

(2020) 08 MP CK 0218
In the Madhya Pradesh High Court
Case No : Writ Petition No. 7565 Of 2020

Chandragupt Saxena

APPELLANT

Vs

Bank Of Baroda And Others

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2020) 08 MP CK 0218

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Maninder S. Bhatti, Ashish Shrotri

Final Decision : Dismissed

Judgement

1. This petition filed under Article 226 of the Constitution assails the transfer order dated 14.02.2020 (Annexure-P/14) whereby the petitioner is transferred from Satna to Chhindwara.

2. The case of the petitioner is that since 2016, he was subjected to frequent transfers. To buttress this contention, reliance is placed on Annexure-P/23 dated 17.02.2017 with the rejoinder and Annexure-P/4 with the petition. The impugned transfer is the 4th transfer order within a short span of time. It is urged that in July, 2019, the petitioner met with a serious accident and was badly injured. He suffered 42% disability which is evident from the certificate Annexure-P/7 dated 24.02.2020. By placing heavy reliance on the Ministry of Finance Circular dated 15.02.1988 (Annexure-P/21), it is urged that the transfer of petitioner, a disabled officer, was wholly impermissible. The ground of personal inconvenience is also canvassed by Shri M.S. Bhatti, learned counsel for the petitioner. By contending that the petitioner's wife is presently pregnant, his daughter is studying in Class IV and aged mother is unwell, the frequent transfer will uproot his family.

3. Lastly, it is submitted that on 31.01.2020, there was a strike called by the employees association in the Bank. The petitioner did not participate in the said

strike. One officer Shri Sinha participated in the strike and during the strike, he came inside the Bank and manhandled the petitioner. The petitioner sustained injuries which is evident from the document (Page 28). He lodged a police report. The Bank did not take any action against Shri Sinha, indeed, transferred the petitioner who had performed his duties on the date of strike. For these cumulative reasons, transfer order needs be interfered with. In support of the said argument, reliance is placed on the judgment of Indore Bench passed in Writ Petition No.148/2017 (Sudhanshu Tripathi Vs. Bank of India) decided on 27.04.2018.

4. Per contra, Shri Ashish Shroti, learned counsel for the Bank supported the impugned order. He urged that the petitioner is a senior officer and history of transfer does not show that the petitioner is subjected to frequent transfer. The petitioner cannot claim immunity on the basis of personal inconvenience. The Circular dated 15.02.1988 (Annexure-P/21) has no application in the present case. Shri Shroti urged that the Bank recorded the statements of the employees about the incident dated 31.01.2020. The employees stated that the petitioner assaulted Shri Sinha by using his walking stick. There was a quarrel between the petitioner and Shri Sinha. The petitioner preferred a complaint before the Investigating Officer (Page 15 with the return) but did not mention that he suffered any injury because of alleged assault by Shri Sinha. In order to maintain discipline in the Branch, the petitioner was transferred and after some time, Shri Sinha was also transferred. This is prerogative of the employer to maintain discipline and transfer the employees from one Branch to another Branch. In the case of this nature, the Circular dated 15.02.1988 (Annexure-P/21) is of no assistance to the petitioner. Reliance is also placed on 2004 (4) SCC 245 (Union of India Vs. Janardhan Debanalth). Lastly, it is submitted that the handicap certificate was obtained by the petitioner after issuance of the transfer order.

5. In rejoinder submission, Shri Bhatti, learned counsel for the petitioner urged that although Shri Sinha has been transferred from Satna but order in this regard is passed after five months from the date of transfer of the petitioner.

6. Faced with this, Shri Shroti, learned counsel for the Bank apprised the Court that Shri Sinha initially went on leave and thereafter in the interest of administration, he was also transferred.

7. No other point is pressed by learned counsel for the parties.

8. I have heard learned counsel for the parties at length and perused the record.

9. In the light of aforesaid statements, following points need determination:

(1) Whether the impugned transfer order can be interfered with on the ground of frequent transfer ?

(2) Whether in the light of Circular dated 15.02.1988 and judgment of Indore Bench in Writ Petition No.148/2017, interference on transfer is warranted ?

(3) Whether on the ground of personal inconvenience of the petitioner, interference can be made ?

10. Point No.1:

The petitioner being a Manager is a Senior Officer of the Bank. The Apex Court in 1986 (4) SCC 131 (B. Varadha Rao Vs. State of Karnataka and others) opined that frequent, unsheduled and unreasonable transfers can uproot a family. However, the Apex Court observed that it cannot be forgotten that so far as superior or more responsible posts are concerned, continued posting at one station is not conducive to good administration. It was observed that the position of Class III and Class IV employees stand on different footing. The petitioner neither a Class III nor a Class IV employee. Thus, it cannot be said that he deserves a protection from frequent transfer which may be given to a Class III/ IV employee in a given fact situation. Even otherwise, the petitioner, in my opinion, is not subjected to frequent transfer.

11. Point Nos.2 & 3:

(i) The relevant portion of the Circular dated 15.02.1988 reads as under:

"F.No.302/33/2/87-SCT(B)

Government of India

Ministry of Finance

Department of Economic Affairs

(Banking Division)

New Delhi, Dated 15.02.1988

AII CES of Public Sector Banks

And Financial Institutions

RBI/NABARD

SUB: Posting/Transfer of Physically Handicapped employed in public sector banks/ financial institutions.

Sir, Representations have been received that in view of their physical disability bank employees who are physically handicapped may be exempted from routine periodical transfers from places of their original postings/appointment. Earlier the Government had issued instructions vide letter No. 302/33/2/87-SCT(B) dated 31st August, 1987 that BSRBs should endeavour as far as possible to allot the selected physically handicapped candidates to banks having branches located in or near their home town or village.

The question of their posting/transfer has also been considered in the same context and it has been decided that subject to the administrative exigencies, the

physically handicapped persons employed in public sector banks in all cadres should normally but exempted from the routine periodical transfers. It has been decided that such persons should not normally be transferred even on promotion if a vacancy exists in the same branch/office, town/city. When the transfer of a physically handicapped employee becomes inevitable on promotion to a place other than his original place of appointment due to non-availability of vacancy, it should be ensured that such employees are kept nearest to their original place of posting and in any case are not transferred to far off/remote places. This concession would not be available to such of the physically handicapped employees of the banks who are transferred on grounds of disciplinary action or are involved in fraudulent transactions, etc.

The receipt of this letter may be acknowledged.

Yours faithfully,

Sd/-

(Y.P. Sethi)

Deputy Secretary to the Govt. of India"

[Emphasis Supplied]

(ii) A careful reading of this circular makes it clear that it is directory in nature. It was decided that "subject to the administrative exigency" the physically handicapped employees should normally be exempted from routine periodical transfer. On more than one occasion, the word "normally" is used in the circular which makes it directory in nature.

(iii) I am unable to read this circular in the manner suggested by Shri Bhatti, learned counsel for the petitioner. Apart from this, the transfer order can be interfered with if it violates any statutory provision (not policy guidelines), issued by an incompetent authority, proved to be mala fide, changes the service condition of an employee to his detriment. Personal inconvenience etc. cannot be a ground to interfere with the transfer order [See: State of M.P. and another Vs. S.S. Kourav and others, 1995 (3) SCC 270].

(iv) So far the order of Indore Bench in Sudhanshu Tripathi (supra) is concerned, a careful reading of this order shows that the Bank in the said case made a bald statement that transfer is the routine transfer done on account of administrative exigency. The Court expressed its displeasure in the manner certain personal allegations against the family members of the petitioner therein were made by the employer. Since, no justifiable reasons were shown by the Bank in the said case to deviate from various policies, interference was made.

(v) In the instant case, as noticed, the Bank recorded statements of various employees who were present on the date of incident/strike i.e. on 31.01.2020 and the employees reported that there was a scuffle between the petitioner and Shri Sinha. The petitioner assaulted Shri Sinha by using his walking stick. In this

backdrop, the employer stated that in order to maintain discipline in the Satna Branch, the petitioner and Shri Sinha both were transferred.

(vi) The ancillary question is : whether for this reason, transfer is permissible ?

In Janardhan Debanath (supra), the Apex Court opined as under:

".....For the purposes of effecting a transfer, the question of holding an enquiry to find out whether there was misbehaviour or conduct unbecoming of an employee is unnecessary and what is needed is the prima facie satisfaction of the authority concerned on the contemporary reports about the occurrence complained of and if the requirement, as submitted by the respondents, of holding an elaborate enquiry is to be insisted upon the very purpose of transferring an employee in public interest or exigencies of administration to enforce decorum and ensure probity would get frustrated."

[Emphasis Supplied]

12. In view of this judgment, no fault can be found in the action of the respondents in transferring the petitioner to maintain discipline in the Branch. The employer is the best judge to take a decision regarding transfer of an employee.

13. In view of foregoing analysis, no case is made out for interfere under Article 226 of the Constitution. Petition fails and is hereby dismissed.