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HIGH COURT REAFFIRMS EMPLOYER'S PREROGATIVE ON TRANSFER ORDERS IN STATUTORY BODIES

by Shariffullah Majeed & Nurul Aisyah Hassan

*Nor Azlinda Mohd Abdullah v Jawatankuasa Tatatertib
Kumpulan Bukan Eksekutif Tabung Haji, Jawatankuasa
Rayuan Tatatertib Kumpulan Bukan Eksekutif Tabung Haji
& Lembaga Tabung Haji*
(Kuala Lumpur Judicial Review Application No. WA-25-
351-10/2023)

The High Court, on 16th January 2026, dismissed a judicial review application by an employee challenging her dismissal from a statutory body on the grounds of insubordination and absence without leave after 20 years of service. In declining to intervene, the Court emphasised the limited supervisory role of judicial review and reiterated that courts will not substitute their views for those of the disciplinary authority in the absence of any illegality, irrationality, or procedural impropriety that would materially affect the validity of the decision.

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Background Facts

The employee was employed by Lembaga Tabung Haji (“TH”) pursuant to a contract of employment which expressly conferred on the employer the right to transfer her to any posting as determined by operational requirements. In consideration of a finding of guilt in separate disciplinary proceedings on the part of the employee in breaching TH’s procedures in handling depositors’ monies at one of its branches, TH issued a Transfer Order directing the employee to report for duty at its Headquarters. At the employee’s persistent requests, TH exercised discretion and postponed the reporting date on two occasions. The first postponement was from 25 January 2023 to 7 February 2023, and subsequently to 13 February 2023, to allow the employee additional time to make the necessary arrangements and preparations to report for duty. Throughout this period, the employee continued to seek reconsideration of the transfer, citing family obligations, rather than complying with the instruction to report for duty, thus displaying no intention to report for duty in the first place.

Notwithstanding these accommodations, the employee failed to report for duty on 13 and 14 February 2023. No prior leave application was made, nor was any supporting documentation produced to justify her absence on those dates. While medical certificates were subsequently furnished, these only covered periods commencing after 14 February 2023 and did not account for the material dates. Following her failure to report for duty as instructed, the employee was directed to provide her written representation to defend herself against the charges of insubordination and absence without leave, in line with the governing disciplinary regulations¹.

The TH Disciplinary Committee subsequently convened and upon deliberating on the employee’s representation against the two charges, it ultimately decided that only the punishment of dismissal was appropriate. Upon the employee’s appeal, the TH Disciplinary Appeal Committee reviewed the disciplinary record, the Disciplinary Committee’s grounds of decision, and the mitigation advanced, and upheld the punishment of dismissal as decided by the Disciplinary Committee.

Transfer Orders in Statutory Bodies

Against this factual backdrop, the Court assessed the decisions of the Disciplinary Committee and Disciplinary Appeal Committee and held that it is well established that the transfer of an employee from one department or station to another is a prerogative of the employer, and that courts will ordinarily be slow to interfere. In the context of statutory bodies which are also government-linked investment organisations such as TH and in public service, this principle is even more firmly entrenched. The courts have also affirmed that, save in exceptional circumstances, every civil servant is liable to be transferred, and that it is for the Government or statutory authority to decide whether a transfer is required in the public interest, having regard to its broader duties. Judicial interference in such matters may, in certain instances, amount to an unjustifiable usurpation of executive discretion².

[1] Tabung Haji Disciplinary Regulations 2010

[2] See: *Haslina Md Ahir v Jawatankuasa Tatatertib Majlis Daerah Pendang Kedah Darul Aman & Anor* [2018] 1 LNS 1877

The duty of an employee to obey a lawful transfer order is equally trite. The courts have also consistently held that even if a transfer is perceived to be unreasonable, so long as it is lawful and within the scope of employment, the employee is duty-bound to comply³. It is also pertinent to note that the employee had previously committed a misconduct involving the mishandling of depositors' monies. In that context, the decision to transfer her to a department that did not involve handling such funds was consistent with legitimate operational considerations and could not be characterised as punitive or tainted with bad faith. Notably, the employee herself acknowledged in her affidavit that TH had the right to transfer her, albeit while alleging improper motive, which the Court found to be unsupported by the evidence.

In dismissing the application, the High Court concluded that the employee's dismissal was neither tainted by irrationality nor procedural impropriety. Disciplinary authorities in statutory bodies are best placed to assess the seriousness of misconduct and determine the appropriate sanction, and that long service does not immunise an employee from dismissal for serious breaches of discipline. The decision serves as a clear reminder that within government and statutory service, compliance with lawful transfer orders which serve to advance the organisation's functions and sanctity is fundamental, and that challenges to such instructions cannot be used to justify an outright defiance.

The statutory body was represented by Partners Shariffullah Majeed and Nurul Aisyah Hassan, of Lee Hishammuddin Allen & Gledhill.

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[3] See: *Nor'isham Manap v Lembaga Tatatertib Perkhidmatan Awam & 2 Ors* [2015] 1 LNS 1408