

(2007) 10 UK CK 0022
In the Uttarakhand High Court
Case No : Special Appeal No. 160 of 2007

Inderjeet Singh

APPELLANT

Vs

Assistant General Manager, Bank of Baroda and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 UC 361

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Birendra S. Adhikari, for the Appellant; Balvinder Singh, on behalf of S.K. Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.

Sri B.S. Adhikari, Advocate for the Appellant.

Sri Balvinder Singh, Advocate on behalf of Sri S.K. Jain, Advocate for the Respondents.

1. They are heard on admission.

2. Appellant Inderjeet Singh has filed this appeal under Chapter VIII Rule 5 of High Court Rules against the impugned judgment dated 27-09-2007 passed in Writ Petition No. 1043 of 2007 (S/S).

3. Appellant Inderjeet Singh filed the writ petition for the following reliefs:

1. A writ, order or direction in the nature of certiorari for quashing the impugned orders dated 3-10-2002, 18-10-2002 and 21-07-2007 (Annexure -1, 2 & 3) passed by the Respondents.

2. To pass any other order or direction which this Hon'ble Court deem fit and proper in the circumstances of the case.

3. To award cost throughout.

4. The Petitioner, thus, in substance, was challenging the impugned order dated 03-10-2002, whereby he was transferred from Dehradun Branch of Bank of Baroda to Dang Branch in Pilibhit District; order dated 18-10-2002, whereby the Petitioner was relieved from Dehradun Branch in pursuance of the order of his transfer; and the order dated 21 -07-2007 whereby the Petitioner's representation was rejected by the Bank Authorities.

5. Petitioner Inderjeet Singh, who was working as peon in Class IV cadre in Dehradun Branch of Bank of Baroda, was transferred vide order dated 03-10-2002 to Dang Branch in Pilibhit District.

6. The Petitioner challenged his transfer in the earlier writ petition, which was numbered as Writ Petition No 34 (S/S) of 2003, and was finally decided vide order dated 01-06-2007 with a direction to the Respondent Bank Authorities to decide the Petitioner's representation in the light of the guidelines contained in the Shastri Award. The Respondent- Bank Authorities have considered and rejected the Petitioner's representation vide order dated 21-07-2007.

7. In the counter affidavit filed on behalf of the Respondents, it was categorically pleaded that the Petitioner took leave 26 times in a year for total period of 142 days. The Respondents have further pleaded that the Petitioner's transfer was on account of the administrative exigencies and it did not violate any of the guidelines contained in the Shastri Award as the Petitioner was transferred within the same language area.

8. The learned Single Judge found that as the Petitioner's order of transfer dated 03-10-2002 was affirmed in the Petitioner's earlier writ petition, the only order open for challenge in the subsequent writ petition i.e. Writ Petition No. 1043 of 2007 (S/S) was the order dated 21-07-2007, whereby the Respondent Bank Authorities had rejected the Petitioner's representation made by him after the final judgment in the earlier writ petition. The learned Single Judge further found that as the Petitioner was transferred within the same language area, the rejection of the Petitioner's representation by the Bank Authorities vide order dated 21-07-2007 did not suffer from any illegality. The learned Single Judge, therefore, dismissed the writ petition vide impugned judgment dated 27-09-2007.

9. Sri B. S. Adhikari, the learned Counsel for the Appellant, vehemently argued that the Respondent Bank Authorities have erred in rejecting the Appellant's representation as the Petitioner's transfer is bad in law being in breach of the guidelines contained in Shastri Award inasmuch as the Petitioner has been transferred beyond the distance of 100 kms. from his present place of posting, which is expressly prohibited in the guidelines contained in 8th Bipartite Settlement.

10. Sri Balvinder Singh, the learned Counsel appearing on behalf of Sri S.K. Jain, Advocate for the Respondents, on the other hand, supported the impugned

judgment; the Petitioner's order of transfer; and the order dated 21-07-2007, whereby the Petitioner's representation was rejected by the Bank Authorities and submitted that clause in the 8th Bipartite Settlement does not relate to Class IV employees and it is applicable only to the Clerical Staff. The learned Counsel further submitted that the only restriction contained in the Shastri Award about the transfer of a Class IV employees is that he should be transferred only within the same language area; and as the Petitioner was transferred within the same language area from Dehradun to Dang Branch in District Pilibhit, the Petitioner's transfer order does not suffer from any illegality, whatsoever.

11. Admittedly, the Petitioner was not a member of Clerical Staff of the Bank and as such, the reliance placed by Sri B.S. Adhikari, the learned Counsel for the Petitioner-Appellant on that clause of 8th Bipartite Settlement, which provides that a member of the Clerical Staff should not be transferred beyond the distance of 100 kms. will not be applicable in the case of the Petitioner, who was serving as a peon. The Shastri Award only provides that a subordinate staff which includes peon, as the Petitioner was, should be transferred within the same language area. It is not in dispute that the Dehradun Branch and Dang Branch of Bank of Baroda in Pilibhit District lie in the same language area. We, therefore, do not find any infirmity in the impugned judgment, which may warrant interference in this Special Appeal.

12. That Apart, the guidelines contained either in the Shastri Award or in the 8th Bipartite Settlement, do not confer any legally enforceable right on the Petitioner as held by the Apex Court in the case of Major General J.K. Bansal Vs. Union of India (UOI) and Others, , wherein the Apex Court outlining the scope of interference in the matter of transfer observed in paras 9 to 11:

In *Shilpi Bose v. State of Bihar* the Appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting Respondents, who were displaced by the Appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:

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.

10. In *Union of India v. S.L. Abbas* the Respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the Hills of UP. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer order. In appeal this Court set aside the order of the Tribunal and observed as under:

7. 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.

11. Similar view has been taken in *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan* wherein it has been held that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the Appellate Authorities substituting their own decision for that of the management.

13. For the foregoing reasons, the Special Appeal is liable to be dismissed and is hereby dismissed summarily.