

(1991) 11 SC CK 0045
In the Supreme Court Of India
Case No : Appeal Civil 4541 of 1991

Bank of India

APPELLANT

Vs

Jagjit Singh Mehta

RESPONDENT

Date of Decision : 22-11-1991

Acts Referred:

Bank of India (Officers Service) Regulations, 1979 — Regulation 47

Citation : AIR 1992 SC 519 : (1992) 1 BC 191 : (1991) 4 JT 460 : (1992) 1 LLJ 329 : (1991) 2 SCALE 1108 : (1992) 1 SCC 306 : (1991) 2 SCC 492 Supp : (1991) 2 SCR 492 Supp : (1992) 1 SLJ 81 : (1992) 1 UPLBEC 484

Hon'ble Judges : S.C. Agrawal, J;L. M. Sharma, J;J.S. Verma, J

Bench : Full Bench

Advocate : Anand Prakash, Veena Birbal and Raj Birbal, for the Appellant; D.R. Sehgal, S. K. Bagga and S. K. Bagga, for the Respondent

Final Decision : Disposed Of

Judgement

Verma, J.—The respondent, Jagjit Singh Mehta, is employed at present in the Bank of India as an officer in Junior Management Grade Scale-1 and posted in a Branch Office of the Bank in District Giridih in the State of Bihar. The respondent was earlier employed in the clerical cadre of the Bank and was posted at Chandigarh. According to the policy contained in Annexure-B read with notice dated March 28, 1988 (Annexure-C), on promotion from the clerical cadre to the Officers' Grade, the respondent had to indicate his preparedness for posting anywhere in India according to the availability of vacancies. The respondent readily indicated his preparedness to be posted anywhere in India by Annexure-D dated April 19, 1988 when the respondent was posted as a Clerk at Chandigarh prior to his promotion as an Officer.

2. After getting the promotion as an officer and being posted in Bihar on the above basis, the petitioner filed Civil Writ Petition No. 2415 of 1991 in the High Court of Punjab and Haryana for a direction to the Bank to transfer him from the Bihar Zone to the Chandigarh Zone on the ground that his wife is employed as a

Senior Accountant at Chandigarh. The writ petition has been allowed by a Division Bench (M.R.Agnihotri & D.S.Mehra, JJ.) of the High Court by a cryptic order dated 6.8.1991 which reads as under :

After hearing the learned Counsel for the parties, We allow this petition and direct the respondents by issuing a writ of mandamus commanding the Bank of India to transfer the petitioner and post him somewhere near Chandigarh as his wife is posted as a Clerk in the office of the Advocate General, Punjab, Chandigarh. This shall be done within a period of two months. No costs.

3. The petitioner-Bank of India is aggrieved by the above order of the High Court. Special leave is granted.

4. In the face of Regulation 47 of the Bank of India (Officers') Service Regulations, 1979 according to which every officer is liable for transfer to any office or branch of the Bank of India or to any place in India and the clear provision for such a transfer in the policy (Annexure-B) read with notice dated March 28, 1988 (Annexure-C), it is difficult to sustain the High Court's order. However, learned Counsel for the respondent placed reliance on para 4 (vi) of a Memorandum dated April 3, 1986 (Annexure-H) of the Government of India containing guidelines for posting of husband and wife at one station which are meant to be followed also by all the Public Sector Undertakings. Learned counsel urged that according to the statutory provisions contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Bank of India (Officers') Service Regulations, 1979 made thereunder, the Bank is bound to follow the guidelines and directions issued by the Central Government in this behalf.

5. There can be no doubt that ordinarily and as 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. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officers' grade and thereafter he seeks to be relieved of that necessary incident of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.

6. The High Court was in error in overlooking all the relevant aspects as well as the absence of any legal right in the respondent to claim the relief which the High Court has granted as a matter of course. The High Court's order must, therefore, be set aside.

7. Consequently, the appeal is allowed, the impugned order of the High Court is set aside and the respondent's writ petition is dismissed. No costs.