
(2000) 10 DEL CK 0003

In the Delhi High Court

Case No : Civil Misc No. 9079 of 2000 in Civil Writ No. 5911 of 2000

Dr. M.V. Rao

APPELLANT

Vs

Chief General Manager, S.B.I. and Another

RESPONDENT

Date of Decision : 18-10-2000

Acts Referred:

Citation : (2000) 7 AD 1002 : (2001) 89 FLR 44 : (2001) 1 LLJ 1634

Hon'ble Judges : N.G. Nandi, J

Bench : Single Bench

Advocate : Mr. A.S. Chandhiok and Mr. Sudhanshu Tripathi, for the Appellant; Mr. Harish N. Salve, Solicitor General of India, Mr. Sanjay Kapur and Mr. Rajiv Kapur, for the Respondent

Judgement

N.G. Nandi, J.—In the writ petition under Article 226 of the Constitution of India for a writ/direction to respondent No.1 to withdraw the Office Order No. 8 dated 26.9.2000 in so far as it affects the petitioner and also for quashing of the said office order and for not transferring the petitioner from the post of Chief Manager, Consistency Cell, Delhi Zonal Office, the petitioner by this C.M. seeks to restrain the respondents from relieving the petitioner from the present position of Chief Manager, Consistency Sales, Delhi Zonal Office during the pendency of this writ petition.

2. It may be noted at the out set that in the writ petition, the impugned transfer order (Annexure-A) is not challenged on the ground of mala fide.

3. The impugned transfer order is challenged on the ground, as suggested from the submissions advanced by learned counsel for the petitioner on 29.9.2000, that it is only respondent No. 2 who can issue the transfer orders and not respondent No.1, in other words authority; that the petitioner is 57 years of age and according to respondents' own policy, normally there won't be transfer of an employee who is more than 55 years of age and that the petitioner is a veterinary doctor for project appraisal in the agricultural finance and that the petitioner is sought to be transferred to a post, which is an administrative post.

4. Learned counsel for the petitioner submitted that page 34 (Annexure R-1) is the foundation for the petitioner's transfer as the petitioner was a protected officer and as such he could not be transferred until now the petitioner is visited with the impugned transfer order and that the said transfer order is indicative of malafide; that there is no basis/particulars for recommending the petitioner's transfer vide Annexure R-1; that the petitioner's bio data was sent to the Bombay Office along with the said communication, the other details ought to have been sent along with the bio data of the petitioner; that looking to the petitioner's specialization and experience, he could have been transferred to a bigger place, viz. Training College at Gurgaon rather than transferring the petitioner to a small place, viz. Training Centre at Ajmer; that it is not a normal transfer but at the instance of the local authorities since Annexure R-1 has emanated from the local office and the place of transfer, viz. Ajmer is indicated by local office; that local office has no jurisdiction/authority to recommend petitioner's transfer and that it is not a transfer by respondent No. 2-Bombay Office and that the petitioner is transferred to an administrative post.

It is submitted by learned counsel for the respondents that normally the transfer orders are not interfered with; that impugned transfer order is not challenged on the ground of malafides; that the transfer is in the administrative exigencies of the respondent-Bank; that the petitioner is in Delhi since 1976 and in Zonal Office since 1981; that the impugned transfer is pursuant to Annexure R-1, which is issued by respondent No. 2-Central Office Bombay; that the guidelines are for the internal working of the bank and are to be followed as far as possible; that there is no case of breach of any statutory requirement; that the challenge to the transfer is on non-issues and the grounds pressed into service are not available to the petitioner under the law and that the appeal against the transfer order would not be within the judicial review under Article 226 of the Constitution of India.

5. It is not in dispute that the petitioner joined the respondent-bank as Technical Officer (Agriculture) at New Delhi Local Head Office and was subsequently appointed in permanent cadre as Technical Officer (Agrl.) Grade-II on 1.6.1976 and posted in erstwhile DM (Agrl) Department in New Delhi LHO since 1981; that the petitioner, as the President of the SBI Officers' Association (Delhi Circle), was a "protected employee" not liable for transfer and that the petitioner has ceased to be a "protected employee". Annexure D dated 7.9.1993 is the Broad Guidelines on the Supervising Specialist Officer Transfer Policy. Clause (A) in paragraph 2 thereof deals with the "tenure". It provides that the maximum period of stay of specialist officer at one centre/office will be fixed at 7 years; as such the case of officers who have completed/will be completing 7 years stay at any one centre as on 31.12.1993 will be taken up immediately. Clause (E) thereof provides that the Officers, who have crossed 55 years of age shall ordinarily be exempted from the purview of the policy.

It need hardly be said that the guidelines are for the internal working/functioning

of the bank and they do not have any statutory force. It may also be seen that as per para (2)(E) the officers, who have crossed 55 years of age are ordinarily exempted from the purview of the policy, which would also suggest that there is no bar against transfer of an officer, who has crossed 55 years of age. The word "ordinarily" would mean that as far as possible, the officers who have crossed 55 years of age, shall be exempted from the purview of the transfer policy.

6. Paragraph 2 of Annexure-D suggests that the guidelines contained therein is keeping in view the officers in the specialist cadre who have by and large fallen outside the purview of transfer policy and in many cases such officers remained at same centre and have been in the same post throughout the tenure of their service and the said guidelines are also keeping in view the requirement of the bank in respect of the specialized expertise provided by these officers to facilitate their career development.

Paragraph 1 of Annexure R-1 suggests that the petitioner initially joined respondent No.1-Bank as Technical Officer (Agrl.) on 3 years contract and subsequently was appointed in permanent cadre as Technical Officer (Agrl) Grade-II on 1.7.1976 and posted in erstwhile DM (Agrl) Department in New Delhi LHO and since 1981 he has been working in Delhi Zonal Office as a Rural Development Officer and was promoted to SMGS-IV w.e.f.1.11.1993. This would suggest that the petitioner is in Delhi since his joining the respondent-bank at least from 1.7.1976. Probably, in view of paragraph 2 of Annexure-D, referred to above, Annexure-R1 came to be written to respondent No. 2 by respondent No.1 as the petitioner was a protected employee till recently and not liable for transfer on account of he being the President of the SBI Officers' Association (Delhi Circle). Para 2 of Annexure R-1 suggests that the petitioner is a Rural Development Officer and that there is no much work relating to his area of specialization viz. veterinary science and Therefore, references to him for scrutiny of proposals have reduced considerably. It is further suggested that given the adequate work load and Dr. Rao's technical background, respondent No.1 recommended that his services may be better utilized either in the training system within the circle or elsewhere in the bank as deemed fit.

Respondent No. 2 vide Annexure R-2 dated 21.9.2000 directed the shifting of the petitioner, SMGS-IV from Delhi Zonal Office immediately and considering that the petitioner had already crossed 57 years of age he will not be transferred out of the circle at this stage and transferred to STC Ajmer. Learned counsel for the petitioner, emphasising the words "as you have indicated" in Annexure R-2 contends that the transfer of petitioner to Ajmer is as per the indication by respondent No.1. It may be appreciated that respondent No.1, vide Annexure R-1, considering the technical background of the petitioner recommended/indicated that his services may be better utilized either in Training System within the circle or elsewhere in the Bank, as deemed fit. This, by no stretch of imagination, would suggest any indication for transfer of the petitioner to Ajmer. It may again be seen that transfer is within the circle, though it was open to

respondent No. 2 to transfer the petitioner beyond the circle.

7. It is a settled legal position that the courts normally would not interfere in the transfer of an employee unless the transfer is tainted with malafides and in absence of malafides, the administration has to be allowed to function at its joints.

In the case of Union of India and Others Vs. S.L. Abbas, it has been held by the Supreme Court that "unless the transfer order is mala fide or made in violation of statutory provisions, the court/tribunal can not interfere. Not following instructions/guidelines not sufficient to quash the order as being malafide and the authority is not obliged to justify the transfer by adducing the reasons therefore." In paragraph 7 thereof, it is observed "who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides or is made in violation of any statutory provisions, the court can not interfere with it"

In the case of Mrs. Shilpi Bose and others Vs. State of Bihar and others, , the Supreme Court held that the "Court 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 malafide. A Government servant holding a transferable post has no vested right to remain posted at one place. Since they hold transferable posts they are 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 authority 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....."

It prima-facie appears that the impugned transfer order is purely administrative. There is no violation of any mandatory statutory rule. The impugned transfer is not assailed on the grounds of malafides. Annexure R-1 and R-2 do not suggest that the impugned transfer is in any way malafide and following the principle laid down in the cases of Union of India & Others (supra) and Shilpi Bose (Mrs) & Others (supra), it can not be said that the petitioner has been able to make out a prima facie case for the grant of injunction.

8. None of the above observations shall be construed to mean an expression of opinion on the merits of the contentions of the parties. The observations are restricted only for the purpose of deciding this interim application.

9. In the result the application, being devoid of merits, fails. The interim order dated 29.9.2000 stands vacated.