

(1994) 12 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7069 of 1994

G.K. Bhandari

APPELLANT

Vs

National Bank for Agriculture and Rural Development

RESPONDENT

Date of Decision : 06-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 109 PLR 409

Hon'ble Judges : T.H.B. Chalapathi, J; Ashok Bhan, J

Bench : Division Bench

Advocate : G.D. Bhandari, for the Appellant; L.M. Suri and Deepak Suri, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Petitioner who is working on the post of the Deputy Manager with National Bank for Agriculture and Rural Development (for short referred to as NABARD) has impugned the order of his transfer from Chandigarh Regional Office to Patna Regional Office inter alia on the ground that the transfer of the petitioner is mala fide and discriminatory. Further averment made is that he be not transferred from this place on compassionate ground because his wife is working on a non transferable post with Chandigarh Administration and that his daughter is suffering from brain tumour and is under treatment in P.G.I.

2. Written statement has been filed. Replication to the written statement has also been filed. We have perused the pleadings of the parties and have heard counsel for the parties at length.

3. It is admitted position between the parties that petitioner holds a post from which he can be transferred to anywhere in India. No specific allegations of mala fide have been made and none of the parties has been impleaded by name. We have gone through the written statement filed and find that no case of mala fide transfer of the petitioner has been made out. So far as the point of discrimination

is concerned, the mere fact that some other officials with more years of stay have been retained at Chandigarh does not mean that petitioner cannot be transferred from Chandigarh or that mala fides are involved in his transfer. The petitioner's wife being on a job with the Chandigarh Administration which is not transferable is further no ground for staying transfer of the petitioner. Supreme Court of India in Bank of India Vs. Jagjit Singh Mehta, in the case of a bank employee held that spouses cannot claim posting at the same place as a matter of right where the other spouse is posted. It was held as under:-

"There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirement of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion any appointment in any All India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officer's grade and thereafter he seeks to be relieved of that necessary incident of All India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the department authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees."

Another submission made by the counsel for the petitioner was that his transfer has been made in violation of the instructions issued by NABARD. For this, reliance was placed on Annexure P5 attached with the replication. Firstly Annexure P5 does not contain the instructions issued by NABARD. This is some

letter addressed by the Officers" Association of NABARD to its members. Even if Annexure P5 is taken to be instructions even then executive instructions are merely guidelines for the appropriate authority to consider while making transfers and do not have any statutory force. In another judgment reported as Union of India and Others Vs. S.L. Abbas, the apex Court observed as under:-

"Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right....The order of transfer can be questioned in a Court or Tribunal only where it is passed mala fide or where it is made in violation of the statutory provisions."

4. The last submission made by the counsel for the petitioner that he be not transferred on compassionate ground because his daughter is under treatment in P.G.I. is again no ground for transferring the petitioner from this place. NABARD has contested the averment made by the petitioner that the daughter of the petitioner cannot be treated anywhere else. In fact, they have filed counter-affidavit along with a certificate of the doctor to the effect that daughter of the petitioner is not suffering from a disease that cannot be attended to at any other hospital and the petitioner has to remain posted at Chandigarh on this ground.

5. There being no merit in this writ petition, it is ordered to be dismissed with no order as to costs.