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**(2019) 05 GAU CK 0020**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 6230 Of 2018**

Dwijen Kalita

APPELLANT

Vs

Assam Gramin Vikash Bank And 4 Ors

RESPONDENT

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**Date of Decision :** 07-05-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 14

**Citation :** (2019) 05 GAU CK 0020

**Hon'ble Judges :** N. Kotiswar Singh, J

**Bench :** Single Bench

**Advocate :** J I Borbhuiya, A D Choudhury, J.I. Barbhuiya, L. Mohan, F Begum, K.H. Choudhury, A.D. Choudhury, D. Choudhury, P. Dutta, T. Chakraborty

**Final Decision :** Allowed

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## Judgement

1. Heard Mr. J.I. Borbhuiya, learned counsel for the petitioner. Also heard Mr. T. Chakraborty, learned counsel assisted by Mr. A.D. Choudhury, learned counsel for the Bank respondents.
2. This is an instance of how human tragedies are dealt with in this country by the officialdom bogged down by rules.
3. The petitioner is presently serving as an Assistant Manager in the Assam Gramin Vikash Bank, a joint undertaking of the Government of India, Government of Assam and United Bank of India. He entered service as a Junior Clerk cum Cashier in the year 1984 and raised in the ladder of hierarchy through promotions and is presently serving in the aforesaid capacity of Assistant Manager.
4. When and how tragedy strikes a person, nobody knows. But when it strikes, it is that particular family which has to bear the brunt of the pain. It is in such situations, fellow human beings come to their side to lessen their pain. That is an index of human civilization, a trait sometimes difficult to observe nowadays, lost in a maze of rules and regulations.

5. In the present case, petitioner's wife met with an accident on 17.06.2013 in which she sustained serious head injuries and remained in a comatose stage. Though she has now recovered, has to undergo continuous and regular medical treatment. She has been suffering from severe disability, loss of memory, comprehension, impairment of right shoulder dislocation, needing constant support for her daily needs. Her condition has been so described by the doctors concerned and that she would need regular follow up and rehabilitation which is being currently managed at home, as advised and certified by the concerned doctor. These certificates were issued on 02.10.2013, 12.12.2015, 25.10.2016 and 06.12.2017, copies of which are to be found at Annexure-2 to the writ petition.

6. The Competent Authority of the State Government has also given a disability certificate in which she has been certified to be suffering from locomotors disability and that she has 80% permanent physical impairment in relation to her whole body.

According to the petitioner, because of the aforesaid medical condition, she constantly needs not only medical care but also personal care.

7. Apart from the aforesaid tragedy which struck the petitioner, fate has been not very kind to him, as his only son who is presently aged about 25 years, has been suffering from behavioral disturbance since 2008. The peculiar symptoms of which he is suffering from, are lack of communication with others, remaining aloof in public place, inability to recognize his relatives and having difficulty in making comprehensive sentences.

Apart from it, his intelligence had been progressively declining and he often becomes aggressive and easily irritable and his aggressiveness lasts for about 2-3 minutes after which he becomes fatigued. His son who is suffering pervasive development disorder is also on medication and requires constant monitoring of his health and treatment.

It has been submitted that there is no substantial improvement in the condition of his son, thus requiring constant monitoring and care of his son. The petitioner, however, has been managing to take care of both his wife as well as his son, being posted in his home place at Nalbari.

8. The Bank authority however, claims to have accommodated the petitioner on earlier occasions by posting him within the Nalbari Region, Nalbari being his home town.

Later, while serving at Kumarikata within Nalbari Region, the petitioner was holding the post of Office Assistant (Multi Purpose) and the petitioner was considered for promotion to the higher post of Assistant Manager to which he was promoted on 19.10.2016 with effect from 12.10.2016.

9. According to the Bank, as per the transfer policy of the Bank, promotion to a higher post would invariably entail transfer to another Region. Accordingly, after

his promotion, the petitioner was transferred to Bijni, outside Nalbari Region which is the nearest place available vide transfer order dated 19.11.2017.

The petitioner, being placed in the aforesaid peculiar adverse circumstances submitted representations to the authorities for retaining his place of posting at Nalbari Region so that he could take care of his ailing wife and son. The petitioner was however, again subjected to transfer from Bijni to Bilashipara vide order dated 29.11.2017, which according to the Bank, was necessitated due to administrative reasons.

10. Being aggrieved by the further transfer from Bijni to Bilashipara, the petitioner submitted his representations to the authorities for posting to a nearby place to his home. Having not obtained any favourable response from the authorities, the petitioner approached this Court by filing a writ petition being, WP(C) No.1080/2018, which was disposed of 23.07.2018.

11. In the aforesaid order passed by this Court on 23.07.2018, this Court had directed the authorities to dispose of the representation of the petitioner by way of issuing a speaking order and while directing so, it was observed that considering the petitioner's grievance, the concerned respondents shall take a sympathetic approach. The said direction of this Court was proceeded by narration of the facts about the medical condition of his wife and his son which impelled this Court to direct the respondents to adopt a sympathetic approach.

Relevant portions of the aforesaid order dated 23.07.2018 reads as follows: "Heard Mr. J.I. Borbhuiya, learned counsel for the writ petitioner and Mr. S. Dutta, learned Senior counsel assisted by Mr. C. Sarma, learned counsel appearing for the respondent Nos. 1 to 5.

By filing this writ petition the petitioner has challenged the order of transfer dated 29.11.2017 (Annexure-7) transferring him from his present place of posting in Bijni to Bilasipara. The petitioner is a Assistant Manager under the Assam Gramin Bikash Bank whose posting was at Bijni Branch in the District of Chirang.

It is the case of the petitioner that while he was serving in the Nalbari Zone of the Bank, his wife met with an accident on 17.06.2013 and as a result she was severely injured in the head. She was under a coma and she took medical treatment at Guwahati Neurological Research Centre Hospital (GNRC). Although his wife has recovered but she requires constant medical attention and support. Besides this, the son of the petitioner has suffered mental disability since the year 2008 and for which, he too, requires constant medical supervision and treatment. Faced with the situation the petitioner submitted representations before the respondent authorities concerned with regard to on his transfer to Bilashipara. His first representation which is dated 06.12.2017 was addressed to the Chairman, Assam Gramin Bikash Bank. The petitioner also submitted a similar representation before the Regional Manager, Assam, Gramin Bikash Bank on the same day and to the General Manager, of the said Bank on 01.02.2018.

However, the same were not considered and therefore, the petitioner is before this Court.

Mr. J.I. Borbhuiya, learned counsel for the petitioner submits that with the health condition of the petitioner's wife and his son, the petitioner will not be in a position to look after them if he is transferred to Bilashipara. He submits that in support of their health conditions, the writ petitioner along with his representation had submitted medical certificates and advice given by the doctors concerned. However, the respondent authorities have failed to consider the same and therefore, they may be directed to consider the representation of the petitioner compassionately and dispose of the same by way of a speaking order.

Mr. S. Dutta, learned Senior Counsel submits that if that is the limited prayer of the petitioner, the respondent authorities would definitely consider his representation and dispose the same expeditiously.

Considering the prayer made by the writ petitioner through his counsel Mr. J.I. Borbhuiya, the writ petition is disposed of with the direction to the respondent No. 3 to consider and dispose the representations submitted by the writ petitioner on 06.12.2017 and 01.02.2018. If it is felt that the decision has to be taken by the respondent No. 2, the respondent No. 3 shall place the representation of writ petitioner before the said authority for necessary consideration and disposal.

The petitioner within a period of 15 days from today shall submit a copy of the writ petition along with a certified copy of this order to the respondent No. 3 who shall thereafter, consider and dispose the representation of the writ petitioner by way of a speaking order within a period of 4 weeks from the date of receipt of a certified copy of this order and the writ petition.

The petitioner will be at liberty to submit related medical certificate of his wife and his son if so advised. In considering the petitioner's grievance, the concerned respondent shall have a sympathetic approach." 12. According to the petitioner, after passing of said order, he was directed by the Bank authority to immediately join at Bilashipara with the assurance that thereafter, necessary order will be issued in compliance of this Court order passed in WP(C) No.1080/2018. In the anticipation of favourable response from the authorities in this regard, the petitioner immediately reported for joining at Bilashipara on 28.08.2018. However, the petitioner made a request to the Branch Manager of the Assam Gramin Vikash Bank, Bilashipara that he may not be, however, able to present for duty because of the family problem.

13. Unfortunately, the authorities posted him from Bilashipara to Sidalsuti, which is further away from his home town, by the impugned transfer order dated 28.08.2018, which is challenged in this petition.

14. The petitioner's grievance is that though this Court had directed the Bank

authorities to issue a speaking order while disposing of the representation submitted by him and also to adopt a sympathetic approach, the authorities neither sympathetically considered the plea of the petitioner nor issued any speaking order.

15. According to the petitioner, the transfer from Bilashipara to Sidalsuti rather than to any other place near to his home at Nalbari, is not only contrary to direction of this Court but also has created more hardships, rather than solving the problem which he is presently facing. Accordingly, he has sought for interference by setting aside the aforesaid transfer order with a direction for posting the petitioner at Nalbari or to a nearby place to look after his ailing wife and son.

16. Learned counsel for the Bank authorities has submitted that though no speaking order was issued in terms of the direction of this Court, the authorities did consider the representation of the petitioner by applying their mind on the same, as clearly evident from the records, a copy of which is annexed as Annexure-3 to the affidavit-in-opposition filed by the Bank respondents, in which reasons have been given while issuing the transfer order dated 28.08.2018. It has been further submitted on behalf of the Bank authorities that transfer policy of the Bank makes it very clear that promotion of an employee would invariably involve transfer to other Region. It has been accordingly, submitted that on promotion as a Class-I Officer from the post of Office Assistant (M), the petitioner had to be transferred out of Nalbari Region to another Region. Therefore, the Bank was merely following its own transfer policy and it was not any specific course of action taken only in respect of the petitioner.

17. It has been also submitted on behalf of the Bank that if the petitioner had not opted to take promotion to higher post, perhaps he could have been retained in Nalbari Region. However, since he had applied for promotion and was given promotion, the Bank had followed the norm of the Bank, that is, to post to another Region. That is what has happened in the present case. Therefore, posting of the petitioner to another Region other than Nalbari Region is in terms of the transfer policy of the Bank and as such, it does not call for any interference from this Court.

18. Further, it has been submitted that the transfer policy of the Bank has not been challenged by the petitioner.

In that view of the matter, since the transfer order was issued in accordance with the transfer policy of the Bank, no case has been made out to interfere with impugned transfer order.

19. It has been also submitted by the Bank respondents that though the petitioner had joined his posting, he remained absent from duty from 01.12.2017 till 26.08.2018. Subsequently, he joined the place of posting on 28.08.2018 and was released thereafter, but presently, the petitioner is not working anywhere and he is staying at home.

20. Heard learned counsel for the parties and perused the materials available on record.

21. This is the second round of litigation by the petitioner seeking for an appropriate place of posting at his hometown or near his hometown because of the illness and medical conditions his wife and son, which was also noted by this Court in the first round of litigation in WP(C) No.1080/2018, disposed of 23.07.2018 as mentioned above.

In view of the above medical conditions of his wife and son, this Court had urged the authorities to take a sympathetic view of his request while disposing of his representation by issuing a speaking order.

22. As mentioned above, no speaking order was issued by the Bank authorities, though, the learned counsel for the Bank respondents has produced relevant parts of the record indicating application of mind by the authorities to show that though the speaking order was not issued, yet the order of this Court in the first instance was followed in letter and spirit.

23. Be that as it may, on perusal of the aforesaid record, a copy of which has been annexed at Annexure-3 to the affidavit-in-opposition filed by the Bank respondents, this Court, however, could not find any reason for rejecting the representation of the petitioner except to mention in the last line that this arrangement has been made in favour of the petitioner with sympathetic consideration. Nothing is mentioned in the record to show that the authorities had considered the medical conditions of his wife and his son which was the sole reason for the petitioner in approaching this Court on the earlier occasion as well as in the present.

It is the plea of the petitioner that the petitioner would not have made any such representation had his wife and son not been suffering from the aforesaid medical conditions and he would have joined any place of posting as part of the normal incidence of service without any reservation. However, the petitioner has been compelled to approach the authorities as well as this Court because of the aforesaid medical conditions of this wife and son.

24. This Court finds force in the submission advanced by the learned counsel for the petitioner. As mentioned above, there is nothing in the affidavit or in the record to show sympathetic consideration by the authorities of the problem faced by the petitioner.

The only plea of the Bank authority is that they had complied with the transfer policy of the Bank. As to how the petitioner is expected to take care of his ailing wife and son, has not been at all dealt with by the Bank, if the petitioner has to remain in the present place of posting at Bilashipara or Sidalsuti away from his hometown.

25. Though, this Court had on the earlier occasion directed the authorities to consider the representation of the petitioner sympathetically, there is nothing to

indicate that they had done so except for stating that it was done with sympathetic consideration.

26. It may be relevant at this stage to refer to Para Nos.8, 9 & 10 of the affidavit-in-opposition filed by the respondents which indicate the manner in which the representation of the petitioner was disposed of.

27. Interestingly, it has been also mentioned in Para-8 of the affidavit-in-opposition that this Court had neither set aside the transfer order dated 29.11.2017 challenged in the said writ petition being WP(C) No.1080/2018 nor any mandamus issued to the Bank to post the petitioner at Nalbari.

From the above, it appears that the Bank authorities were perhaps not inclined to make any change in the posting of the petitioner as this Court did not set aside the earlier transfer order dated 29.11.2017, nor issued any specific direction to the Bank authorities to post the petitioner in Nalbari.

28. It has been further mentioned in Para-9 of the affidavit-in-opposition that the new place of posting at Bilashipara would reduce the distance to about 70 K.M. to his home from his earlier place of posting. This fact has been sought to be disputed by the petitioner contending that in fact, Bilashipara is further away from Bijni, transfer to which place was challenged by him in the earlier writ petition. It has been, accordingly, submitted that rather than mitigating the hardship of the petitioner, the Bank Authorities by transferring Bilashipara has aggravated his hardships.

29. On consideration of the pleadings and submission advanced on behalf of the Bank authorities, nothing is ascertainable that the request of the petitioner for posting at Nalbari or nearby place had been considered by the Bank authority sympathetically. "Sympathy" is an attribute which cannot be assessed in measurable terms. It is a quality and state of mind which essentially lies within the person who takes the action or decision, which is not visible to outsiders.

Therefore, the only way to ascertain whether a person has adopted a sympathetic approach can be ascertained from the effect such a decision or action has taken on the person for whom such decision was taken.

If the decision of the authorities has the effect of mitigating or lessening the hardships of the petitioner, such a consideration would certainly be considered to be sympathetic and not otherwise. Therefore, in absence of any such balming effect by the decision taken, merely using the expression "sympathetically considered" by the Bank authorities, means nothing to the petitioner.

30. As mentioned above, consideration by the Bank authorities has not helped the petitioner in any manner whatsoever. Rather, it has the effect of increasing the hardships and inconvenience of the petitioner to deal with a situation which is beyond his control. The fact that the petitioner's wife is suffering from serious head injury and resultant medical conditions is totally beyond his control. So is the medical condition of his son of which he cannot do anything except by taking

care.

In such circumstances, the only "sympathetic" consideration which could be done by the Bank authorities was to place the petitioner either at his hometown or to nearby place which would not involve long travel time, so that he can take care of his ailing wife and son, thus, to mitigate his hardships.

31. As regards the issue raised by the Bank authorities that Bank was merely following the transfer policy, it may be noted that transfer policies are evolved to ensure that nobody suffers from any inconvenience by prolonged posting at any inconvenient place or no one gains undue advantage by remaining in a favoured place of posting. Transfer policies are adopted to ensure that everybody has a fair chance or the opportunity of being posted for a reasonable period of time at any convenient place of posting and not to be monopolied by a fortunate few and also prevent cultivating vested interests in the place of posting because of prolonged posting in a place. In other words, transfer policy it is meant to be an equitable policy, so that any employee is not placed to any undue hardship because of any prolonged posting at a place.

32. In the present case, though the Bank authorities may not be strictly legally faulted for adopting the transfer policy, it must be kept in mind that such policies are not rigid and must be tempered with reasonableness and fairness.

33. It is now well settled that transfer policies do not have statutory force but and are merely guidelines issued by the administration for effective and efficient administration. As such, no employee has a vested right to claim posting on the basis of transfer policy and the Courts also do not enforce such transfer policy in favour of any employee, such policy being non enforceable.

34. If that is the judicial approach as regards transfer policy, it cannot be also the stand of the authorities that they cannot deviate from the transfer policy, as it merely contains the guidelines for efficient and effective administration. Nothing prevents the authorities from adopting a particular approach for effective and efficient administration, even if it is purely in terms of the transfer policy, so long it is not discriminatory or arbitrary. It is in this context that the principles contained in Article 14 of the Constitution of India come into play. Article 14 also mandates that unequals cannot be treated equally and that any action taken by the authorities must be fair and reasonable. Thus, if the petitioner is able to make out a case that he constitutes a class of his own and cannot be treated in the same manner as other employees who do not have such medical issues to deal with, and if the authorities accordingly, on the basis of such consideration deviates from the transfer policy, this Court is of the view that on that ground of departure from the transfer policy, such an action of the Bank could be said to be vitiated. Ultimately, it is the welfare of the organization as well as individual which have to be balanced by the authorities concerned.

35. Seen from the above perspective, if the authorities do not dispute the genuineness of the problems faced by the petitioner as regards the medical

issues of his wife as well as his son, this Court is of the view that deviating from the normal transfer policy cannot be considered to be an arbitrary or discriminatory act on the part of the authorities. Perhaps, it is this concern of the effects of deviation from the transfer policy that compelled the authorities to insist on following the transfer policy to transfer the petitioner away from his home district to another Region, irrespective of the consequence it may have on the petitioner.

36. In this connection, one may also note that the Bank authorities had taken the stand that the promotion to a higher post would entail transfer to a different Region. Promotion is given to an employee for the efficient and loyal service rendered by an employee, as a recognition of the meritorious service. In other words, promotion is a reward for serving the establishment with sincerity and efficiently. If the stand of the Bank authorities is to be accepted that if the petitioner had not sought for promotion, he could have remained in the original home place of posting somehow, betrays the lack of concern for the welfare of the employees, which would also amount to non recognition of the loyal, sincere service rendered by an employee and would act as a disincentive for efficient service.

37. The fact remains that the petitioner was promoted to a higher post only on 19.10.2016 which is indicative of the fact that the administration had recognized his efficient, meritorious and dedicated service. Though, the said promotion may involve application by the employee concerned, nevertheless the fact remains that merely because an employee makes an application for promotion, it would not entitle him for promotion. Promotion will be ultimately based on the meritorious service rendered by the employee concerned.

38. Therefore, in the present case, even if the petitioner had applied for promotion, the fact remains that the authorities acknowledged his meritorious service on the basis of which he was given promotion.

39. Accordingly, though, as per the transfer policy of the Bank, promotion may entail transfer to any other Region as mentioned above, the said policy can not be so rigid and inflexible for the reasons discussed above and the authorities can depart from the same for germane and genuine reasons.

40. Perusal of the transfer policy would indicate that it also contains certain beneficial provisions for the employees. For example, if an employee is going to retire within a period of 3(three) years, he may be given the choice of place of posting. Accordingly, in the present case, if the petitioner had only 3(three) years left before retirement, he would have been definitely entitled to choice posting at his home town. In the present case, it has been stated that he has 4(four) years remaining in service, i.e. only one year in excess of the aforesaid provision of the transfer policy. This Court is of the view that relaxing the aforesaid 3(three) years period required under the transfer policy to 4(four) years by keeping in mind the peculiar problems faced by the petitioner, cannot be said to be in

violation of the transfer policy. After all, the authorities have the power to relax the transfer policy provided, the same is not done arbitrarily and without causing any discrimination to others.

41. This Court is of the view that nobody would have any grievance if the petitioner, who is facing serious hardships is retained in his home town or in a nearby vicinity, so that he may not have to compromise with quality of attention required to be given to his wife and his son.

42. It may be also mentioned that nothing has been brought on record that retention of the petitioner in his home district would create any administrative problem or his posting in home district would be undesirable. The only stand taken by the authorities that there is no vacancy available at present in the Nalbari Region and the petitioner had to be transferred out to another Region upon his promotion.

43. After discussing all these aspects, as mentioned above, this Court is of the view that a case has been made out by the petitioner for interference by this Court.

44. Matter relating to posting is normally within the exclusive domain of the employer concerned and ordinarily, the Court does not pass any specific order for posting any employee to any particular place.

In the present case, what is seen is that upon bringing forth his grievances before this Court, this Court on an earlier occasion, considering the peculiar problems faced by the petitioner, had directed the authorities for sympathetic consideration of his representation for posting in his home district. Unfortunately, that had not been done.

45. Therefore, this Court is not inclined to give any option to the authorities, considering the peculiar facts and circumstance of the case and would direct the authorities to post the petitioner to a branch at his hometown at Nalbari or to a place nearest to his residence so that the petitioner can continue to look after his ailing wife and son. Bank authorities will issue the necessary posting order within a period of one month from the date of receipt of a certified copy of this order.

46. As regards the arrear of salary claimed by the petitioner, the Bank authorities will examine and release the same at the earliest, as per rules.

47. Accordingly, with the above observations and directions, this petition is allowed by setting aside the impugned transfer order dated 29.11.2017 and subsequent order dated 28.08.2018.