

(1993) 12 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No. 33605 of 1993

A.S. Pattabhiraman

APPELLANT

Vs

State Bank of India

RESPONDENT

Date of Decision : 22-12-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 162, 226, 311
State Bank of India Officers Service Rules, 1992 — Rule 47, 7.1, 7.2

Citation : (1994) ILR (Kar) 834 : (1994) 2 KarLJ 213

Hon'ble Judges : Hanumathappa, J

Bench : Single Bench

Advocate : H. Subrahmanya Jois, for the Appellant; H.B. Datar and B.C. Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

Hanumanthappa, J.—The petitioner, who is the Deputy General Manager of State Bank of India, Local Head Office, Church Street, Bangalore-1 has filed this Writ Petition challenging his transfer by the Bank by its order dated 20.9.1993 from Bangalore to Hyderabad as Deputy General Manager (Special) attached to Inspection and Management Audit Department, Hyderabad.

2. A few facts which are necessary to dispose of this Writ Petition are as follows:-

In the month of November 1992 the petitioner was transferred to Bangalore and he reported for duty in Bangalore on 31.12.1992. His wife, Smt. Sathyavathi is also working in the same bank as the Chief Manager of Bangalore. Earlier both the petitioner and his wife were working in Bombay. From there the petitioner was transferred to Ahmedabad and his wife Smt. Sathyavathi to Bangalore. Believing that there will be no further transfer of the petitioner till the normal period of 2 to 3 years of service, he reported for duty in Bangalore. One Sri Shankaranarayan, General Manager (Operations), Local Head Office, Bangalore was inimically disposed towards the petitioner. Sri Shankaranarayan opposed posting of the petitioner to Bangalore. However, the Chairman of the Bank

posted the petitioner to Bangalore to work in the public interest. While transferring the petitioner from Ahmedabad to Bangalore, the Chairman had also taken into consideration the fact of petitioner and his wife were separated earlier by transferring them to different places and feeling that it is not just to separate them in future. As Shankaranarayan was dissatisfied with the posting of the petitioner to Bangalore, he issued a letter at Annexure-B calling upon the petitioner to give his comments as to why he was using the Maruthi van, the same was replied at Annexure-C informing that engaging the said vehicle was in the official capacity as Deputy General Manager and that to discharge the duties as per the existing instructions and practice of the Bank. Not satisfied with the reply at Annexure-C, Shankaranarayan issued another letter at Annexure-D, which was again replied by the petitioner at Annexure-E. This was followed by another letter dated 30.8.1993 issued by Sri Shankaranarayan at Annexure-F and reply of the petitioner at Annexure-G. Subsequently Sri Shankaranarayan persuaded the Chairman to transfer the petitioner. Annexure-A is the result of persuasion of Shankaranarayan.

3. According to the petitioner, petitioner's transfer from Bangalore to Hyderabad within a year, retaining other three persons viz., Govindarajan, Sadashivam and Vaidyanathan, who are also working as Deputy General Managers beyond two years is quite arbitrary, capricious and discriminatory. The bank being an instrumentality of the State is expected to work within the frame-work of the State Bank of India Act, 1955 "hereinafter referred to as the Act". Regarding the transfer, it is bound to observe the guide-lines and the Rules of the Bank in the matter of transfer. Transfer has been made for extraneous consideration and not in the bank's interest. That the competent authority has not made this transfer by using its independent discretion, but made due to the extraneous influence brought by Sri Shankaranarayan. The Chairman made this transfer without taking into consideration the harm and hardship that may be caused to the petitioner if he is transferred within nine months. The transfer is not in the public interest and not a general transfer or a scheduled one, but a premature and unscheduled one. Further, transferring the petitioner from Bangalore to Hyderabad, that too when there is no vacancy at Hyderabad is not only malafide but also penal in nature and attaches stigma. The transfer is nothing but a resultant of the voice of Sri Shankaranarayana, the General Manager (Operations). When the letters at Annexures B, D and F were properly replied by the petitioner satisfactorily, the transfer order should not have been made. The transfer is also illegal as no officer of the petitioner's scale would be posted to central office at Hyderabad. The transfer order is tainted by extraneous influence of Sri Shankaranarayan and it will also cause great hardship to him, his wife and disturbs the education of the children as the present transfer is in the middle of the year. Thus contending, he sought for the following reliefs:-

"i) Call for the records relating to the impugned order vide -Annexure-A bearing No. PER 1842 dated 20.9.1993 served on the petitioner on the 20th instant, peruse the same and declare the said order/letter as arbitrary and penal in

nature; and

ii) Grant such other reliefs to which the petitioner found entitled to in the circumstances of the case, including the award of costs of this petition, in the interest of justice, and equity."

4. On service of notice, respondents 1 and 2 filed their objections. In the objections, while denying the allegations made by the petitioner, it is further stated that the petitioner's services are governed by the SBI Officers' Service Rules. As per Rule 47 "every officer is liable for transfer to any office or any branch of the Bank or to any place or on deputation to any other organisation in India". As per Chapter III of 7.1 and 7.2, which state about the Rules of placement of officers as under: -

"7.1 The post that an officer is to occupy at any time shall be decided by the Competent Authority.

7.2. Subject to exigencies of services or availability of posts, an officer shall be placed in a post corresponding to his grade/scale. However, the mere fact that an officer belongs to a particular grade or scale shall not by itself entitle him to be posted in a post categorised as such."

The transfer of the petitioner made by the Chairman of the Bank, who is the Chief Executive of the Bank with his head office at Bombay. As per the hierarchy, the Chairman will be at the top, followed by the Chief General Manager, Deputy Managing Director and Managing Directors, then the General Manager. The General Manager (Operations) is, quite junior in the said hierarchy of officers. The General Manager - (Operations) as now said in the matter of transfer of the officers of petitioner's type has no say. The petitioner joined the Bank on 17.8.64. He was working as Deputy General Manager at Ahmedabad till December 1992, and subsequently transferred to Bangalore as Deputy General manager (Commercial Banking) at Local Head Office, Bangalore. Subsequent to his posting to Bangalore, certain allegations were received about the petitioner's irregularities at Ahmedabad and investigations are in progress. Likewise, irregularity at Bangalore are reported and the same are investigated by the Bank's Vigilance Officer at Bangalore Head Office. Before transferring the petitioner to Ahmedabad, himself and his wife Smt. Sathyavathi were working in Bombay. Smt. Sathyavathi was transferred to Bangalore in 1991 at her own request. Thus, there was no separation of petitioner and his wife Smt. Sathyavathi deliberately, but on their own request. The allegation that the transfer can be only after normal tenure and the present transfer is the resultant of malafides yielding to the request of present officer Shankaranarayan is quite incorrect. Investigation against the petitioner is going on. The post which the petitioner is holding is a sensitive one, which among others involves handling matters relating to credit portfolio aggregating to 900 crores. The responsibility of Deputy General Manager includes sanctioning/arranging sanction of loans and advances, disbursal of large credits, both fund based and non-fund based,

stipulated terms and conditions governing loans and advances, direct periodic contacts with customers, overall supervision and follow up of the credit etc. Since the position involved direct contacts with customers who borrow large amounts from the Bank, the post of Deputy General Manager (Commercial Banking) is considered sensitive, The transfer in question is not with any malafide intention or unjust or unfair. The allegation that the petitioner's transfer is made at the instance of respondent No. 2 is quite unwarranted. Further, no penal action is said to have been taken against the petitioner so far. Since his wife is also working in Bangalore, the petitioner shall also be retained in Bangalore has no substance as an employee as a matter of right cannot claim that both spouses should be stationed at one place. Always the request of such officers viz., husband and wife working at same place, Bank considers favourably and also taking into consideration the administrative exigencies. The respondent - Bank, thus contending sought for dismissal of the Writ Petition.

5. Respondent No. 2 Sri Shankaranarayan against whom allegations have been made by the petitioner that this transfer is the resultant of the influence of Sri Shankaranarayan, has filed his affidavit denying the allegations made against him. He has stated on oath that he never carried a personal vengeance against the petitioner. He has stated that he never opposed the petitioner's transfer to Bangalore from his previous place. The transfer of the officers of the cadre to which the petitioner belonged is to be made by the Chairman and in his absence by the Managing Director. The present transfer has been made by the Chairman of the Bank. He has also denied that he did not like petitioner's posting to Bangalore and that he developed enmity towards him.

6. The petitioner has filed a rejoinder on 30.9.93 stating that the bank has got 200 Deputy General Managers and not a single officer of his cadre subjected to unscheduled transfer. Three persons viz., Govindarajan, Sadashivam and Vaidhyanathan of the same cadre are in the same place for more than two years. Order of transfer does not disclose reasons. Further, the original of the same is not produced to the Court. The petitioner has not challenged the power of the Bank to transfer, but the challenge is only regarding the way in which the petitioner has been transferred, and the arbitrariness in the action of the bank in penalising the petitioner. The order of transfer is not a general one but in the middle of the year. All that Rule 47 says is that an officer is liable to be transferred to any office or any place, but it does not say that the official can be transferred at any time. The 2nd respondent viz., Shankaranarayan though, subordinate to the Chief General Manager of the Circle, he has been dealing directly in all matters. While the petitioner was at Ahmedabad, he showed tremendous growth in the business of the Bank and profits to the Bank. As such the allegation that he was responsible for certain irregularities while he was at Ahmedabad was not correct. The action of the Bank on the anonymous letters received by it has been mooted by the 2nd respondent. The order of transfer does not disclose that the same has been made in the public interest. On the other hand, in the statement of objections, it is stated that on account of alleged

irregularities and complaints, the petitioner's transfer has been made. As such the same is penal in nature. The transfer is not made by the Chairman by using his independent discretion, but he is misled by the 2nd respondent. In the year 1980, when there was bomb blast everyday, the Bank invited volunteers to work in the north-east region and no one was prepared to go and work there, then petitioner and his wife volunteered to work in the north-east region. Explanation given by the respondent - Bank regarding the tenure of stay is incorrect. The allegations made in the statement of objections about certain alleged irregularities, the same have no force and the same cannot directly be attributed to the petitioner. Regarding the so-called irregularities, investigations have been held by the Investigation Department and so far no progress in that regard. Though the transfer is purely Bank's administrative action the same shall not be non-scheduled transfer or either irrational or arbitrary. The order of transfer is not administrative in nature, but is vindictive based on the coloured version of the 2nd respondent. While transferring, the Authorities failed to take into consideration the hardship that the petitioner and other members of his family may undergo.

7. The respondents have filed their reply subsequent to the rejoinder, contending that the transfer is not one of the penalties prescribed in the Service Rules applicable to the Bank employees. His transfer is not an arbitrary one. He has been posted to Hyderabad for being assigned special duty thereat. It is incorrect to state that it is inconvenient for the Bank to keep the petitioner in the post held by him. The allegation that the Chairman is misled by the 2nd respondent is incorrect. The officers, even the top executives are liable to be transferred as per Bank Rules. Number of Deputy General Managers have been transferred even within two years period. The transfer is an administrative action and the same has been made by the competent authority and not with any malafide intention or extraneous reason.

8. To justify the stand taken in the pleadings, Counsel on both sides argued at length. Sri Subramhanya Jois, learned Counsel for the petitioner submitted as follows:-

- i) The present transfer of the petitioner made as per Annexure-A is without jurisdiction as the same is not made by the competent authority but made by the 2nd respondent, who is incompetent;
- ii) The order of transfer made by the Chairman not communicated to the petitioner;
- iii) Annexure-R-1 produced subsequently is difficult to be believed as original, but it must have been prepared subsequently just to cover up the lacuna in the case of the respondents;
- iv) Even if it is accepted that Annexure R-1 is the original one, the same cannot be termed as an order made by the Chairman, in the eye of law and, transfer is not a valid one as no reasons have been assigned as to why the petitioner has

been transferred within 9 months from Bangalore to Hyderabad;

v) Annexure R-1 is an after-thought and just to support the case of respondents.

vi) Again it is arbitrary and discriminatory and malafide one made at the instance of respondent No. 2.

9. The learned Counsel for the petitioner further submitted that the transfer order is arbitrary because neither reasons given in the order of transfer nor vacancy exists at Hyderabad. It is discriminatory because officers of his grade viz., Sadashivam, Govindarajan and Vaidhyahathan are allowed to stay in Bangalore beyond two years, but picked up the petitioner alone for transfer. It is malafide, because the same has been made at the instance of Shankaranarayan, who is the author of Annexures B, D and F. The order in question is also not just and reasonable as his wife Smt. Sathyavathi, who is working in Bangalore and his children are studying in different schools and colleges at Bangalore as such it is not proper to transfer him in the middle of the year. Though the transfer is administrative in nature, while making transfer, the same shall be made in good faith adhering to guide-lines issued in the matter of transfer. Any administrative action shall be just and fair and be adhered to the policies. Though in the order of transfer it is not said that his transfer is due to alleged irregularities or any penal action in contemplation or to punish him, but if circumstances mentioned are understood properly, the only conclusion is the same is penal in nature, and thus attacks stigma on the service conditions of the petitioner. The Authorities have failed to notice that transfers shall be in the public interest and in the normal circumstances but not by way of frequent transfers or for undisclosed reasons.

10. In support of his contention that order of transfer is not made by the competent authority but the same came into existence subsequently; the public authorities while discharging their duties must act in a just and fair manner but shall not make an attempt to improve their case by filing affidavits, the learned Counsel placed reliance on the Decision of the Supreme Court laid down in the case of Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , wherein the Supreme Court held in para 9 as follows:

"An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

11. For the proposition that any administrative order shall give reasons and the same shall not be the resultant of any arbitrariness or malafides, and there shall

not be an attempt to improve their case by filing affidavits, etc., the learned Counsel for the petitioner placed reliance on the following Authorities:-

1. A.K. Kraipak and Others Vs. Union of India (UOI) and Others, Head Note-B of the Decision reads thus:-

"(B) Constitution of India, Article 226 - Administrative or Quasi-judicial power - Matters to be considered in determining -Dividing line between two powers has become thin."

2) Union of India (UOI) Vs. K.P. Joseph and Others, of the Judgment the Supreme Court observed thus:-

"Generally speaking, an administrative order confers no justiciable right, but this rule, like all other general rules, is subject to exceptions. This court has held in Sant Ram Sharma Vs. State of Rajasthan and Another, that although Government cannot supersede statutory rules by administrative instructions, yet, if the rules framed under Article 309 of the Constitution are silent on any particular point, the Government can fill up gaps and supplement the rules and issue instructions not inconsistent with the rules already framed and these instructions will govern the conditions of service."

3) E.P. Royappa Vs. State of Tamil Nadu and Another, of the Decision reads thus:-

"The last two grounds of challenge may be taken up together for consideration. Though we have formulated the third ground of challenge as a distinct and separate ground it is really in substance and effect merely an aspect of the second ground based on violation of Articles 14 and 16, Article 16 embodies the fundamental guarantee that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Though enacted as a distinct and independent fundamental right because of its great importance as a principle ensuring equality of opportunity in public employment which is so vital to the building up of the new classless egalitarian society envisaged in the Constitution, Article 16 is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species. Article 16 gives effect to the doctrine of equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is

arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16."

4) *Shri Raghunandan Panda Vs. State of Orissa and Others*, The Supreme Court in the Head Note-A of the Decision observed as follows:-

"Generally speaking administrative order confers no justiciable right. There are however exceptions. There are administrative orders which confer rights and impose duties. The Orissa State Union Land Settlement Rules of 1959, however, confer no rights on a person whose application for grant of a nazul plot of land is disposed of fairly by the revenue authorities. No person has a vested right to get any lease of the Government land; of course, he has got a right to get his application for lease disposed of fairly and not arbitrarily. The land was reserved under Rule 4(b) for middle class people having no house site or inadequate accommodation. Whether the other party came within the category of people for whom the land was reserved was a question of fact within the domain of the administrative authorities to determine. No rule was violated if the authorities concerned took into consideration the benefit to and the needs of the public in general of getting supply of medicine at all time during day and night. Hence a writ cannot lie in such a case. AIR 1978 SC 306 Rel. on."

5. *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, In Head Note-A of the Decision, the Supreme Court held as follows:

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order made in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out Commissioner of Police, Bombay Vs. Gordhandas Bhanji, Rel. on"

6. In *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, the Supreme Court observed thus:

"F. Administrative Law - Subordinate legislation - Policy guidelines - Are binding

till altered the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it."

7. The transfer shall be in the interest of public service and it shall be made in a good faith and adherent to guidelines, but not with any malafide intention and for this proposition the learned Counsel for the petitioner, also placed reliance on the following Decisions:

(i) 1973(2) Mys L J 271 . H. Krishna and Ors v. State of Mysore and, wherein this Court at paragraphs 5 and 6 observed as follows:

"That the State Government has power to issue instructions regulating transfer of its Government servants cannot be disputed. It cannot also be disputed that the State Government can, in exercise of its executive powers under Article 162 of the Constitution, prescribe the conditions for transfer as well as the procedure for effecting such transfers. It cannot also be disputed that this Court cannot go into the question of the propriety of an order of transfer made by the State Government or its Officers in a given case. But if the State Government issues a general order as it has done in these cases laying down the conditions and the procedure for transfer of primary school teachers and a complaint is made that the action taken by the State Government amounts to hostile discrimination against the petitioners, the Court has necessarily to examine as to whether the classification made by the State Government is justified on the basis of well known principles.

6. As already mentioned, the principal contention of the petitioners is that though the Primary school teachers can be regarded as a clear and distinct class from other Government servants of the State, the classification made for the purpose of impugned order has no nexus with the object sought to be achieved by the order. Generally stated, the object of the order of transfer must be regarded as being "public interest. The petitioners have asserted that whereas there is no directive issued by the State Government that other Government servants should not be posted to their home taluks, it is only the primary school teachers that have been picked and chosen for such hostile treatment by the State and for which there is no justification whatsoever. The order itself does not give any reasons as to why this class of Government servants has been picked and chosen for imposition of a ban as contained in Clause (3) of the impugned order against the Primary School Teachers being posted in their home taluks. There is no apparent reason which can easily be discerned. The State Government which has filed its counter affidavit, though it has given the background for the passing of the impugned order, has not stated any reason as to why it became necessary to impose a ban against transfer to the home taluks only in respect of one class of Government servants viz., the Primary School teachers.

I am, therefore, clearly of the opinion that there is no nexus between the object sought to be achieved and the classification sought to be made by the impugned order,"

(ii) Seshrao Nagorao Umap Vs. State of Maharashtra and others, wherein it is said that the Government is always bound by its policy decision to enforce strictly. However, the discretion that is available to the authority to give effect to transfers, powers exercised must be honest, bonafide and reasonable. Again, the State has to follow the relevant principles applicable, as applying to others similarly situated and it must not be for malafide, extraneous or irrelevant consideration as otherwise that would amount to denial of equality of opportunity. Sri. Jois further submitted that sometimes on the face of it, though an order does not disclose that the same is made with a malafide intention, however if such circumstances are explained, the proper course for the Court to find out is Whether any stigma is attached or not while making transfer. Further there shall not be frequent transfers or transfer in the middle of the year as otherwise it affects efficiency in administration. When once the officer is transferred, it is reasonable to expect that he would be allowed to function in the said place till normal tenure of 2 or 3 years. Any curtailment of legitimate expectation without valid reasons as happened in the case of petitioner by transferring him within 9 months from bangalore to Hyderabad is quite illegal. To support his contention, the learned Counsel placed reliance on Supreme Court Decision reported in Union of India and others Vs. Hindustan Development Corpn. and others, . wherein it is held:

"Administrative Law - Legitimate expectation - Meaning of -Nature, - scope and applicability of the doctrine - Legitimacy of expectation - Basis or foundation of rights and obligations vis-a-vis the administrative authorities arising out of - Held, it only, operates in public law field and provides locus standi for judicial review - its denial is a ground for challenging the decision/action -But denial can be justified by showing some overriding public interest - Denial does not by itself confer an absolute right to claim relief - Grant of relief should be limited only to cases where denial amounts to denial of any right or where decision/action is arbitrary, unreasonable, not in public interest and inconsistent with principles of natural justice."

12. For the reasons given above Sri Jois submitted that the transfer of the petitioner is not in the public interest but the same is arbitrary, discriminatory and resultant of malafides and as such the transfer order be quashed.

13. As an answer to these contentions, Sri Datar, learned Senior Counsel for the respondent Bank submitted that the transfer in question is made in the public interest and not with any malafide intention. Sri Shankaranarayan has filed his detailed affidavit denying the allegations as such the contention that the transfer is the resultant of influence of Shankaranarayan is incorrect. Shankaranarayan is not an officer who can take a decision to transfer officers of petitioner's grade or he is so senior in the hierarchy of officers to influence the Chairman. Respondent

No. 1 has filed statement of objections denying the allegations made by the petitioner. He contended that the transfer is not for any extraneous consideration or yielding to any one's influence, but the same has been made in the public interest. Since transfer is an incidence of service and the conditions of the transfer are governed by the Service Rules of Bank, particularly Rules 7(i), 7(ii) and 47, there is no substance in the contention urged by the petitioner. Sri Datar argued that except alleging malafides and extraneous consideration, the petitioner has not established that the transfer is illegal or it has attached stigma on petitioner's service condition. Any transfer will definitely cause inconvenience to the transferee or members of his family, but the same cannot be a ground to cancel. There is no hard and fast rule that both husband and wife shall be allowed to work at a particular place. However, if the petitioner desires that his wife shall also work along with him if petitioner's wife Smt. Sathyavathi gives a representation to the Chairman seeking transfer to Hyderabad, the same will be considered favourably.

14. In support of his contentions, Sri Datar placed reliance on the following Authorities:

(i) Mrs. Shilpi Bose and others Vs. State of Bihar and others, for the proposition that it is not proper for the Court to interfere in the matter of transfer as the same is incidence of service, unless such transfers are made with malafide intention.

(ii) Posting both husband and wife at same station cannot be claimed as of right. For this proposition, he placed reliance on the following Authorities:

(a) Bank of India Vs. Jagjit Singh Mehta,

(b) Union of India and another Vs. N.P. Thomas,

(c) Rajendra Roy Vs. Union of India (UOI) and Another,

(d) M. Sankaranarayanan, IAS Vs. State of Karnataka and others,

Thus arguing Sri Datar submitted that the Petition be dismissed.

15. From the averments in the pleadings, arguments advanced and authorities relied upon by both sides, now the point to be decided is whether transfers of the petitioner is arbitrary, discriminatory or malafide one. The petitioner has not denied that the Chairman is the competent authority to transfer an officer of the Bank from one place to another. It is also not denied that an officer of the bank is not liable to be transferred from one place to another. In the statement of objections, the reasons have been given why the petitioner has been transferred. Further, Rules 7(i), 7(ii) and 47 of the Bank Rules give power to the competent authority to transfer and an officer under transfer is liable to respect it. It is stated that no arbitrariness in the transfer of the petitioner. The allegation of discrimination by giving the names of three officers, who are continuing for more than two years and picked up the petitioner alone for transfer has been explained

by the respondents that in view of the Rules referred to above, it cannot be treated that the petitioner's transfer is discriminatory in nature. Regarding the malafides, the same has been denied in the statement of objections and the affidavit filed by Sri. Shankaranarayan. It is easy to allege malafides, but very difficult to prove. Thus, the petitioner has not established that the order of transfer is arbitrary, discriminatory and malafide one.

16. Shri Jois believing that order of transfer in question though administrative in nature, but suffers from arbitrariness, malafides and discrimination, as such deserves to be interfered with, though placed reliance on the following Decisions which dealt about the nature of administrative orders and when Courts can interfere, (i) Commissioner of Police, Bombay Vs. Gordhandas Bhanji, (ii) A.K. Kraipak and Others Vs. Union of India (UOI) and Others, (iii) Union of India (UOI) Vs. K.P. Joseph and Others, (iv) E.P. Royappa Vs. State of Tamil Nadu and Another, (v) Shri Raghunandan Panda Vs. State of Orissa and Others, and (vi) Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others, , but the principles laid down in these Decisions are general in nature and these principles cannot be attracted or applied to the case on hand as except pleading petitioner failed to establish that order of transfer suffers from arbitrariness, malafides or discrimination. Moreover, it is not shown as to how the order of transfer is in, violation of any Regulations or guidelines. Further from the material placed before the Court it is clear that the respondents did not attempt to improve the order of transfer by introducing certain things subsequent to transfer order in order to hold that principles laid down in the case of Mohinder Singh Gill reported in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, wherein it is held that subsequent to an order the same shall be dealt with as it is without supplementing something or fading the earlier order by some more material as applicable to the facts of the case.

16A. Regarding transfer and the principles which have to be borne in mind while making transfer Sri Jois placed reliance on (i) 1973 (2) KARLJ 271 16. 1965 (28) FJ.R. 275 and (ii) Seshrao Nagorao Umap Vs. State of Maharashtra and others, whereby this Court in first case observed that transfer of teachers only held as bad and violative of Article 14 and in the second case Court observed that Government shall always respect its policy decision and transfer shall be in the public interest and must be honest, bonafide and reasonable, But the facts involved and explained did not reveal that order of petitioner's transfer made by an Authority without competency and not in the public interest. Hence, the above Decisions on fact have no application.

17. The position of transfer and when the Court's can interfere, can very well be understood by referring to the following Decisions :

(i) in SYNDICATE BANK LTD. v. THEIR WORKMEN the Hon'ble Supreme Court held that the transfer can be interfered with only when it has been made by an authority who has no competency or made with a dishonest intention or with a

view to victimise the employee. It is held :

"The managements of banks are entitled to decide, on a consideration of the necessities of banking business, whether the transfer of an employee should be made to a particular branch. It is in the best position to judge how to distribute its employees between the different branches. Industrial Tribunals should be very careful before they interfere with the orders made by banks in discharge of their managerial functions. If, however, it is found that an order of transfer is made malafide or for some ulterior purpose, Industrial Tribunals should interfere and set aside such orders of transfer but the finding of malafide should be reached by the Tribunal only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds."

(ii) Supreme Court has taken a similar view in the following Cases:

(a) B. Varadha Rao Vs. State of Karnataka and Others, wherein it is held as follows:

"The learned judges observe that these penalties can be imposed on a Government servant where disciplinary proceedings are initiated against him under the Rules by the competent authority. They further observe that Rule-18 of the Rules, therefore, provides for appeals against orders imposing penalties referred to and specified in Rule-8, and add:

"If an order of transfer does not amount to an order of penalty or any other order falling within Rule-19, such an order does not attract and is, not appealable either under Rule-18 and Rule-19".

We agree with the view expressed by the learned judges that transfer is always understood and construed as an incident of service. The words "or other conditions of service" in juxtaposition to the preceding words "denies or varies to his disadvantage, his pay, allowances, pension" in Rule 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant, and some disadvantage touching his pay, allowances, seniority, promotion, leave etc. It is well understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned judges rightly observed:

"The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants."

(b) Mrs. SHILPI BOSE AND ORS. v. STATE OF BIHAR AND ORS. wherein it is held that it is not proper for the Courts to interfere with transfer orders as the transfer is an incidence of service, it is held:

"If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the Court merely because the transfer orders were passed on the request of the employees concerned. The respondents have continued to be posted at their respective places for the last several years, they have no vested right to remain posted at one place. Since they hold transferable posts they are liable to be transferred from one place to the other. The transfer orders had been issued by the competent authority which did not violate any mandatory rule and, therefore, the High Court had no jurisdiction to interfere with the transfer orders.

In our opinion, the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fides. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instruction or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

(c) SYNDICATE BANK v. SUNDER K PANIYADI 18. (1992) I LLJ 273, wherein this Court held as follows :

"Transfer is a necessary concomitant of every service. Therefore, if the administrative exigencies warrant a transfer, the High Court cannot, as though it is exercising supervisory jurisdiction over the bank, say how it should manage its affairs. It is entirely the look-out of the employer-Bank. The mere fact that the writ petitioners were subjected to three transfers or it had come to be passed in the middle of the year will be of no consequence whatever in examining the validity of the transfer, nor again, the so-called policy which is adumbrated in a circular could ever be enforced by the High Court. These circulars are intended only for the internal guidance, the breach of which will not give rise to any cause of action in favour of the writ petitioners. The orders of transfer, made in pursuance of general toning up of the administration cannot be said to be mala fide."

(d) BANK OF INDIA v. JAGJIT SINGH MEHTA, wherein it is held that posting of both husband and wife cannot be claimed as of right. It is held :

"Ordinarily and 33 far as practicable the husband and wife who are both

employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case, the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places."

(e) M. SHANKARANARAYAN I.A.S. v. STATE OF KARNATAKA AND ORS. wherein Supreme Court observed as follows:

"Constitution of India, Articles 14, 226 - Transfer - Challenged on ground of malafides - malice in fact - inference of, must be based on factual matrix - Transfer of Chief Secretary due to difference of opinion occurring between the Chief Secretary and the Chief Minister alleged - Such a fact does not warrant a finding that due to displeasure of Chief Minister transfer is effected not on administrative exigencies but to malign the Chief Secretary."

(f) Regarding the hardship pleaded and the difficulties to be faced by an employee in case of transfer and how malice has to be proved, it is proper to refer here the following Decision of the Supreme Court in the case of RAJENDRA ROY v. UNION OF INDIA AND ANR., wherein it is held as follows:

"It is true that the order of transfer often causes a lot of difficulties and dislocation in the family set up of the concerned employee but on that scope the order of transfer is not liable to be struck down. Unless such order is passed mala fide or in violation of the rules of service and guidelines for transfer without any proper justification, the Court and the Tribunal should not interfere with the order of transfer. In a transferable post an order of transfer is a normal consequences and personal difficulties are matters for consideration of the department.

Constitution of India, Article 226 - Malice - Proof - Cannot be established on basis of insinuation and vague suggestions.

Administrative law - Malice - Proof.

It may not be always possible to establish malice in fact in a straight cut manner. In an appropriate case, it is possible to draw reasonable inference of malafide action from the pleadings and antecedent facts and circumstances. But for such inference there must be firm foundation of facts pleaded and established. Such inference cannot be drawn on the basis of insinuation and vague suggestion."

(g) UNION OF INDIA AND ANR. v. N.P. THOMAS wherein it is held that an employee holding a transferable post has no vested right to remain in a place. It is held thus :

In the present case, it cannot be said that the transfer order of the respondent transferring him out of Kerala Circle is violative of any statutory rule or that the transfer order suffers on the ground of malafides. The submissions of the respondent that some of his juniors are retained in Kerala Circle and that his transfer is against the policy of the Government posting the husband and wife in the same station as far as possible cannot be countenanced since the respondent holding a transferable post has no vested right to remain in the Kerala Circle itself and cannot claim, as a matter of right, the posting in that circle even on promotion."

(h) Union of India and Others Vs. S.L. Abbas, wherein it is held as follows :

"An order of transfer is an incident of public service. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect" to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that, as far as possible, husband and wife must be posted at the same place. The said guidelines, however does not confer upon the Government employee a legally enforceable right."

The respondent in this case was employed in an office of the Central Government and was liable to transfer anywhere in India. He objected to being transferred from the place he was employed because his wife was working at the same place, his children were studying there and also his health has suffered a set back recently. The member of the Central Administrative Tribunal held that the transfer was mala fide and liable to be quashed. On an appeal to the Supreme Court by the Government."

(i) State of Punjab and others Vs. Joginder Singh Dhatt, wherein it is held:

"Constitution of India, Articles 311, 226 - Transfer - Public Servants - it is entirely for employer to decide when, where and at what point of time a public servant is to be transferred - Court ordinarily should not interfere."

Transfer - Province of employer - Court should not interfere."

Constitution of India, Articles 311, 226 - Transfer - Order passed merely on administrative grounds - In ordinary course and to prevent transferee from interfering with enquiry - Order not causing any injustice - Not liable to be set aside in writ jurisdiction."

(j) In *Vijaya Bank Officers Congress and Others Vs. Vijaya Bank*, while referring to some of the Decisions referred above took a similar view which reads as follows :

"From the above position, it is clear that normally the Courts will not interfere in orders of transfer which are transferable. It can interfere only when the transfer orders are made by an authority who has no competency or the motive is to victimise the employee or made with a mala fide intention. Thus, on the first point it is held that transfer orders cannot be challenged unless the same are illegal, without an authority of law or malafide or made for extraneous consideration.

It is true as held the Bombay High Court in the case of *Sesharao Nagarao Umap*, that frequent transfers will definitely demoralise the employees and affect the efficiency of the administration apart from hampering the education of the staff's children. But, here transfers are not frequent ones. In order to decide whether transfers have been made with a malafide intention or were arbitrary or discriminatory, various factors have to be taken into consideration and then an opinion formed whether the transfer has been made with any dishonest intention or in the public interest. In matters relating to transfer, it is very difficult to understand the mind of an officer as to why he has made an order of transfer."

From the facts narrated and the contentions raised by both sides and tested from the principles laid down in the Decisions referred to above, the conclusions to be drawn is that it is not proper to quash the order of transfer. On the other hand, it is prudent for the petitioner to obey the order of transfer. In spite of these, if the petitioner does not want to obey the order of transfer all that I can say is to conclude this order by extracting the observations made in *Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani*,

"Whenever, a public servant is transferred, he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay; modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation, or on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules....."

18. The petitioner has not denied that the authority who made transfer had no competency. It is not his case that when once he has been appointed or

promoted he is not liable to be transferred from one place to another. The petitioner though pleaded but failed to establish that while transferring the petitioner the authority had any dishonest intention or transfer made with a view to victimise the petitioner. After all, as observed earlier the transfer is an incidence of service and this power is inherent to an employer. The transfer cannot be assailed in the absence of Rules or the same made not in the public interest but made for extraneous consideration or malafide intention to victimise an employee or such a transfer has affected the service conditions of an employee adversely. The circulars and other orders issued in respect of transfer are mere internal guidelines and they will not have a statutory right.

19. From the information furnished, it is clear that there is neither arbitrariness, discrimination nor has the authority violated the regulations in transferring the petitioner. On the other hand, transfer of this petitioner has been made in the public interest. Hence the order of transfer is unassailable.

20. No doubt, an order of transfer is always a painful one to an employee. Regarding other grounds to cancel order of transfer, viz., petitioner's wife is serving in Bangalore, as such not proper to separate them; further his children are studying in Bangalore and the transfer in the middle of the year will affect their education. Answer regarding the first difficulty pleaded, Sri Datar agreed that if petitioner's wife wants a transfer to Hyderabad and if a representation is given by Smt. Sathyavathi her case will be considered. Regarding the second difficulty that if the transfer is made in the middle of the year, the same will affect the education of the children, it was suggested whether the petitioner is prepared to give an undertaking that he is ready to obey the transfer order if he is retained in Bangalore till the end of April-May, 1994. Counsel for the petitioner, for the reasons best known to him, replied that his client is not prepared to file such an undertaking. From this it is clear that the petitioner wants to fight his case more on prestige. In spite of this uncompromising attitude on the part of the petitioner, since it is said that his children are studying in different Schools and Colleges and his transfer in the middle of the year will affect their education, it is made clear that even now instead of contending that the transfer of the petitioner is arbitrary, discriminatory, illegal and the resultant of malafide, it is proper and wise for the petitioner to make a representation to the authorities concerned for his retention in Bangalore till end of May, 1994 and if such a request is given within 10 days from the date of this order, the competent authority shall consider the same favourably.

21. In the result, this Writ Petition is dismissed.