the terms have been incorporated therein that the service of the workman is transferable and he can be transferred to any of the office/division/department of the company but there is no mention that he can be transferred to one regional office to another regional office and that he can be transferred at any place in India. It is a settled principle of law that transfer is an incident of service. But at the same time it is also well settled law that the order of transfer should not be used as a measure of punishment and to victimise the workman. It has been held by the Hon'ble Court in a case as reported in 2003(2) LLJ page 512 as appearing in paragraph no. 11, relevant portion of which runs as follows:-

..... I am satisfied that the action of the petitioner Bank to transfer its employee was a malafide exercises of the power. The sole object appears to me of transferring the award employees under the guise of restructuring, reorganisation and

rationalisation was to make them sit ideal in RMC/AMER. humiliate them and force them to quit by accepting the VRS, which cannot be permitted. Undoubtedly it is permissible for the employer to engage services of the contract labour, that does not mean that such statutory power could be exercised malafidely. Malafide exercise of power can not be considered to be the legal exercise of the power given by law".

In the instant case before us the management has issued the order of transfer giving its effective date on the following day of issuing such order of transfer. When the workman was appointed in service in the year 1999 his total pay was Rs. 2265/-. On the date of issuance of order of transfer in the year 2004 the pay of the workman may be enhanced a little more. As per averment made in the written statement filed for the workman it appears that at the material point of time the salary of the workman was 3500/- per month. The workman is supposed to work not only for maintaining his livelihood but also to maintain the livelihood of his other dependents. No reasonable and sensible person can accept that the present workman with such a little amount of salary can maintain himself by joining at Cochin office of the company from Calcutta. In the said transfer order nothing has been mentioned regarding the address of the office at Cochin and the name of the person to whom the workman has to submit his joining report. Nothing has been mentioned therein by which date the workman has to join new office situated at Cochin as per said order of transfer. There is also no mention as to whether any amount as T.A. will be provided to the workman as travelling allowance to meet up the cost of journey from Calcutta to Cochin. No documents could be produced by the company to substantiate that any financial assistance was offered to the workman to meet up the cost of journey. The workman has stated in his evidence that no such offer was given by the company to him regarding any financial matters involving such order of transfer. The CWI during cross examination has stated that he does not know whether any financial assistance was given to the workman at the time of issuance of transfer order considering the cost of living at Cochin. The said order of transfer (exhibit-3) was issued on 12.07.2004 giving its effect from 13.07.2004. I fail to understand as to how the management of the company can give such effective date of transfer on a day following the day when such order of transfer was issued. The workman submitted a representation to the company (exhibit-4) praying for withdraw of the said order of transfer on the ground that he has to look after and to take care of his ailing old mother. The company did not accept such request. The workman has stated that he then brought the matter to the notice of his union members. It appears that General Secretary of the union vide exhibit-6 submitted a representation before the company to withdraw the said order of transfer by which workman was ordered to join at Cochin office, Kerala. The management of the company did not pay any heed to the same. In the appointment letter (exhibit-1) there is no mention about any condition that the workman can be transfer to any place in India. The company witnesses have also admitted the same. It appears from exhibit-3 that in a very cryptic manner transfer order was issued by mentioning that the management has decided to utilise the expertise of the workman in the field of driving at its Cochin branch. No document has been produced by the company that any requisition



was ever sent from the Cochin office asking the Calcutta region to send driver on transfer. The company has failed to explain anything as to the exigency which necessitate the company to issue such order of transfer. All such acts and conduct of the management of the company appears to be very much unusual and such conduct clearly suggest that such order of transfer was issued with some ulterior motive.

Considering the totality of the evidences and materials on record and in view of forgoing discussions and reasons stated thereon, I am convinced to hold that the company issued such order of transfer (exhibit-3) transferring the workman from Calcutta office to the Cochin office at Kerala with some malafide intention and with a vindictive motive for the reasons best known to the company and for such reason the management cannot act on such order of transfer. Accordingly, I hold that the said order of transfer is absolutely unjustified. Consequently, the company should allow the workman Sri Ajoy Bagani to continue his work in Calcutta office. I am of the view further that company should be directed to pay to the said workman 25% of the back wages.

Hence, it is ordered, that the management of the company i.e. M/s. DTDC Courier and Cargo Ltd., DTDC Bhavan, Raghunathpur, VIP Road, Kolkata-700 059 is directed not to give any effect and/or further effect of the order of transfer dated 12.07.2004 issued by it transferring the workman Ajoy Bagani to the Cochin Branch. The management of the company is directed to allow the workman Ajoy Bagani to continue his work duties in Calcutta office. The management of the company is also directed to pay to the said workman 25% of the back wages in default the said amount will carry simple interest @ 7% per annum.

All the three issues as mentioned in the order of reference are thus decided and disposed of accordingly.

This is my A W A R D.

Dictated & corrected by me.

sd/- T. Gupta

Judge.

sd/- T. Gupta

Judge.

First Industrial Tribunal

