

(2016) 08 JH CK 0069

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3507 of 2016.

**Ashok Kumar - Petitioner @HASH Jharkhand Gramin Bank, through its
Chairman, Ranchi**

Date of Decision : 19-08-2016

Acts Referred:

Citation : (2016) 4 JBCJ 526 : (2017) 1 JLJR 161

Hon'ble Judges : H.C. Mishra, J.

Bench : Single Bench

**Advocate : M/s. Sumeet Gadodia, Advocate, for the Petitioner; M/s. Abdul
Allam, Sr. Advocate, for the Jharkhand Gramin Bank**

Final Decision : Dismissed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and the learned counsel for the respondent Jharkhand Gramin Bank.

2. The petitioner, who was working as Staff Officer in Chechaki Branch of Jharkhand Gramin Bank, is aggrieved by the letter dated 02.07.2016 as contained in Annexure-3 to the writ application, issued by the respondent No. 4, whereby the petitioner has been relieved from the said branch to join at Jharkhand Gramin Bank, Simdega Branch, upon his transfer by the Head Office of the Jharkhand Gramin Bank.

3. The case of the petitioner is that, that the petitioner was promoted in the Officer's grade on 24.06.2014 and thereafter he was transferred to Gomia in Bokaro on 07.07.2014. Thereafter he has been subjected to frequent transfers and he was transferred from Gomia to Janta Jaridih Branch in the district of Giridih on 18.04.2015. Thereafter, he was transferred from Janta Jaridih Branch to Nawadih Chatti Branch of the Jharkhand Gramin Bank on 13.05.2015. Thereafter on 28.07.2015 he was transferred to Chechaki Branch, where the petitioner was presently working and from there also he has been relieved on 02.07.2016 for giving his joining in Simdega Branch.

4. It is submitted by learned counsel for the petitioner that the petitioner is being

subjected to such frequent transfers with mala fide intentions by the respondent Bank. Learned counsel has also pointed out from the counter affidavit filed on behalf of the respondent Bank in which it is stated that the behaviour of the petitioner with customers and the fellow employees of the Bank is not good and wherever he is posted the Bank is getting complaints about him compelling the Bank to transfer him on administrative reasons. Learned counsel for the petitioner has submitted that this is only a punitive transfer of the petitioner, which cannot be sustained in the eyes of law. In this connection learned counsel has placed reliance upon the decision of the Supreme Court of India in *Somesh Tiwari v. Union of India and others*, reported in (2009) 2 SCC 592, wherein the law has been laid down as follows:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds - one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

Placing reliance on this decision, learned counsel submits that since transfer of the petitioner is by way of punishment, the same cannot be sustained in the eyes of law and is fit to be quashed.

5. Learned counsel for the respondent Bank on the other hand has opposed the prayer and has pointed out from the counter affidavit that the petitioner is having proven track record of creating problems in the Branch, where ever he is posted. He is having habitual indiscipline behaviour and he disobeys even the Manager in banking work. Learned counsel has also pointed out from the counter affidavit that there are instances where the petitioner has refused to do the work assigned to him by the senior officers. Learned counsel accordingly, submitted that in these facts and in view of the administrative exigencies the petitioner has been transferred from Chechaki Branch to Simdega Branch on 02.07.2016.

6. Having heard learned counsels for both sides and upon going through the record, I find that the petitioner is being transferred from one Branch to another Branch due to his own behaviour and in administrative exigencies. The decision relied upon by the learned counsel for the petitioner is not applicable to the facts of this case in as much as in *Somesh Tiwari's* case (*Supra*), relied upon by the learned counsel for the petitioner, the appellant had been transferred on the basis of anonymous complaints against him which in the facts of that case the Hon"ble Supreme Court held, was a transfer by way of punishment and it was

set aside. In the same case it has been held that transfer, is ordinarily an incident of service, which should not be interfered with, save in cases where inter alia, mala fide on the part of the authority is proved. This is a case where there are mala fides on the part of the petitioner himself, and not on the part of the respondent authorities.

7. There is no merit in this application and the same is accordingly, dismissed.