
(2013) 01 PAT CK 0084
In the Patna High Court
Case No : CWJC No. 22441 of 2012

Anirudh Akhauri

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Banking Regulation Act, 1949 — Section 36AD

Citation : (2013) 3 PLJR 152

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Binod Kumar Kanth and A. Srivastava, for the Appellant; Tarakant Jha, R. Ahasan, S.D. Sanjay, A. Chaturvedi and Anil Kumar, for the Respondent

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for the following reliefs:-- (i) Issuance of a direction, order or writ including writ in the nature of certiorari quashing the order dated 30.11.2012 issued by the Deputy General Manager & Circle Development Officer, Human Resources Department of State Bank of India at its Local Head Office in Patna, by which the petitioner has been transferred to the North Eastern Circle of the Bank in the most arbitrary and illegal manner without assigning any reasons for issuing the said order of transfer of the petitioner much less indicating the administrative exigency warranting issuance of the said transfer order notwithstanding the fact that vide an office order dated 29.10.2012 issued by the Bank the petitioner had recently been transferred as AGM(OSD), stationed at SBLC, Purnea;

(ii) Issuance of a direction, order or writ including writ in the nature of mandamus commanding the concerned respondent authorities under the Bank to refrain from giving effect to the directions contained under the aforesaid letter dated 30.11.2012, by which the petitioner has been transferred to the North Eastern Circle of the Bank in the most arbitrary and illegal manner;

(iii) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

Learned counsel for the petitioner stated that he initially joined in the service of the State Bank of India (hereinafter referred to as "the Bank" for the sake of brevity) as Probationary Officer on 16.10.1979 and was confirmed as Junior Management Grade (J.M.G.) Scale-I on 16.10.1981 and subsequently on the basis of his performance in service he was granted promotions to the higher scale from time to time and as such was promoted to the Senior Management Grade (S.M.G.) Scale-V with effect from 1.11.1999 in the Bank. 2. Learned counsel for the petitioner averred that he is an active member of the State Bank of India Officers' Association, which is the only recognized Officers' Association within the State of Bihar and Jharkhand and from time to time he held important offices of the said Association making considerable contribution towards the welfare and interest of the officers of the Bank. During 2006-2009, he was the elected President of the Central Committee of State Bank of India Officers' Association (Patna Circle) and subsequently during 2009-2012 he was the elected General Secretary of the said Committee. However, during the said period he was elected as President of All India State Bank Officers' Federation on 28.5.2012.

3. Learned counsel for the petitioner claimed that the views of the Chairman of the Bank were published in different newspapers with respect to keeping the branches of the Bank open on all the seven days in a week, whereafter the All India State Bank Officers' Federation decided to stage a protest on 28.8.2012 against the said views and in their meeting, the petitioner in the capacity of General Secretary of State Bank of India Officers' Association (Patna Circle) addressed the officers of the Bank at the local Head Office of the Bank in Patna protesting against the said decision of the Chairman of the Bank, which was contrary to the demand of All India State Bank Officers' Federation of five days' Banking. The said act of the petitioner was not in his personal capacity of an Officer of the Bank, rather it was in the capacity of the General Secretary of State Bank of India Officers' Association.

4. Learned counsel for the petitioner submitted that on 30.8.2012, the Deputy General Manager of the Bank sent a letter addressed to the General Secretary of the Association, calling upon him to desist from such behaviour and not to repeat it in future. Thereafter, another letter dated 22.9.2012 was sent by the said authority stating that since no response was sent by the petitioner to the earlier letter dated 30.8.2012, it was held that the petitioner's action in holding demonstration within the Bank's premises and shouting slogans, apart from disturbing the peace within the Bank premises and causing hindrance in Bank's working also lowered the image of the Bank in the eyes of public, which amounted to violation of the provisions of Section 36AD of the Banking Regulation Act, 1949 and, accordingly, the Bank might be constrained to take appropriate-action as required.

5. Learned counsel for the petitioner asserted that on 27.9.2012, article of charges was prepared against the petitioner and charge-sheets against 28

persons, namely, President and General Secretary of all the 14 Circles were issued, but vide letter dated 5.10.2012 charge against one of them, namely, Samir Kumar Mukherjee was withdrawn only because he was promoted to Scale IV. However the petitioner sent an elaborate reply to the charges on 12.10.2012.

6. Learned counsel for the petitioner further stated that he was transferred from Patna to Purnea on 29.10.2012. The said order was served on the petitioner on 8.11.2012 and he was relieved on 10.11.2012 from Patna for Purnea, whereafter 11.11.2012 being Sunday, 12.11.2012, being journey day and 13.11.2012 being Deepawali holiday, the petitioner could not join at Purnea and from 14.11.2012 to 1.12.2012 he was on leave duly sanctioned by the authority for the marriage of his daughter, whereafter 2.12.2012 was Sunday and hence the petitioner was to join at Purnea on 3.12.2012, but during his legitimate leave on 30.11.2012 three officers came to the petitioner's house to serve order dated 30.11.2012 of the concerned authority transferring him to Guwahati and directing him to be relieved on 1.12.2012 and informing that no leave would be granted to him. This order is under challenge in the instant writ petition.

7. Learned counsel for the petitioner argued that the impugned order of the authority concerned is against the specific transfer policy of the Bank itself as within a period of about a month, he had been transferred twice; once from Patna to Purnea and then from Purnea to Guwahati and furthermore when the proceeding against the petitioner was pending, he was not to be sent to any far off place.

8. Learned counsel for the petitioner also argued that demonstration was held on 28.8.2012 during lunch period only in the local Head Office of the Bank, where merely administrative works were performed and it did not have any Banking transaction and there was no public dealing at that place, hence there was no question of any disruption of public work or lowering of image of the Bank in the eyes of public.

9. On the other hand, learned counsel for the respondents stated that the petitioner had remained at Patna for 33 years, whereafter on 29.10.2012 he had been transferred from Patna to Purnea as A.G.M. (O.S.D.) stationed at State Bank Learning Centre, Purnea, which is a Grade-IV post, but the petitioner was in Grade-V and there was no post of Grade-V at Purnea, hence the authorities corrected themselves and issued order dated 30.11.2012 transferring the petitioner to Guwahati, where Class-V post was existing.

10. Learned counsel for the respondents submitted that according to State Bank of India Officers' Services Rule, Chapter-X, Rule 47, such officers can be transferred to any place in India and vide impugned order dated 29.10.2012 the competent authority, namely, the Chief General Manager(Human Resources) (State Bank of India) wrote to the local Head Office at Patna to transfer 11 SMGS-IV and 3 SMGS-V Officers including the petitioner to North Eastern Circle, where there was shortage of such officers. Hence the Rules being present, the

authorities having power and the petitioner having remained in Patna Circle for 33 years, it was right time for transfer of the petitioner. In this connection, he relied upon a decision of the Apex Court in case of Registrar General, High Court of Judicature at The Registrar General High Court of Judicature at Madras Vs. R. Perachi and Others, .

11. Learned counsel for the respondents averred that neither there was any Rule nor there was any policy that an officer cannot be transferred within the last two years of his service or any charge-sheeted officer cannot be transferred. In this connection, he referred to the Vigilance Manual, Chapter-XI: 2(K).

12. Learned counsel for the respondents argued that transfer in question was purely administrative transfer of 15 officers from Patna Circle to North Eastern Circle and they were out of 44 persons transferred by the higher authorities of the Bank on all India basis, hence the petitioner must be asked to come and join at Guwahati and at no other place, specially when there was no violation of any Rule or policy. In this connection, learned counsel for the respondents relied upon four decisions of the Apex Court in case of National Hydroelectric Power Corporation Ltd. Vs. Shri Bhagwan and others, , in case of State of U.P. and Others Vs. Gobardhan Lal, , in case of Union of India (UOI) and Others Vs. Muralidhara Menon and Another, and in case of Mohd. Masood Ahmad Vs. State of U.P. and Others, .

13. Considering the averments made by learned counsel for the parties and the materials on record, it is quite apparent that the facts regarding appointment, promotion and posting of the petitioner as well as his being an office bearer of the State Bank of India Officers' Association are not denied. The dispute had arisen only due to the protest staged by the All India State Bank Officers' Federation on 28.8.2012, in which the petitioner had actively participated.

14. It is also admitted that an explanation was called for by the authorities from the petitioner and article of charges was prepared on 27.9.2012 and charge-sheets against the petitioner and others were issued on the same day, to which the petitioner sent his elaborate reply on 12.10.2012 as a proceeding had been initiated against him. It is further not in dispute that the order of petitioner's transfer from Patna to Purnea was issued on 29.10.2012, which was served upon him on 8.11.2012 and he was relieved on 10.11.2012 from Patna for Purnea, but 11.11.2012 being Sunday, 12.11.2012 being journey day and 13.11.2012 being Deepawali holiday, the petitioner had to join at Purnea on 14.11.2012, but since he was on leave from 14.11.2012 to 1.12.2012, which was duly sanctioned by the authorities for the marriage of his daughter, hence the petitioner was to join at Purnea on 3.12.2012, as its preceding day i.e. 2.12.2012 was Sunday. But in the meantime, an order was served upon the petitioner at his house on 30.11.2012, by which he was transferred from Purnea to Gauhati directing him to be relieved on 1.12.2012, with a rider that no leave would be granted to him. This order is under challenge in this writ petition.

15. The claim of the petitioner is four fold; firstly that he was transferred twice within a period of 31 days; secondly that he was transferred to another Circle although a proceeding at that time was pending against him in Patna Circle; thirdly that he was transferred as punishment due to mala fide of the respondents even before the completion of the proceeding and fourthly that the allegation levelled against the petitioner was absolutely frivolous and misconceived on the face of it.

16. So far the first point raised by learned counsel for the petitioner is concerned, his transfer vide order dated 29.10.2012 passed by the local Head Office at Patna Circle was from Patna to Purnea i.e. within Patna Circle, where he had remained for 33 years, whereas, his subsequent transfer vide order dated 30.11.2012 was passed from the Central Office of the Bank communicated by the Human Resources Department and it was for his transfer to another Circle, namely, North Eastern Circle at Gauhati. In the said circumstances, merely on the ground that he was transferred from one place to another within a period of 31 days, such transfer cannot be held to be bad or illegal, specially when the petitioner has failed to produce any provision of law to the contrary.

17. So far the second point raised by learned counsel for the petitioner is concerned, he has failed to show any difficulty in attending to the proceeding at Patna while posted in North Eastern Circle, specially when the Management of the Bank will have to take care of his traveling and leave for the said purpose. In this regard also, no provision of law has been cited, which provided that an employee has to remain at the same place, where the proceeding had been initiated. Hence this point raised by learned counsel for the petitioner also fails.

18. So far the third point raised by learned counsel for the petitioner is concerned, from a bare perusal of the impugned order, it is quite apparent that the petitioner had not been transferred from Purnea (Patna Circle) to Gauhati (North Eastern Circle) by way of punishment as alongwith him several persons had also been transferred to Gauhati (North Eastern Circle), where there was dearth of Officers of Senior Management Grade Scale-V. Furthermore, admittedly, there being no vacant post of Senior Management Grade Scale-V working at Purnea, there was no occasion for the authorities to allow the petitioner to continue at Purnea. There may be some minor irregularities in passing the order of transfer and sending it to the petitioner while he was on sanctioned leave, but that would not affect the order of transfer, which appears to be necessary at the relevant stage.

19. So far the fourth point raised by learned counsel for the petitioner is concerned, he has relied upon two decisions i.e. in case of The Management of the Syndicate Bank Ltd. Vs. The Workmen, as well as in case of P. Pushpakaran Vs. Coir Board and Another, . In the first decision, it has been held by the Apex Court that the Management of the Bank is in the best position to judge how to distribute its employees between different Branches and hence the Tribunals/Courts should be very careful in interfering with such managerial

functions. However, only when there is some mala fide or ulterior purpose, the Tribunals/Courts may interfere. Similarly, in the second decision, the Kerala High Court had held that the right to transfer an employee is a powerful weapon in the hands of the employer, which is some time more dangerous than other punishment and hence if transfers are effected by way of punishment, they are to be quashed by the Courts.

20. In the instant case, the local authorities might have some grievances against the activities of the petitioner, but the order of transfer of the petitioner from Patna Circle to North Eastern Circle was not by the local Head Office of Patna Circle, rather it was by the Central Office of the State Bank of India and there is no material to show that the Central Office of the State Bank of India was biased or had mala fide intentions against the petitioner.

21. Learned counsel for the petitioner had also relied upon Clause 95 of Chapter 17 of the Treatise of Samaraditya Pal on Law Relating to Public Service, but the said clause does not at all help the case of the petitioner as relying upon settled principles of law it has been noted therein that there was no bar in transferring a senior employee while retaining a junior and only when other things being equal, the transfer of a senior while retaining the junior would be an unreasonable exercise of power both on account of administrative and personal logic; administrative, because the senior might already have undergone transfers and the personal, because the senior was likely to have more personal family problems than the junior. But in the instant case the petitioner had never undergone any transfer from one Circle to another earlier, rather he had remained in Patna Circle for about three decades and furthermore the petitioner had failed to show any family problems. Thus, the petitioner does not come within the exception provided therein.

22. On the other hand, the Apex Court in case of Registrar General, High Court of Judicature at Madras (supra) had held that in a matter of transfer, the scope of judicial review is limited and the High Court would not interfere with the order of transfer lightly. Similarly, the Apex Court in its three decisions i.e. in case of Mohd. Masood Ahmad (supra), in case of Union of India & Ors. vs. Muralidhara Menon and another (supra) and in case of State of U.P. & Ors. vs. Gobardhan Lai (supra), has specifically reiterated the legal position that the transfer is an incident of service and, therefore, judicial interference should be in very rare cases. This case clearly does not come within such exceptions of rare cases. Considering the aforesaid facts and circumstances of this case, this Court does not find any reason to interfere with the impugned order of the authorities concerned and, accordingly, this writ petition is dismissed, with a direction to the petitioner to immediately report to the Deputy General Manager & C.D.O., Local Head Office of North Eastern Circle of the Bank at Gauhati; if he has remained at Purnea in view of the interim order of this Court dated 6.12.2012.