

(2011) 03 CAL CK 0031

In the Calcutta High Court

Case No : Writ Petition No. 21938 (W) of 2010 with W.P. No. 23336 (W) of 2010 with C.A.N. No. 190 of 2011

Biplab Das

APPELLANT

Vs

Chairman, Bangiya Gramin Vikash Bank

RESPONDENT

Date of Decision : 24-03-2011

Acts Referred:

Citation : (2011) 3 CHN 760 : (2011) LLR 947

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Saptangsu Basu and Jayanta Das, for the Appellant; L.K. Gupta, Sumit Ghosh, S. Banerjee, J. Acharya and P. Ghosh, for the Respondent

Judgement

Tapen Sen, J.—The petitioner, a Clerk-cum-Cashier has challenged the Memos as contained in Annexures P/1 and P/3. By Annexure - P/1 issued on 10.8.2010, he was transferred from Sultanpur to the Head Office within a remark that it was an administrative order and he was to be released immediately. By Annexure-P/3, the respondents informed the petitioner that his appeal which he had filed against the aforementioned order of transfer, had been considered but he was directed to join his new place of posting immediately. In other words, by Annexure-P/3, the petitioner's appeal stood rejected.

2. The petitioner has further prayed that the respondents should be directed to allow him to continue to work in Sultanpur instead of the transferred place i.e. Head Office at Behrampur in Murshidabad.

3. According to the petitioner, he has been subjected to frequent transfers. He was transferred to the Narazole Branch in 2005 and he was posted there till 2010. Thereafter, he was transferred to Sultanpur and within a period of four months, he was transferred again by reason of the impugned order.

4. According to the learned Counsel for the petitioner, an employee has the right to submit a representation and Clerks are normally retained in "B" Category

Branches for four years but in the case of the petitioner, neither was his representation attended to as would be from the impugned order of rejection dated 26.8.2010 as contained in Annexure-P/3, nor has he been allowed to stay for a period of four years in such a Branch and therefore, his submission is that the order of transfer is bad.

On 4.10.2010 this Court passed the following order:--

4.10.2010 A.S.T.G13 of 2010.

Biplab Das Petitioner vs. The Chairman, Bangiya Gramin Vikash Bank & Ors.
Respondents For the petitioner: Mr. Saptangsu Basu, Mr. Tapabrata Chakraborty and Mr. Jayanta Das,

For the respondents : Mr. L.K, Gupta, Mr. J. Acharya, Mr. Pratik Ghose.

Affidavit of service filed by the petitioner is taken on record.

The petitioner challenges the order of transfer by which he has been transferred from Sultanpur to the Head Office which, according to the representation itself, is 350 km, away and has been passed within a period of four months from the date he joined at Sultanpur. According to the learned Counsel, under the guidelines framed under the Bangiya Gramin Vikash Bank (Officers" & Employees") Service Regulations, 2007, a Clerk has the right to submit a representation and under Clause 19 thereof, Clerks are normally to be retained in "B" Category Branches for four years but in the case of the petitioner, the order of transfer has been made within a period of four months. Learned Counsel further submits that although he filed a representation on 23.8.2010 vide Annexure - "P2", it was not even attended to as would be evident by the communication dated 26.8.2010 as contained in Annexure- "P3".

Mr. L.K. Gupta, learned Senior Counsel, appears on behalf of the bank and has attempted to justify the order of transfer. However, since no affidavits have been filed, this Court is of the view that the matter requires consideration.

The writ petition will be heard. Admit.

Counter affidavits, if any, may be filed within; a period of two weeks after the Puja Holidays.

One week thereafter is given to the petitioner to file his reply.

Till further orders are passed, the operation of the impugned order of transfer dated 10.8.2010 shall remain stayed.

Liberty to mention after exchange of affidavits.

Subject to an application for certified copy being made and proof in support thereof being furnished, let a plain photocopy of this order, duly countersigned by the Assistant Registrar (Court), be handed over to the learned Counsel for the parties, on usual undertakings.

(Tapen Sen, J.)" (Quoted)

5. The respondents have filed an affidavit-in-opposition wherein they have inter alia stated in paragraph-7 as follows :--

7.....In the instant case, the petitioner has been transferred out of sheer administrative exigency. In the branch office at which the petitioner was posted prior to issuance of his transfer order, the said bank had discovered a huge scam that had led to siphoning of money and fund of the said bank. A fraud resulting in embezzlement of fund of more than Rs. 45 lakhs has been unearthed. The fraud has been played by an unidentified group of employees who have utilized their expertise knowledge in computer to defraud not only the said bank but also the general public. After such fraud was discovered, the administration of the said bank immediately took steps and a Vigilance Team was appointed. A process of investigation is ongoing. The administration of the said bank was advised to remove the petitioner from the concerned branch office as it could have hampered the process of investigation. The petitioner was thus, transferred to the Head Office where there is no monetary transaction. The order of transfer is not punitive in nature. The said bank has also not formed any opinion on the involvement of the petitioner in any fraud played upon the bank. The petitioner has only been transferred to ensure that the ongoing process of investigation is not hampered as it is imperative that the fraud and the perpetrators of it are identified to enable the said bank to appropriately deal with the same. The punitive measure such as suspension was available at the discretion of the said bank. However, no such punitive steps have been taken, as such can be imposed only in contemplation of a disciplinary proceedings. No disciplinary proceeding is yet contemplated against the petitioner. The petitioner is not deemed to be involved in any office. However, it is absolutely imperative to ensure that the process of investigation reaches its logical end." (Quoted)

6. Upon a perusal of the statements made in the counter affidavit it is evident that the stand of the respondents is not what was stated in the order of transfer. Annexure-P/1 clearly shows that it is an "administrative order of transfer". The rejection of the appeal shows that the appropriate authority has not even stated as to why was the appeal not considered. All that has been stated in Annexure-P/3 is :--

Your appeal dated 23.08.2010 has been noted by us. The said appeal has not been considered by the bank. You are directed to join your new place of posting immediately. Your absence from the date of release from Sultanpur Branch will be treated as "Unauthorised"." (Quoted)

7. Upon a perusal of Annexure-P/3 it is thus evident that the petitioner has not even been told as to why the appeal was not considered by the bank. No reasons have been given. In the Counter-Affidavit, a lot of reasons have been given to the effect that the bank has discovered a huge scam that has led to the siphoning of money and a fraud resulting in embezzlement of fund of more than

Rs. 45 lakhs has been unearthed. They have also said that the fraud has been played by unidentified group of employees who have utilized their expertise in the knowledge of computers and therefore, the administration was advised to "remove" the petitioner and that the bank has taken steps and a vigilance team has been appointed. They have further stated that the Bank was advised to remove the petitioner as his presence could have hampered the process of investigation and the petitioner was therefore transferred to the Head Office where there is no monetary transaction.

8. Having considered the aforementioned facts and circumstances, this Court is of the view that transfer of an employee in the interest of administration cannot be interfered with. However, in the instant case, this Court notices that the respondents, in their counter-affidavit, have opened up a "Pandora's Box" and the portion quoted above clearly shows that the bank was advised to "remove the petitioner" to the Head Office where there was no monetary transaction, if an embezzlement had been detected where the petitioner was suspect, the respondents could have acted in accordance with law by placing the petitioner under suspension and by initiating departmental action also in accordance with law but instead of doing so, they have adopted a method by which, in the garb of an innocuous order of transfer, they have actually attempted to remove him on the advise of the administration of the bank. This Court is unable to understand as to why was the need to "remove" the petitioner felt by the administration so that he could be posted where there was no monetary transaction!!

9. If these facts had not been stated in the affidavit, then this Court, perhaps would have accepted the plea of the respondents to the effect that it was an order of simple administrative transfer but because of the grounds that have been incorporated in the affidavit-in-opposition, this Court is compelled to infer that the reasons are otherwise and the impugned order is certainly not a pure and simple order of transfer based on administrative reasons.

10. That apart, it is a well known concept of law that an order cannot be allowed to be complemented or supplemented through an affidavit by addition of reasons because if such a procedure is allowed, an order may get validated by the time it gets challenged in a Court of Law. Reference to the aforementioned proposition can be had from the well known judgment of the Supreme Court passed in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

11. Another reason which compels this Court to pass an order in favour of the petitioner is because when he filed an appeal on 23.8.2010 vide Annexure-P/2, the respondents did not even give reasons as to why it was rejected. They merely stated that the appeal had not been considered by the bank and having said so, they directed him to join at his new place of posting with a "threat" that if he did not do so then his absence from the date of his release from the Sultanpur Branch will be treated as unauthorized.

12. Under such circumstances, it must be deemed that the petitioner was put in a helpless position. He did not even know the reasons why his appeal stood dismissed and when he came to this Court, the respondents proceeded to slap a counter-affidavit on his face attempting to justify/ complement and supplement the order.

13. Such an action is impermissible in view of the judgment of the Supreme Court referred to above. Consequently, the writ petition must succeed. It is accordingly allowed to do so. The order of transfer is held to be an order which has been passed not on administrative reasons but, in view of the affidavit-in-opposition. It must be held to have been passed and issued for considerations which are not relevant for purposes of passing an order of transfer. Consequently, both the orders are set aside. The writ petition is allowed.

As a consequence of this order, CAN application being CAN No. 190 of 2011 which merely repeats and attempts to justify the order of transfer is held to be not maintainable. It is accordingly dismissed.

14. However, this order will not prevent the bank from passing a fresh order in accordance with law.

In Re : W.P. No. 23336 (W) of 2010

In this writ petition, the petitioners have prayed that the respondents be directed to pay him his regular salary and arrears of salary in terms of his prayer made pursuant to the order passed by this Court on 4.10.2010 in W.P. No. 21938 (W) of 2010. In view of the judgment delivered above in W.P. No. 21938 (W) of 2010, the respondents are directed to pass an order on the representation filed by the petitioner as contained in Annexures-P/7 and P/8 to the writ petition within 2(two) weeks. This writ petition [W.P. No. 23336 (W) of 2010] is accordingly disposed of.

Upon appropriate applications) being made. Urgent certified copy of this judgment, may be given issued expeditiously subject to usual terms and conditions.