

(2020) 08 DEL CK 0106

In the Delhi High Court

Case No : Civil Writ Petition No. 3373 Of 2020, Civil Miscellaneous Application
No. 11965 Of 2020

Capt. Vivek Singh

APPELLANT

Vs

State Bank Of India

RESPONDENT

Date of Decision : 20-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

State Bank Of India Officers Service Rules, 1992 — Rule 47

Citation : (2020) 08 DEL CK 0106

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Jasbir Singh Malik, Rakesh Munjal, Anil Kumar Sangal, Siddharth Sangal

Final Decision : Dismissed

Judgement

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Jyoti Singh, J",

1. Challenge in the present petition is to an order dated 21.05.2020 transferring the Petitioner from Local Head Office (LHO), New Delhi to",

Bhubaneswar Circle. Petitioner also prays for a writ of mandamus directing the Respondent to continue his services at LHO, New Delhi, to complete",

10 years in accordance with the Policy framed by the Respondent being HR/CM/7/2243 dated 21.03.2011.,

2. Petitioner is a Short Service Commission Officer who served the Indian Army from March 1995 to March 2000. From 2002 to 2010, he was",

appointed as Security Officer in Punjab National Bank. Pursuant to an offer of appointment dated 15.12.2009 by State Bank of India, for the post of",

Deputy Manager (Security) Grade Scale-II, Petitioner joined the Respondent on 26.04.2010 and was posted as Deputy Manager (Security) at",

Administrative Office, Bidhannagar, West Bengal on 30.04.2010.",

3. On 21.03.2011, in order to make the postings in North-Eastern Circle, more attractive, Respondent issued a Policy, inviting applications from",

Officers willing for such postings, from other Circles, with an assurance that posting at a place of their choice will be given at the end of the two year",

tenure.,

4. Pursuant thereto on 23.05.2012, Petitioner submitted his application with the Circle Security Officer, LHO, Kolkata, expressing his willingness for",

being posted in the North-Eastern Circle. Relevant at this point is to note that the Parent Circle of the Petitioner is admittedly, Kolkata Circle.",

5. After being relieved on 26.04.2013, Petitioner joined the North-East Circle and reported at LHO, North-East Circle, Guwahati. During his tenure at",

Guwahati, Petitioner received two letters of appreciation dated 25.06.2014 and 24.09.2014 for his dedicated and exemplary work. In August 2014",

Petitioner was promoted as Manager (Security) Scale-III. Having completed three years, instead of two years, as were initially contemplated for the",

North-Eastern Circle tenure, Petitioner was asked to opt for his choice posting, as an incentive to his willingness to serve in the North-Eastern Circle.",

Exercising his choice, Petitioner chose to be posted at Delhi Circle and was accordingly transferred to Delhi on 10.05.2016. In May 2019, Petitioner",

was promoted as Chief Manager (Security) Scale-IV and on 21.05.2020, he was transferred to Bhubaneswar, which is the order assailed by the",

Petitioner before this Court.,

6. Learned counsel for the Petitioner assails the Transfer Order on various grounds. It is contended that the Petitioner has been abruptly transferred to,

Bhubaneswar Circle, despite an assurance given to the officers that on rendering service for two years at the North-Eastern Circle, officers would get",

posting at a place of their choice and will not normally be transferred out of the Circle for a period of 10 years, except for postings on foreign",

assignments and on promotion to TEGS. Petitioner rendered three years exemplary service instead of two years and was transferred to Delhi, as an",

incentive for posting at Guwahati, but Respondent is now going back on the commitment and assurance of a tenure of at least 10 years at Delhi. He",

submits that this is in complete violation of the terms and conditions of the Policy dated 21.03.2011. It is argued that at the time when the Policy was,

issued, officers were unwilling to be posted in the North-Eastern Circle and as an incentive it was assured to the officers that in case they opted to",

serve in the North-Eastern Circle, they will be assured a static posting for 10 years at whichever place they chose, within or outside, the Parent Circle.",

The action of the Respondent in issuing the impugned order is therefore completely illegal, arbitrary and in the teeth of the assurance given to the",

Petitioner and violative of principles of Promissory Estoppel.,

7. Learned counsel further argues that Applications were invited for posting to North-Eastern Circle and the officers were informed of the,

incentives/additional facilities that would be provided to them and particularly draws the attention to paras 2 and 3 of the invitation letter which is at,

page 29 of the Writ Petition. The argument is that it is clearly mentioned in para 2 that officers who opt for posting at North-Eastern Circle shall have,

the option to be repatriated to a Circle of their choice, instead of their Parent Circle and para 3 further provided that on being so transferred to the",

Circle of their choice, they will normally not be transferred within a period of ten years.",

8. Learned counsel for Petitioner additionally submits that Respondent ought to have deferred the posting of the Petitioner on account of the fact that,

Petitioner has aged parents living with him. They have health issues and medical ailments and movement to a far off area, during the present",

Pandemic Covid-19, will not be conducive, as they are vulnerable to infection. This apart, one of his children is studying in Class X and the other is",

giving examinations for entrance to MBA course.,

9. Per contra, Mr. Rakesh Munjal Learned Senior Counsel appearing for the Respondent raises a preliminary objection and submits that the Petitioner",

has deliberately suppressed vital information and documents from this Court and a person who does not come to the Court with clean hands is not,

entitled to any relief from this Court under Article 226 of the Constitution of India, which is an extraordinary and equity jurisdiction. He submits that",

the Petitioner was promoted to the post of Chief Manager (Security) Scale-IV in May 2019 and while accepting the promotion he had given an,

undertaking that the Respondent may at its discretion, post him to some other

Circle depending on the requirement. The undertaking dated 30.04.2019",
as filed by the Respondent is as under:,

â??I am aware that promotion to SMGS-IV is based on the vacancies on an all India basis.,

2. I understand that the bank may, at its discretion, post me to some other Circle/Corporate Centre/Corporate Centre Establishment(s)",
depending on the requirement.,

3. I also understand that the Bank may not be able to accommodate request for cancellation/modification of transfer orders.â??,

10. Learned Senior Counsel submits that condition No. 8 of the â??Promotion Conditions for Officer Specialist Cadreâ?? for 2019-2020 provides that,

Specialist Cadre Officers may be transferred out of their Parent Circle as per administrative requirement and in case an officer found suitable for,

promotion to next Grade is posted out of the Circle after promotion, no request for retention will be considered on any ground viz. spouse/extreme",

compassion etc. He submits that under the said Revised Policy for Promotion, Officers were given a choice to opt-in/opt-out and the option had to be",

exercised as per the format which was given along with the Policy. Option so exercised was taken on record and digitally saved. It is submitted that,

the Petitioner had exercised the choice and opted for the promotion process for promotion in the year 2019-2020 and after being promoted, he cannot",

make a request for retention at Delhi Circle.,

11. Learned Senior Counsel contends that the nature of the job of the Petitioner entails an All India Service Liability and Clause 5 of the Appointment,

Letter clearly stated that he was liable to frequent transfers anywhere in India and no request for posting at a particular place will be entertained.,

Learned Senior Counsel points out that as per Rule 47 of the â??State Bank of India Officersâ?? Service Rulesâ??, every Officer is liable for",

transfer to any Office or Branch of the Bank or to any place or deputation to any other Organization, in India. Petitioner is clearly bound by the said",

Rules and cannot resist his transfer to Bhubaneswar.,

Name,Particulars

Sh. Joydipto Bose,"Posted in Kolkata Circle since March, 2011, which is his Parent Circle.

Posted in Siliguri since 2018, which is a difficult (sensitive) centre.

Kolkata Circle is a "deficit Circle" and if the officer is transferred out of Circle, immediate replacement would have to be provided.

Ms. Pratibha Sharma,"Female Officer, and is under Order of Transfer to Mumbai Circle from

Corporate Centre.

Sh. Peddada Gargi,"Posted in Hyderabad Circle (Parent Circle) which is a "deficit circle" and

if the officer is transferred out of Circle, immediate replacement would have to be provided.

Sh. Rajshekhar Gattu,"Posted at Guntur from 2012 to May 2017.

Is posted in Amravati Circle since May 2017.

Amravati Circle is a "deficit Circle" and if the officer is transferred out of Circle, immediate replacement would have to be provided.

Ms. Seema Pandey,"Female Officer, and is posted in Lucknow City since January 2014.

26. Court also finds force in the submission of Learned Senior Counsel for the Respondent that the Petitioner was obliged to disclose that he had,

rendered an undertaking on 30.04.2019 while opting for promotion to SMGS-IV. It is clear from the undertaking that the Petitioner understood that the,

Bank in its discretion could post him to any Circle/Corporate Centre/ Corporate Centre Establishment(s) depending on the requirement and may not be,

able to accommodate the request for cancellation/modification of the Transfer Order. Document placed by the Respondent as Annexure R-4 clearly,

gave an option to the Petitioner to opt-in/opt-out of the promotion process and required the Petitioner to fill in a proforma indicating his choice, which",

the Petitioner admittedly did and opted-in for promotion. Relevant para reads as under:,

"9. Procedure to opt-in/ opt-out of the promotion process in HRMS is attached as annexure. The record of opt-in/ opt-out will be digitally,

saved in the system. The user manual for the process is enclosed as Annexure A.,"

27. Respondent is also right in its contention that the nature of appointment of the Petitioner entails an All India Service Liability. Rule 47 of the State,

Bank of India Officersâ?? Service Rules provides as under: ,

â??47. Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organization, in",

India.â??,

28. Additionally, the Petitioner was clearly informed of his transfer liability in the offer letter. Relevant Clause 5 of the letter dated 15.12.2009 reads as",

under: ,

â??5. You are liable to frequent transfers anywhere in India and request for posting at particular place will not be entertained by the,

Bank.â??,

29. Petitioner has laid much emphasis on the alleged discriminatory and arbitrary action of the Respondent in posting certain other Officers, giving",

them undue indulgence. Respondent in the short Affidavit filed in response to the Rejoinder has clearly brought out the detailed reasons for posting of,

the said Officers to their respective places of posting. There is no reason for the Court to disbelieve the statements made in the Affidavit on oath and,

therefore there is no merit in this contention of the Petitioner. Court is satisfied after perusal of the Affidavit that the transfers have not been made,

violating the guidelines of transfer or against the norms of â??Surplusâ?? or â??Deficitâ?? in various Circles.,

30. It needs to be mentioned at this stage that this Affidavit was directed to be filed, to satisfy the Court that the action of the Respondent is not",

arbitrary and/or that no discriminatory treatment is being meted out to the Petitioner. However, if one looks at the prayer of the Petitioner, perhaps this",

exercise was not even necessary. Petitioner has predicated his case purely on the interpretation of the Policy dated 21.03.2011, which according to",

him assured him a tenure of ten years, as an incentive, on repatriation to a Circle of choice posting, after completion of tenure at North-Eastern Circle.",

31. Insofar as the plea of parents and children of the Petitioner is concerned, certainly these issues have to be dealt with soft hands and need to be",

looked at with compassion. On being questioned with respect to this issue, Mr. Munjal Learned Senior Counsel submitted that Respondent has stated",

in its Reply that the Petitioner would be permitted to continue the Lease of his residential premises at Delhi and would also be given medical and other,

facilities required by his family. Petitioner therefore need not disrupt the life of

family members and can continue to keep them at Delhi for the, present. Mr. Munjal assured the Court that no disruption shall be caused, entailing the Petitioner to move his family to Bhubaneswar in the near future.",

In my view, this assurance redresses the grievance and the concern of the Petitioner of having to move his family at this juncture, from Delhi.",

32. Respondent has in my view rightly argued that transfer is an exigency of service and it is purely in the domain of the employer to decide how the, postings have to be carried out. It is not for the Court in a judicial review to interfere with the transfers and postings of the employees unless the, transfer is in violation of a policy or is malafide. Supreme Court has repeatedly held that transfer of a Government Servant from one place to another, is an incidence of service. No Government Servant or employee of a Public Sector Undertaking has a legal right for being posted at any particular, place. Transfer is also necessary in public interest and efficiency in public administration.,

33. In Gujarat Electricity Board vs. Atmaram Sungomal Poshani (1989) 2 SCC 602, Supreme Court held as under:",

4. Transfer of a government servant appointed to a particular cadre of transferable posts from one place to the other is an incident of, service. No government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from, one place to other is generally a condition of service and the employee has no choice in the matter. Transfer from one place to other is, necessary in public interest and efficiency in the public administration. 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 with the transfer order, he would expose himself to disciplinary action",

under the relevant rules, as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his",

transfer from one place to the other.â??,

34. In *Mrs. Shilpi Bose & Ors. vs. State of Bihar* 1991 Supp (2) SCC 659 S,upreme Court clearly held that the Courts should not interfere in a",

Transfer Order made in public interest and for administrative reasons unless the order is in violation of mandatory Statutory Rule or on grounds of,

malafide. Relevant para reads as under: ,

â??4. In our opinion, the courts should not interfere with a transfer order which is 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 fide. 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 instructions 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 overlooked these aspects in interfering with the transfer orders.â??,

35. To the same effect is the decision in *Rajendra Singh vs. State of U.P.* 2009 (15) SCC 178.,

36. Relevant would it be to refer at this stage to the observations of the Supreme Court in *Mohd. Masood Ahmad vs. State of U.P.* (2007) 8 SCC 150," ,

where the Supreme Court clearly held that an order of transfer is a part of service condition of an employee and should not be interfered with,

ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. Relevant para reads as under: ,

â??The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in,

Rajendra Rao v. Union of India AIR 1993 SC 1236 ,National Hydroelectric Power

Corporation Ltd. v. Shri Bhagwan AIR 2001 SC 330,9",

State Bank of India v. Anjan Sanyal AIR 2001 SC 174.8 Following the aforesaid principles laid down by the Supreme Court, the Allahabad",

High Court in Vijay Pal Singh v. State of U.P. (1997) 3 ESC 1668 : 1998) AII LJ 70 and O. N. Karnath Tiwari v. The Chief Engineer, Minor",

Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866 : 1998 AII LJ 24,5 has held that the principle of law laid down in the aforesaid",

decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a,

Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the,

service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders.â??",

37. In N.K. Singh vs. Union of India 1994 (6) SCC 98, Supreme Court observed as follows:",

â??Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of,

service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the,

quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and,

exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times, the",

only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by,

mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinized judicially, there are no",

judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all,

government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.â??",

38. This Court in Anil Dhall vs. Union of India & Ors. 81 (1999) DLT 501 ,summarizing the law of transfer and relying on the judgements in Union of",

India v. S.L. Abbas 1993 4 SCC 357 and Bank of India vs. Jagjit Singh Mehta (1992) 1 SCC 306, concluded as follows:",

7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments, pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of, its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the, transfer can be challenged only under two circumstances namely, (a) when their transfer is an act of mala fides on the part of the", respondents; (b) when it is made in violation of statutory provision.,

xxx xxx xxx,

13. In view of this position arguments of the petitioner that he has right to stay at Delhi for 3-5 years, based on these guidelines, has no", merit. In the case of Union of India vs. S.L. Abbas (supra) it was held that such guidelines/instructions do not confer any right on the, employee to challenge the transfer order on the ground of violation thereof, merely because the guidelines are violated is not sufficient to", quash the order as being mala fide. Order of transfer on an administrative grounds can still be passed even if it is in violation of such, guidelines which have no statutory force and administrative exigencies have to give way to these guide-lines. In the case of Bank of India, vs. Jagjit Singh Mehta; reported in (1992) 1 SCC 306 dealing with the case of posting of husband and wife at one station as per, government guidelines, it was held by Supreme Court, that such guidelines would not confer any right on the employee to remain at same", place. The only requirement is that departmental authority should consider this aspect along-with exigencies of administration. In the, present case it is mentioned in guidelines itself that they would not confer any right on the officers to represent against posting quoting, these orders. Therefore, petitioner cannot, as of right, state that he should be allowed to remain in Delhi for a period of 3-5 years as per", these guidelines. As no such right can be claimed by the petitioner, it is not open to the petitioner to allege the violation of these guidelines", and make the same as basis to challenge transfer.â??,

39. In the present case, Petitioner has neither pleaded nor argued any violation of any Statutory Rule nor alleged any malafide as a cause of the",

impugned Transfer Order. The interpretation given by the Petitioner, in my view, is not a correct interpretation of the Policy entitling him to a relief of",
quashing the Transfer Order and continue staying in Delhi Circle.,

40. In view of the above, there is no merit in the petition.",

41. Accordingly, Petition, along with accompanying application, is dismissed.",