
(1990) 01 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : L.P.A. No. 1633 of 1989 and C.M. No. 15803 of 1989

Ashok Arora

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 29-01-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) 97 PLR 562

Hon'ble Judges : J.V. Gupta, Acting C.J.; M.S. Liberhan, J

Bench : Division Bench

Advocate : V. Ram Sarup, for the Appellant; R.C. Setia, for the Respondent

Judgement

M.S. Liberhan, J.—The appellant was posted as a Clerk in the Allahabad Bank. On Completion of his five year stay at Phagvrara, he was transferred to Sagarpura vide order, dated April 8, 1989.

2. The order of transfer was impugned by the appellant through the Writ Petition, inter alia, on the ground that the transfer was made by the respondent Bank for extraneous considerations and under the influence of one Sudesh Kumar, respondent No. 5, President of the Allahabad Bank Employees Union, Ludhiana. The transfer was in violation of the Sastri Award as well as the policy decision and against the guidelines on transfers job rotation of Award Staff, dated 11, June 1988, Annexure P2.

3. The learned Single Judge found that the transfer was neither in violation of Sastri Award nor against the policy decision providing the guidelines on transfer and job rotation of Award Staff, dated June 11, 1988, nor was the transfer mala fide, nor it was for extraneous considerations Against this decision of the learned Single Judge, the present Letter Patent Appeal has been preferred.

4. The learned counsel for the appellant submitted; (1) that the Sastri Award has a statutory force and was binding on the parties ; (2) the transfer was in Violation of the Sastri Award inasmuch as Paragraphs 534, 535 and 536 of the

Sastri Award provides that ordinarily no employee should be transferred from one place to another without his consent; (3) that since the appellant was an office-bearer of a Union, he could not have been transferred; (4) it was urged that the transfer was in violation of the policy decision dated June 11, 1988; and (5) the transfer was mala fide and was for extraneous considerations.

5. In order to support the said contentions, the learned counsel referred to the Writ Petition, pleadings of the parties as well as the judgment of the learned Single Judge and submitted that the findings arrived at by the learned Single Judge to the effect that the Sastri Award had no statutory force and, therefore, no legal rights of the appellant! have been infringed, was erroneous and the same cannot be sustained. It was further submitted that the finding that there was no violation of any policy decision, is also erroneous. The learned counsel for the appellant in the course of arguments referred to *Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others*, , *K. Siyankutty Nair v. Managing Director, Syndicate Bank* 1985 (1) S. L. R. 370 and *Bank of Maharashtra v. O. P. Malwalia* 1985 (2) L L N 137, only though he has cited a number of judgments in the Grounds of Appeal. The only attempt made by citing the judgments was to urge that Sastri Award has a statutory force and is binding on the parties.

6. The learned counsel further relied on *Raghvendra Mathur v. Allahabad Bank and Ors.* 1989 Lab. I. C. 75 (All.) 32, wherein it was observed that transfer of a Clerk to another District contrary to the guidelines contained in the Sastri Award was illegal as its terms become part of contract of employment of every individual workman.

7. In our considered view, there is no gainsaying that the judgments referred to in the Grounds of Appeal as well as the ones referred to in the Court do say that the Sastri Award has a statutory force and can be enforced, but in each case there were different terms of the Sastri Award which were under consideration either of the High Court or the Supreme Court of India. The policy of transfer contained in the Sastri Award on the question of transfer came up for consideration before the Supreme Court of India in *Canara Banking Corporation Ltd. Vs. U. Vittal*, , wherein it was observed as follows:

"In our opinion, there is considerable force in both these contentions. It will be noticed that in making the directions as regards the transfer of workmen the Sastri award drew a distinction between workmen belonging to the subordinate staff and others. As regards members of the subordinate staff, the direction was to the effect that there should be no transfers ordinarily and there was absolute prohibition against transfers beyond the language area of the persons concerned. The words used for the purpose are " if there are any transfers at all, they should not be beyond the language area of the person so transferred " As regards these workmen the award did not say that "as far as possible transfers should not be beyond the language area of the person so transferred." It is easy to see that here the prohibition was absolute. When they go on to consider the case of workmen not belonging to the subordinate staff, the members of the tribunal

however use markedly different language and preface the direction with the words "there should be no transfer outside the State or the language area in which he is serving except of course, with his consent" by the words "as far as possible." It is not possible to consider this direction as amounting to absolute prohibition without ignoring the words as far as possible." It is clear that these words were deliberately used to leave it to the banks to decide on a consideration of the necessities of its business interests whether a transfer of a workman not belonging to the subordinate staff outside the State or the language area in which he had been serving could be avoided or not, and directing that where possible it should be avoided. We are satisfied the labour Court was in error in holding that transfers outside the State or the language area can be made only with the consent of the employees. What that clause means is that with consent such transfers can of course be made, otherwise they should be avoided as far as possible "

8. In view of the law laid down in Vittal's case (supra), we find no merit in the contention of the learned counsel for the appellant that Sastri award puts any embargo on the rights of the Bank to transfer the appellant from one place to another without his consent. Otherwise also, reading of Paragraphs 534, 535 and 536 of the Sastri Award makes it clear that the contention of the learned counsel for the appellant that he cannot be transferred without his consent can not be sustained. Paragraph 534 reproduces the demand of the workers to the effect that ordinarily an employee should not be transferred from one place to to another without his consent Paragraph 535 relates to the discussion with respect to to the respective contentions of the employees and the employer. Penultimate result reached in the Award is in Paragraph 536 wherein it was observed that the policy of transfer should be limited to the minimum consistent with the Banking needs and efficiency. It was observed that ordinarily there should be no transfer beyond the language area of the person so transferred and the number of transfers ordinarily should not be more than once in a year. Ail other demands were rejected. On our repeatedly asking whether in the Sastri Award it is provided that an office-bearer cannot be transferred the learned counsel was able to only read out Paragraph 13 of his Grounds of Appeal where he has reproduced the Paragraphs of the Sastri Award, which runs as under:-

"That paragraphs 534. 535 and 436 of the Sastri Award which are applicable to Bank Employees, laid down the procedure for transfer of office bears of a Registered Trade Union "

The paragraphs as above mentioned are reproduced as under :-

"534:- The demonds under this head may be thus summed up. Ordinarily, no employee should be transferred from one plate to another without his consent. Office bearers of the unions in particular should not be transferred against their will. In the case of transfer, the service conditions of his original place, if more favourable to the employee, should be made applicable Future prospects should not be affected unfavourably. Arrangements for proper housing accommodation

at the new place should be made by the bank. A special house allowance should be given for a period of six months or until the employee finds a house at the new place whichever is earlier. The number of transfers in a year should be limited. The banks have vigorously repelled the demands. They point out that the exigencies of service necessitate the transfer of experienced workmen to places where their services can be utilised to the greatest advantage. They quote paragraph 45 of the Divatia Award in support of their stand. In making transfers from one branch to another the banks, it is urged, give as far as possible full consideration to any difficulties arising out of housing shortage but they cannot undertake to provide accommodation for workmen so transferred. Any special concessions attached to posts in one locality cannot obviously be continued if the workman is transferred to another locality. Conditions obtaining in places from which the transfer is made cannot, if more favourable be reproduced in the new place. The banks submit that they would be faced with an impossible situation if in every case workmen's consent or concurrence is required. After all a workman when he joins the services of a bank is expected to work at any place the management, governed by the interests of the institution determines.

535. Policy regarding transfers is a constant source of friction between the banks and the workmen now organised into unions. The cry of victimisation of office bears and "activists" of trade unions is raised wherever such transfers are mooted. We have found that such allegations are easily made but not so easily substantiated. Transfers are rendered necessary by the exigencies of administration. The proper view to take is that transfers are normal incidents of the working of a bank and they must be left to the discretion of those who guide the policy of the bank and manage its affairs. It is possible that the discretion may be abused and transfers effected on considerations other than the needs of administration. The percentage of transfers as shown by the figures furnished by some of the banks in the course of arguments leads us to the conclusion that the question of transfer even as it is, affects only a very small number of persons. This is conceded by the workmen also. Still wherever an activist of the trade union movement, as yet in its formative stage and is liable to be crippled easily, is transferred a suspicion naturally arises that it is inspired by ulterior motives and the consequences thereof may be an industrial dispute. In order that such suspicions may be avoided as far as possible we, adopting the Sen Award in this respect, give the following directions :-

- (1) Every registered bank employee's union, from time to time, shall furnish the bank with the names of the President, Vice-President and the Secretaries of the union;
- (2) Except in very special cases, whenever the transfer of any of the above-mentioned office bearers is contemplated, at least five clear working days notice should be put up on the notice boards of the bank of such contemplated action;
- (3) Any representations, written or oral made by the union shall be considered by the bank;

(4) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate ; and

(5) The decision shall be communicated to the union as well as to the employee concerned.

536. We direct that in general the policy should be to limit the transfers to the minimum consistent with banking needs and efficiency. So far as members of the subordinate establishment are concerned there should be no transfers ordinarily and if there are any transfers at all they should not be beyond the language area of the person so transferred. We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible there should be no transfer outside the State or the language areas in which an employee has been serving except of course, with his consent In all cases the number of transfers to which a workman is subject should be strictly limited and normally it should not be more than once in a year. We are unable to accept the demand that residential accommodation should be provided by the bank at the new station. The demand for a special house allowance is also rejected."

In our opinion, the contention of the learned counsel for the appellant that an office bearer of a Union can not be transferred is devoid of any force.

9 As has been consistently held by their Lordships of the Supreme Court, transfer in a Government Service is an ordinary concomitant and incident of service, an employee who is appointed in a particular cadre of transferable posts his transfer from one place to another is an ordinary incident of service and it does not result in alteration of any conditions of service to his disadvantage. The transfer is a normal feature in service and no one has a right to remain at a particular post or for a particular period. The norms or the policy is for the guidance of the Officers authorised to effect and regulate the transfers. Immunity against transfers would amount to gagging the right of the administration to administer and Tight of the employer to get work at the time and place of his choice and according to the administrative exigencies the employer, which he wants to meet. The above observa- tions of ours find support from B. Varadha Rao Vs. State of Karnataka and Others, .

10. In Sri Raghvendra Mathur's case (supra) the judgment of the Supreme Court in Vittal's case (supra) was not brought to the notice of the learned Judges of the Allahabad High Court. Otherwise also, the Court was considering whether the transfer of the petitioner in the said case was in accordance with the policy laid down by the Sastri Award, or not, or whether the transferring authority had abused his discretion in the matter of transfer. While answering the said questions posed, the learned Judges on appreciation of the facts, came to the conclusion that the transfer was in violation of the policy as well as it was ordered at the behest of the General Secretary of the Staff Association and, thus, was not a bona fide transfer. Hence, the judgment is not applicable to the facts

and circumstances of the present case.

11. We have gone through the policy decision dated June 11, 1988, Annexure P2. From a reading of the said policy, it emerges that the efficiency of the Bank's working was kept in view. It was observed that transfers is an incident of employment, an inherent right of the Management and keeping in view the directive of the Government, the transfers/ rotation of the employees who had completed more than five years at a particular Branch/Office are to be effected. However, guidelines to be followed at the time of normal transfer of an employee after his stay for five years at a particular Branch/Office were laid down. The emphasis has been put on the principle that a person with the longest stay should be the first to move. It has nowhere been provided that no transfer can be effected. The learned counsel specifically referred to Condition No. 7, which runs as under :

"The transfer may be made within the same station."

In our view, the Condition cannot be read in isolation. A reading of the entire policy leaves no room for doubt that normally a transfer has to be effected after the stay of a person for more than five years at a particular station and it can also be made at the same station from one Branch to another Branch. The referred clause is an enabling provision authorising the authority to transfer a person from one Branch to another at the same station it does not put any restriction on the right of the employer to transfer its employees from one station to another.

12. We are of the opinion that the only conclusion which can be drawn is that the employer has a right to transfer and normally with a stay for five years at a particular Branch/Office is liable to be transferred and there is no restriction imposed on the employer either by the Sastri Award or the guidelines, dated June 11, 1988. Thus, no fault can be found with the view taken by the learned Single Judge and in our opinion that is the only view possible in the facts and circumstances of this case.

13. Lastly, the learned counsel for the appellant urged that the transfer is mala fide and for extraneous considerations. In order to support the said contention, the learned counsel urged that the appellant was the Secretary of All India Ex-Servicemen Bank Employees' Federation and was an Assistant General Secretary, Allahabad Bank Employees' Union, before March 15, 1988, and his refusal to join the call for Bharat Band had annoyed the President of the Employees Union, who called him names. Against this act and conduct of the President, as well as the General Secretary, the appellant served a legal notice, dated May 6, 1988 and lodged a complaint with the Magistrate on which they had been Summoned. The President, through one of his friends O. P. Sood who happened to be a relation of the then Regional Manager approached the appellant not to pursue the matter and threatened that otherwise he would have to suffer. On his declining to succumb to his pressure, the appellant was

transferred to Sagarpura in a District in the border area

14. It is not disputed that the then Regional Manager alleged to be the relation of O. P. Sood, was transferred on April 17, 1989. It was further pointed out in Ground No. 9 of the Grounds of Appeal, which was not disputed at the bar, that respondent No. 5 at whose instance the alleged transfer has been effected reached Chandigarh from Ludhiana and stayed at the residence of the then Regional Manager of the respondent-Bank and manipulated the transfer of the appellant from Phagwara to Sagarpura, District Gurdaspur which means Regional Manager was approached on or about 17th April, which is much after the order of transfer i.e. 8th April. The learned Single Judge has taken into consideration all the facts stated in the pleadings of the parties and found that it is difficult to say that the order of the transfer of the petitioner is mala fide and has been passed due to extraneous considerations.

15. We find no error in the findings arrived at by the learned Single Judge. The undisputed facts which emerged in the course of arguments are that the appellant was posted at Phagwara for last more than five years and he has been transferred in terms of policy decision Annexure P2, to Sagarpura, as there is no second Branch of Allahabad Bank at Phagwara. Even otherwise, in view of the disputed questions of fact particularly keeping in view that the Regional Manager who was transferred on April 7, 1989, the letter referred to in the course of arguments, does not lead to an inference that it relates to the appellant or any transfer has been effected at the instance of respondent No. 5. No firm finding of mala fide can be arrived at on the facts and circumstances of this case, emerging from the material placed on the record particularly when it involves disputed questions of fact. It is alleged on behalf of the appellant that he is an office-bearer of the Union, but it is also disputed, but merely because he is an office-bearer of the Union, no inference can be drawn that the transfer has been effected in order to harass an office-bearer or the transfer was ordered for ulterior motives. The bona fides of the Management have to be presumed unless otherwise shown. There is no material on the record to show the lack of bona fides of the Management. Hence we are of the opinion that the petitioner has failed to show that the transfer was either mala fide or was extraneous considerations.

16. At this stage, it may be specifically mentioned that on our asking, the respondent-Bank offered the appellant a posting at Abohar to which the appellant declined and insisted on a posting of his choice, i.e. either Ludhiana or Jalandhar

17. In view of the observations made above, the Letters Patent Appeal is dismissed, with no order as to costs. Civil Miscellaneous Application No. 15803 of 1989 also stands disposed of accordingly.