1970 *Present :* **Weeramantry, J.**

THE CEYLON ESTATES STAFFS' UNION, Appellant, *and* THE SUPERINTENDENT, MEDDECOMBRA ESTATE, WATAGODA, and another, Respondents

S. C. 184/68—Labour Tribunal, No. 9/1297

Industrial dispute—Employer's right to transfer his staff—Employee's disobedience to transfer order—Termination of employee's services—Validity.

An employee, who was employed as senior factory officer and acting as head factory officer of the northern division of a tea estate, received a letter from his employers informing him that he was transferred to the southern division of the estate as the senior assistant factory officer with immediate effect. He was assured specifically that his salary and the terms and conditions of his appointment would be the same as those attached to his post at the northern division and that his transfer was not a demotion. The employee refused to accept the transfer on the ground that he was " forced to believe " that it was a demotion. It was admittedly a condition in the contract of service that the employee " shall not be reduced in grade ".

Held, that, inasmuch as (1) the management made it perfectly plain that the employee's position remained unaffected by the transfer, and (2) the transfer did not come within any of the limitations of the employer's right to transfer, the employee was not entitled to refuse to act on it. There was, moreover, no evidence that the employee was down-graded. In the circumstances the employers were justified in terminating the services of the employee for non-compliance with the transfer order.

APPEAL from an order of a Labour Tribunal.

Walter Jayawardena, Q.C., with *P. Somatillekam*, for the applicant-appellant.

Lakshman Kadirgamar, for the employers-respondents.

Cur. adv. vult.

June 8, 1970. WEERAMANTRY, J.—

Meddecombra estate consists of two divisions—a northern division of 1,148 acres and a southern division of 831 acres. Each division has its own factory.

The factory of the southern division is smaller and of considerably less capacity than the factory on the northern division, for even apart from the fact that it serves a smaller division, it does not handle that division's entire production of leaf.

The employee in this case was at the relevant date the senior factory officer of the northern division and was acting as the head factory officer. He had earlier served as the senior factory officer of another estate owned by the 2nd respondent company, known as the Velli Oya estate which was 1,350 acres in extent and thus served a larger area than even the northern division. He had been transferred to Meddecombra north in 1963 and served there till this dispute arose in September 1967.

On 9th September 1967 the group Manager of the appellant Company sent the letter R1 to the employee informing him that he was transferred to the south division as the senior assistant factory officer with immediate effect, but the same letter specifically informed him that the terms and conditions of this appointment would be the same as those attached to his present post at north division.

The employee replied by R2 of 15th September 1967 refusing to accept the transfer to the south factory. He stated that he had acted for the head factory officer of the north factory which was a much bigger factory than the south and that in all fairness he should be promoted instead of being demoted. On this basis he requested a reconsideration of the Management's decision and promotion to the existing vacancy of head factory officer.

There had thereafter been discussions between the employee and the management of the respondent company and by letter R3 the latter confirmed the transfer and reiterated that it was on the same terms and conditions as the post held by the employee in the north division. To this the employee replied by R4 refusing to accept the transfer. The employee repeated his position in R6 stating that he was unable to accept the demotion and by R7 the Company replied to him that his posting to the south factory as senior assistant factory officer was not a demotion, repeating once more that he would enjoy the same terms and conditions as in his present appointment. This letter also informed him that the decision could not be revoked and that unless he complied with the transfer order the Company would be compelled to take disciplinary action which may even amount to a termination of his services. The employee was given ten days' time for compliance with the transfer order. On 15th October 1967 the employee replied stating once more his unwillingness to accept the post in the south factory "since I am forced to believe that this is a demotion." He stated reasons for this belief and pointed out the difference in acreage covered by the factories and complained again that at this juncture when he could be made a head factory officer since he had successfully acted in that capacity in the other factory, he could not be asked to go on transfer to a place lower in every respect than the one he then held. He repeated his request for a promotion to the vacant post of head factory officer and expressed his willingness, if this was not possible, to go on transfer or promotion to another estate of the Company.

Thereafter the employee took up the matter with his Union who on 16th October 1967 addressed to the management letter R9 stating that the employee was entitled to be considered for promotion to the vacant post of head factory officer and that a transfer at that stage appeared calculated to deny or damage his prospects of promotion. The Union took up the position that such an action was contrary to clause 6 of the Collective Agreement relating to terms and conditions of employment of the technical staff of Tea and Rubber Estates, entered into between the Ceylon Estates Employers' Federation and the Ceylon Estates Staffs' Union.

The management replied stating that it had no intention of withdrawing its decision to transfer, and on 15th October 1967 by its letter R12 terminated the employee's services with immediate effect on the ground that he had failed, in spite of repeated instructions in writing, to take up duties in the south factory as senior assistant factory officer.

The Collective Agreement referred to has been marked R12 and is one entered into on 23rd April 1965. This agreement provides by clause 4 that the assignment of staff into grades is to be in accordance with a grading table set out in Schedule A. It goes on to provide that those in

service prior to the date of the agreement " shall not be reduced in grade." The grading table shows that the technical staff are classified into grades ranging from special A to grade 12. It contains a salary scale set out against each grade and also relates the grades to the acreage of the estate. A tea estate with an acreage between 1,126 and 1,200 corresponds in grading to grade 5 while an estate between 826 and 900 acres would correspond to grade 9.

The contention of the appellant, based on this grading table, is that having regard to the difference in acreage of the area covered by the north and the south factories respectively, the employee's transfer would have meant his reduction in grade from 5 to 9. This, it was submitted, would affect his prospects of promotion and was a reduction in rank which he described as a demotion. It was also submitted that the commissions to which he was entitled would be diminished in consequence of the transfer.

On the other hand the respondent company has submitted that this was neither a demotion nor an adverse factor in regard to future promotion, in view of its repeated assurances to the employee that his salary as well as the terms and conditions of his appointment would be the same as those in his previous post.

It was further submitted on behalf of the employee that the employer was in any event not justified in terminating the employee's services for non-compliance with the transfer order.

This appeal thus involves a consideration of two matters, namely whether the transfer was so prejudicial to the employee as to make the transfer wrongful and secondly the propriety and legality of the order of termination of services made for defying a transfer order.

The employer's right to transfer his staff within his service is too well established to need elaboration here. Both in English Common Law [1] and more specifically in relation to industrial disputes in India [2] and Ceylon [3] that right has received firm recognition.

As this Court observed in *Manager, Nakiaddeniya Group v. The Lanka Estate Workers' Union,* [4] " to grant the demand that the management of the estate cannot transfer a Kangany from his division in such circumstances is to interfere with the discretion of the management as to where in the interest of the estate—and it may be of the man himself—the workman should be best employed. Such interference

[1] See *Bouzourou v. Ottoman Bank*, (1930) A. C. 271.
[2] *Bareilly Electricity Supply Co. Ltd. v. Sirajjuddin & Others* (1960) 1 L. L. J. 556.
[3] *Manager, Nakiadeniya Group v. Lanka State Workers' Union* (1969) 77 C. L. W. 52.
[4] (1969) 77 C. L. W. 52.

in the management of estates is not in the best interests of their productivity and therefore not in the interest of the country. In the making of a just and equitable order one must consider not only the interest of the employees but also the interest of the employers and the wider interest of the country, for the object of social legislation is to have not only contented employees but also contented employers."

The Supreme Court of India has been careful to stress that an order by which an employee was transferred from one department of a company to another is a matter of internal arrangement and that Industrial Tribunals should be very careful before they interfere with such orders made in the discharge of the management's functions [1]. Liability to be transferred from one establishment to another at a different place by the employer or at his instance is a normal incident of service, that is to say, it is an implied condition of service [2].

So also the Labour Appellate Tribunal of India has observed that a number of decisions of that Tribunal had laid down that it was an undoubted right of the management to transfer an employee for the purpose of business, a proposition which it treated as established law [3]. It has been held further by the Tribunal that unless the terms of the employment provide otherwise the Company has the right to transfer and it is for the employee to show that there has been a contracting out of this position [4]. Again, a bench of four judges of the Supreme Court of India, while observing that Industrial Tribunals should interfere if a transfer order is made mala fide or for the ulterior purpose of punishing an employee for his trade union activities, has stressed that a finding of mala fides should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding [5].

Since then the legal position is clear that the employer is ordinarily entitled to the right to transfer, we must see whether the special circumstances of this case bring it within any of the acknowledged limitations of that principle. Limitations having a bearing on the present case are the limitations that the employee cannot be made to suffer financially, that the transfer should be bona fide and in the interests of the business, and that it should involve no reduction in rank.

Mala fides has not been proved in this case and it would suffice to examine whether the facts bring this case within either of the other limitations referred to.

1. *Bareilly Electricity Supply Co. Ltd. v. Sirajjuddin and others* (1960) 1 L. L. J. 556.
2. *Workmen of Philips (India) Ltd. v. Philips (India) Ltd.* (1960) 2 L. L. J. 125.
3. *British India Corporation Ltd.* (1956) 1 L. L. J. 591.
4. Ibid.
5. *Syndicate Bank Ltd. v. Its Workmen* (1966) 1 L. L. J 440.

It has been urged on behalf of the appellant that the transfer to the smaller factory would entail a reduction in commissions. It would appear however that there has been a total failure on the part of the employee to place before the Tribunal any material on which it can be concluded that commissions would decline if the transfer was accepted. The only evidence placed before the Tribunal has been that the commissions in the north factory would be Rs. 240, and it has not even been stated whether this sum of Rs. 240 is a monthly, quarterly or an annual sum. Further, no evidence has been placed before the Tribunal indicating in what manner or to what extent this commission would be reduced in the event of a transfer to the south factory. Mr. Burton, the Manager of the Company, has in cross-examination admitted that the commissions would be reduced. I am unable to say that such a reduction is anything more than nominal. In the absence of more specific evidence of the extent of the reduction, the burden of furnishing proof, even of approximate figures, lay upon the applicant. The only figures we have are that 30,000 lbs. of leaf from the south division are handled by the north division factory and that the south division factory handled 88,000 lbs, but these figures by themselves, though they may indicate a greater capacity of production in the north factory, afford us no basis for calculation of the reduced commission in the south factory. There has been no evidence placed before the Tribunal in regard to the manner in which commission is related to the quantity of leaf handled, nor is any figure by way of percentage or otherwise indicated which may serve as a basis for calculation. It is significant also that the employee was cross-examined on the basis that in any event he would be entitled only to a limited amount of commission. After he answered this question in the affirmative, it was put to him that on this basis, by his going to Meddecombra South his commission would not have declined at all, but to that question he has given no answer.

In the result there is no material placed before the Tribunal by the applicant to support his submission that his emoluments would be affected to an extent rendering justifiable his refusal to accept a transfer.

It is urged, again, that in any event his position would be adversely affected by this transfer in so far as it concerns his prospects for promotion, as the fact of his "down-grading" from grade 5 to grade 9 would be a factor operating against him. As against such an adverse comment, it may well be urged on the other hand, in the particular circumstances of this case, that the management had gone out of its way to stress repeatedly that the salary and other advantages of his earlier appointment were being expressly preserved.

It was mentioned at the argument of this appeal as being a factor to which attention should be paid, that Clause 6 of the Collective Agreement makes express provision regarding promotions. Clause 6 provides that

wherever possible and subject, in all cases, to the suitability of the employee, vacancies in higher grades shall be filled by promotion from the lower grades.

I am of the view that Clause 6 has no bearing on the issues to be decided, as we are not here threatened with any violation of the principle of promotion from lower grades to higher grades. The only question is whether since the applicant has been transferred to what is described as a lower grade, his prospects of promotion to the higher grade will be adversely affected, but as I have already said the management made it perfectly plain that the employee's position remains unaffected by the transfer.

The submission of the appellant that there has been a "down-grading", being based upon the grading table in schedule A of the Collective Agreement, calls for a close examination of the implications of this scheme of grading.

The President of the Tribunal has taken the view that this grading table only specifies the minimum salary that is to be paid to a person in estates of the respective acreages therein specified, and that there is nothing to prevent a person working on any one of those estates from receiving a higher salary scale than would appear in the grading table. In other words the mere fact that a person is attached to an estate of a particular acreage does not necessarily mean that he falls into the salary scale shown against the acreage or into the corresponding grade. Consequently a person may, while upon an estate of lower acreage, draw a salary appropriate to an estate of higher acreage, and in such a case his salary scale would be the salary scale corresponding to the larger estate and he would be graded accordingly. It follows from this view that if a person is transferred to a smaller estate but his salary and other terms and conditions are expressly stated to be the same as those he enjoyed on the larger estate, then the grading he now enjoys would remain unaffected.

In this view of the matter, and upon a consideration of the circumstances of the particular case before him, the President has concluded that the transfer in question did not adversely affect the position of the applicant.

This view of the nature of the grading table would appear to be more practical and more consonant with realities than the view contended for by the appellant that reduction in grade automatically results when a person moves to an estate of smaller acreage, even though his salary and other terms and conditions of service are left unaffected. Such a view would mean that an employer would not even for special reasons be able to transfer an experienced officer from a larger estate to a somewhat smaller estate while preserving his emoluments unaffected. One can

well visualise a number of situations in which such a course is rendered necessary. For example a factory of a smaller estate may have on it elaborate machinery or conversely machinery in a greater state of disrepair than the machinery on a factory serving a larger acreage. It may well be that in view of the special condition of the machinery on the smaller estate the management of a group of estates may desire to post to that smaller factory its most experienced technical officer. There may again be particular conditions on a smaller estate that necessitate very special skill in the manufacture of tea. I do not think that an employer in such special circumstances would be precluded from shifting to such a factory the best skill available to him, even though it so happens that his most experienced officer happens to be already in a factory serving a larger area.

Again, the management of a group of estates may, having regard to the necessity for deployment of available personnel to the best advantage of the concern, need to move an employee from one estate to another. It would not always be possible in the event of transfers—and indeed such a possibility is most unlikely—to find estates of such similar acreages that the employees transferred fit in at the same point in the grading table. Suppose, for example, the management has three estates ranging from 700 to 1,000 acres. The grades involved would range from 4 to 2. It may be inevitable in such a case that some of the transfers should operate in such a manner as to cause persons from larger estates to move to smaller estates and vice versa. When an employee is transferred to such smaller estate, so long as his emoluments, salary and other conditions of service are expressly left unaffected, it can scarcely be said that a violation of the grading table inevitably results. To take such a view would be to render unworkable the proper management of companies owning or managing more than one estate, for, considering the improbability of all its estates being of the same grading, it would then be well nigh impossible to effect any transfers at all.

I would however at the same time wish to stress that the mere fact of such an assurance by the management does not of itself suffice to regularise all transfers to estates of lower acreage, for much would depend on the circumstances of each particular case. One important factor would be whether the difference in area between the estates in question is so great as to render the difference in grading too pronounced to be negatived by any assurance of the management that the employee's position was left unaffected. Each case would be one for decision by the Tribunal concerned in the light of its own particular circumstances and in the exercise of the Tribunal's discretion; and no general rule can be formulated.

Having regard to the fact that the Tribunal, being possessed of all the particular circumstances peculiar to this case, has not seen the transfer as producing any adverse effect on the employee, I see no sufficiently compelling reason to interfere with that view.

I now pass on to another argument urged in appeal, based on Clause 16 of the Collective Agreement. This clause provides that in any case in which an employee to whom the Collective Agreement applies is not satisfied with the application to him by his employer of the conditions of service contained in the Collective Agreement, if such case is not settled in 6 weeks by negotiation between the parties concerned, it may be taken up by the Union with the Commissioner of Labour for settlement under the provisions of the Industrial Disputes Act.

It is submitted on behalf of the appellant that the employer could not take unilateral action by terminating the services of the employee before the period of negotiation therein contemplated had elapsed. It is submitted further that there was a genuine and real dispute as to whether there was or was not a demotion and that even if the transfer was right legally and fairly, the order of dismissal was unfair and uncalled for having regard to Clause 16.

I must observe however that no mention of this matter appears in the application to the Tribunal, and no argument was addressed to the Tribunal based on Clause 16. No correspondence has been marked indicating any reference to Clause 16 or any position arising from it, nor was a single question put to Mr. Burton upon this matter although he was subjected to a lengthy cross-examination. Had it been put to Mr. Burton in cross-examination that the management was guilty of a violation of Clause 16, there may well have emerged some additional material indicative of the management's position on this matter. Moreover this is not a point that has even been taken in the petition of appeal; and in the light of all these circumstances I do not think an argument based on Clause 16 is available to the applicant at the stage of argument in appeal.

I would wish however to observe that over and over again in this case the employer has asked the employee to take up his position as factory officer on the same terms and conditions as before, and has been met over and over again by a categorical refusal to obey these orders. By R4 of 2nd October the employee states that he had already informed the management in writing of his refusal to accept the transfer. By R5 of 5th October the employer wanted to know whether or not the employee was taking up the position as instructed. By R6 the employee again repeated that he was unable to accept the transfer. The management reassured him by R7 that the transfer was not a demotion. By R8 the employee, repeating that it was a demotion, refused to accept the transfer. After the correspondence addressed to the management by the Union

and the Management's reply thereto, the employee again requested the management by R11 to reconsider the matter stating once more that he was unable to accept the transfer, and it was in those circumstances that the management by R12 informed him on 15th November that in view of his failure in spite of repeated instructions in writing to take up duties as instructed, his services were terminated.

No doubt the employee was entitled to contest the right of the management to make this transfer and the employee was entitled to take the necessary steps towards bringing this dispute to adjudication in the manner provided by law. The employee was not entitled however to set the employer at defiance by flatly refusing to carry out orders.

There is of course no general principle that an employee is in all cases bound to accept such a transfer order under protest, for there may be cases where the mala fides prompting such an order is so self-evident or the circumstances of the transfer so humiliating that the employee may well refuse to act upon it even under protest. In the present case however I do not think the orders were of such a nature that it can fairly be said that the employee was entitled flatly to refuse to obey them even under protest. If his grievances were heard before the proper Tribunal and he succeeded eventually, he would have had his position restored together with all benefits that he might have lost in the interim. This is a case, moreover, where the right to transfer has been conceded as a right inherent in the employer, for the submissions of the employee before the President quite frankly admit that "the management no doubt has the legal right to transfer its employees from post to post or from estate to estate within the same management." The only grounds on which the transfer in this case has been resisted namely that the exercise of the power was not bona fide and that it should not in any event harm the employee, have not, as already observed, been proved. One can well visualise the enormous practical difficulties and the indiscipline that would result from the view that pending any dispute as to transfer the employee can refuse to act in the position to which he has been transferred.

I have not been referred to any dicta or judgments of this Court relating to the result of the disobedience to a transfer order. There would appear however to be Indian authority to the effect that disobedience to a transfer order can amount to misconduct justifying termination. In *Workmen of Phillips (India) Ltd. v. Phillips (India) Limited*[1] where a workman refused to accept a transfer order it was held by the Labour court of Madras that it could not be contended that the order of termination for disobeying the order of transfer was bad and inoperative on the ground that it was passed without holding any domestic inquiry after the receipt of the explanation from the employee concerned. In cases where it is not the employee's position that there was no such refusal on his part, but he only challenges the legality of the order of

[1] *(1960) 2 Labour Law Journal, pp. 135–6.*

transfer which he has admittedly disobeyed, it was held to be unnecessary to hold a further inquiry on this matter. By way of analogy with the public service, reference may also be made to *Gulam Haqquani Khan v. State of Uttar Pradesh*[1] where it was held,[2] regarding a public officer, that "even assuming that the transfer was invalid the petitioner was bound to have obeyed it. He could have filed an appeal or representation but he could not have refused to carry it out."

I have already observed however that this is a matter which this court does not in the present case have to examine in detail. Moreover the Tribunal in this case has taken the view that the transfer was lawful and bona fide and that the applicant has categorically refused to accept the transfer having said so in no uncertain terms in the several letters that he has written to the management. In this view of the matter the President has held that the termination was for just cause. There is here a finding of fact with which this court will not interfere except in the most special circumstances and an appreciation of the legal position regarding the right to transfer which cannot be said to involve an incorrect appreciation of the relevant rules of law.

In these circumstances I am not inclined to uphold the submission that the Tribunal has in any way erred in arriving at its finding that the termination was lawfully made and for just cause.

For the reasons I have set out I consider that no sufficient ground has been made out for any interference with the order of the President, and I dismiss this appeal with costs.

Appeal dismissed.

[1] (*1958*) *2 Labour Law Journal, p. 673.*
[2] *ibid. At p. 676.*