

(2020) 11 DEL CK 0123

In the Delhi High Court

Case No : Civil Writ Petition No. 7927 Of 2020, Civil Miscellaneous No. 25928 Of 2020

Anju Mehra

APPELLANT

Vs

Canara Bank & Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Citation : (2020) 11 DEL CK 0123

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Kushagra Bansal, Priyam Agrawal, J.P.N. Shahi

Final Decision : Allowed

Judgement

Jyoti Singh, J

Hearing has been conducted through Video Conferencing.

1. By way of the present petition, Petitioner assails the Transfer Order communicated to the Petitioner vide email dated 21.09.2020 whereby the Petitioner has been transferred to Teela Mod, Farrukh Nagar, U.P.

2. Petitioner was appointed as a Clerk on 23.11.1989 on probation and posted to Palwal Branch, Haryana in the erstwhile Syndicate Bank which has now merged with the Respondent Bank. The erstwhile Syndicate Bank had confirmed the appointment of the Petitioner vide letter dated 22.06.1990 and transferred the Petitioner to Gurgaon Branch. Petitioner was promoted from clerical grade to Officer Cadre in JMGS-1 vide letter dated 27.08.2010 in terms of the Circular of the Bank and was posted to Delhi. Petitioner was further promoted to MMGS-II between 2014-2015 under the Merit-cum-Fast Channel Promotion Process.

3. Petitioner received a Transfer Memorandum dated 14.05.2019 posting the Petitioner to Teela Mod, Farrukh Nagar, U.P. against which he represented on 16.05.2020 to reconsider the decision in view of the guidelines of the

Government of India for transfer of persons under the disability category. There was no response to the representation and the Petitioner joined at Teela Mod. Being a person with 90% disability it was difficult for the Petitioner to drive the car and being dependent on public transport she was required to change the public transport three times in a single journey from her residence in New Delhi.

4. Petitioner filed a complaint dated 20.05.2019 before the Chief Commissioner for Persons with Disabilities and the Chief Commissioner taking cognizance of the same sent a notice dated 13.06.2019 to the Bank and finally after hearing the parties vide its order dated 27.12.2019 directed the Bank to reconsider the transfer order to a Branch nearby her residence. However, the order was not complied with.

5. In the meantime the erstwhile Syndicate Bank amalgamated with Canara Bank (Respondent No.1 herein) w.e.f from 01.04.2020. On account of the lockdown the Petitioner was exempted from physically reporting to the office. After several representations the Petitioner was deputed to work at Patparganj Branch, New Delhi but soon thereafter an email dated 21.09.2020 was received whereby the deputation was cancelled and Petitioner was asked to report to Teela Mod Branch.

6. The Transfer Order is assailed by the Petitioner on several grounds. It is first contended by Mr. Bansal learned counsel for the Petitioner that the Respondents have overlooked the directions given by the Office of Respondent No.2/DoPT vide Memorandum dated 31.03.2014. The provisions of the said OM clearly exempt persons with disability from rotational transfers. Petitioner herein is a person with 90% locomotor disability and is entitled to exemption from routine or regular transfers by virtue of the said OM. Relevant extract relied upon by the learned counsel for the Petitioner is as under :-

"H. Preference in training / Posting

As far as possible, the persons with disabilities may be exempted from the rotational transfer policy / transfer and be allowed to continue in the same job, where they would have achieved the desired performance. Further, preference in place of posting at the time of transfer / promotion may be given to the persons with disability subject to the administrative constraints. The practice of considering choice of place of posting in case of persons with disabilities may be continued. To the extent feasible, they may be retained in the same job, where their services could be optimally utilized."

7. The next contention is that the transfer of the Petitioner is also in the teeth of the provision of the Right of Persons with Disabilities Act, 2016 as well as its own Memorandum No.69/2018 dated 13.12.2018 wherein Respondent No.1 is bound to give relaxations/exemptions from undergoing transfers to rural/semi-urban areas if they are persons with disabilities over 65%.

8. Learned counsel for the Petitioner also contends that Respondent No.1 has failed to comply with the order dated 27.12.2019 passed by the Chief

Commissioner for Persons with Disabilities whereby the Commissioner has directed the erstwhile Bank/Respondent No.1 to reconsider the transfer order and to transfer the Petitioner to a Branch near her residence within 90 days from the date of the order. Reliance is also placed on the Circular of the Bank dated 16.05.2019 in respect of the postings to rural areas, semi urban branches in terms of the Promotion Policy and is argued that although the said experience is a criteria for promotion but persons with disabilities have been categorically exempted. Relevant portion of the Circular dated 16.05.2019 reads as under :-

"5. Officers who are differently abled or who are care givers of dependants with specified disability be exempted from the rural, semi-urban service in the spirit of Govt. guidelines and Transfer Policy."

9. The next contention of learned counsel for the Petitioner is that Respondent No.1 has also failed to appreciate that Petitioner is 90% disabled and is unable to drive her car and is totally dependent on public transport to reach the Bank but can only use the transport to a limited extent as changing the public transport many a times during the course of the journey is an impossible task for the Petitioner. Keeping in view the distance of the Branch at Teela Mod from her place of residence at Delhi it would be impossible for the Petitioner to travel such a distance as the same would entail changing the mode of transport at least three times during her transit from the residence to the office.

10. Reliance is placed on the judgment of the High Court of Madhya Pradesh in W.P.(C) 148/2017, titled Sudhanshu Tripathi vs. Bank of India and Ors. to argue that while transfer is an incidence of service, but the same has to be done keeping in mind the policies issued by the Government from time to time. Relevant part of the judgment relied upon reads as under:

"..No employee can dispute the aforesaid established fact that transfer is an incident of service, but the fact remains that the transfer has to be done keeping in view the various policies issued from time to time and it should not be vitiated by malafides or should not be contrary to the notification issued by the Government of India or by other authorities."

11. Reply has been filed on behalf of Respondent No.1/Canara Bank. It is stated in the affidavit that the Petitioner joined the erstwhile Bank as a Clerk in the year 1989 and was subsequently promoted from Scale I to II and then Scale III. Respondent Bank has always given due indulgence to the Petitioner and has been concerned about the fact that she is suffering from a disability and therefore she has been posted in Delhi (Metro branches) except for a short period from 26.06.2014 to 05.07.2014. Petitioner was deputed to the Patparganj Branch from 28.07.2020 till 21.09.2020 considering the circumstances arising due to Pandemic Covid-19.

12. It is further averred in the affidavit that as per Long Term Policy for Promotion to MMG Scale-II, MMG Scale-III and SMG Scale-IV, eligibility criteria requires the generalist Officers in MMGS-II to complete minimum one term i.e.

three years in their total service in rural/semi-urban areas for promotion to the next higher scale. Petitioner has thus been posted to complete the mandatory service for promotion and that too at a Branch which is near her residence.

13. Learned counsel for the Respondent has vehemently contested the present petition on the ground that the Petitioner has made a false averment that she is staying at Delhi whereas the place of her residence is C-84, Ramprastha Colony, District Ghaziabad. The present branch where she has been posted is about 10 km away and the Petitioner can have no grievance in joining her duties in the said Branch.

14. Learned counsel for the Petitioner in rejoinder rebuts the submissions made by counsel for the Respondent. He contends that it is the Bank which is misrepresenting before the Court that the Petitioner is residing at Ghaziabad and reiterates that the Petitioner is residing at Delhi. Attention of the Court is drawn to various documents filed by the Petitioner along with the rejoinder in proof of her residence at Delhi.

15. With regard to the argument of the Respondent that the posting has been done keeping in mind the Promotion Policy so that the Petitioner has the requisite experience in the rural/semi-urban areas, it is argued that under the Memorandum dated 13.12.2018 there is a clear exemption granted to persons suffering from disability over 65%.

16. I have heard the learned counsel for the parties.

17. I find force in the contention of the Petitioner that in terms of the O.M. dated 31.03.2014, there is a clear directive that employees with disabilities must be exempted from routine/rotational transfers. Relevant part of the O.M. has been extracted in the earlier part of the judgment. A Division Bench of this Court in V.K. Bhasin vs. State Bank of Patiala & Ors., LPA No.74/2005 while dealing with a transfer order of the Petitioner therein who had 40% disability observed that persons with disabilities face discrimination and various barriers. To set right this position, the Economic & Social Commission for Asian & Pacific Region in its meeting in December, 1992 launched the Asian & Pacific Decade of Disabled Persons and a Proclamation on the Full Participation and Equality of People with Disabilities was adopted. India was signatory to the Proclamation and this gave birth to the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 Disabilities Act, 1995. The Court while culling out the Statement of Objects and Reasons of the enactment, observed that despite the legislation endeavors have been made by department to frustrate the provisions. The Court placed reliance on the Circular of the Bank therein, particularly a Circular dated 15.02.1988 and observed as follows :-

"17. A reading of the aforesaid circular dated 15.02.1988 would show that even prior to the said Act coming into force, the issue of posting / transfer of physically challenged employees in public sector banks / financial institutions (the respondent Bank being one such) was dealt with by the Ministry of Finance.

In terms of the circular, every endeavour has to be made so far as possible to allot persons with disability to branches located in or near their home town or village. Not only this, such persons are exempted from routine periodic transfers except on account of administrative exigencies. The circular further goes on to record that such person should not normally be transferred even on promotion, if a vacancy exists in the same branch office and town / city, but in case of such promotion, if the transfer is inevitable, the person is to be kept nearest to his / her original place of posting. Of course, in case of disciplinary action, the position would be different. Such a circular itself would take care of persons with disability. This circular has never been superseded.

xxxxx xxxxxx xxxxxx

24. The written synopsis also goes on to raise the issue of scope of judicial review. In matters of transfer, this Court does not sit as a court of appeal. However, where the very basis is erroneous, this Court is entitled to intervene. Totally irrelevant factors have been taken into account as stated above and the provisions of statutory enactment like the said Act, the said Rules and the Office Memorandum issued in furtherance thereof are sought to be defeated. One cannot lose sight of the fact that the legislation is in furtherance of international commitments and to give an equal treatment to persons with disability. All this has been given a go-bye while rejecting the request of the appellant and the Bank insists on implementing the erroneous decision. In such a case, this Court cannot be powerless to remedy the situation."

18. In view of the mandate of the Right of Persons with Disabilities Act, 2016 as well as the O.M. Dated 31.03.2014, this Court cannot accept the contention of the Respondent that the Petitioner has to be subjected to routine / rotational transfer.

19. The contention of the Respondent that the Petitioner resides in Ghaziabad, at the address furnished in the affidavit and thus the distance from her residence to the Branch office will be 10 km, is not substantiated. While on one hand, Petitioner has placed on record plethora of documents to show that the Petitioner continues to reside at the address in Delhi, Respondent No.1/Bank in turn despite opportunity has only made an averment to that effect in the affidavit but has been unable to place any document to that effect. In view of the documents placed on record by the Petitioner and no document rebutting the same by the Respondent, this Court is unable to agree with the contention of the Bank that the Petitioner is residing in Ghaziabad. Petitioner is thus right in her contention that it will be very difficult for her to travel from her residence at Delhi to Teela Mod Branch considering that she is 90% disabled and is dependent on public transport.

20. In so far as the contention of the Bank that the Petitioner is being posted to enable her to gain the mandatory experience of working in rural/semi urban areas, is concerned, suffice would it be to take note of the provisions of the O.M.

dated 31.12.2018, wherein it is clearly stipulated that with respect to persons with over 65% disability, there shall be an exemption from the transfer. Relevant para has been extracted above. While it is true that transfer is an incidence of service and the right of an employee to resist transfer is subservient to administrative exigencies but in my view this principle would not apply in the present case. The Petitioner is agitating her rights under a Legislation i.e. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which has been enacted in furtherance of international commitments and to ensure equal treatment to persons with disabilities, as observed by the Division Bench in V.K.Bhasin's case (supra).

21. For all the aforesaid reasons, I am of the view that there is merit in the present petition and the same deserves to be allowed. The writ petition is accordingly allowed. Transfer Order communicated to the Petitioner vide email dated 21.09.2020 is hereby quashed and set aside. Pending application stands disposed of.