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**(2001) 02 DEL CK 0067**  
**In the Delhi High Court**  
**Case No : C.W.No. 2993 of 1998**

J.P. Sharma

APPELLANT

Vs

State Bank of India and others

RESPONDENT

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**Date of Decision :** 14-02-2001

**Acts Referred:**

State Bank of India (Officers Service) Rules, 1992 — Rule 47

**Citation :** (2002) 92 FLR 591 : (2002) 4 LLJ 887

**Hon'ble Judges :** Dr. M.K. Sharma, J

**Bench :** Single Bench

**Advocate :** Mr. K.C. Dua, for the Appellant; Mr. Rajiv Kapur, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Dr. Mukundakam Sharma, J.—In this writ petition the petitioner has challenged the order of transfer, transferring the petitioner from Delhi to Jaipur. The said order is challenged on the ground that the said order is issued in violation of the transfer policy of the respondent and that the said order is malafide.

2. Counsel appearing for the petitioner has drawn my attention to the various averments made in the writ petition particularly, to paragraphs XIV, XV and XVI of the writ petition in support of his contention that the impugned order was issued in violation of the transfer policy of the respondent bank and that the same is malafide. In order to prove malafide definite and specific pleadings are to be given in the writ petition to show how the order is malafide. Contents of the aforesaid paragraphs are vague and do not make out any case of malafide action on the part of the respondents. Therefore, the only question that is to be examined in this case is whether the impugned order of transfer is in violation of the provisions of the transfer policy of the respondent bank.

3. It was submitted by the counsel appearing for the petitioner that the son of the petitioner is mentally retarded and that he had suffered an attack of psychosis in 1997. By relying on the provisions of the transfer policy circulated

on 3.3.1983 he submitted that in view of the aforesaid position the case of the petitioner comes within the purview of paragraph 3.5 of the said transfer policy. It was submitted by him that since the aforesaid order of transfer was made by ignoring Clause-C of said para 3.5, the impugned transfer order is illegal and is liable to be set aside.

4. Counsel appearing for the respondents, however, submitted that the aforesaid submissions are without any merit and that the impugned order transferring the petitioner was made in exigencies of service. It was also submitted by him that the transfer policy relied upon by the counsel appearing for the petitioner has since been modified by issuing a fresh policy in June, 1998, which was issued after consultation with the SBI Officers Association, of which the petitioner is also a member. It was also stated that the son of the petitioner, who was stated to be mentally retarded got married on 21.11.1996 and that he is allotted with a kiosk, as is admitted by the petitioner in paragraph 19 of the synopsis and the list of dates annexed with the writ petition as also in the writ petition. It is stated therein that the son of the petitioner was allotted a kiosk near I.P.Estate in order to run a photostat machine so that he could come up in the life to earn his livelihood. Relying on the said statement counsel submitted that the son of the petitioner is a married person and not dependant on his father/petitioner. He also submitted that the petitioner has an all India transfer liability and, Therefore, the order which is passed in exigencies of service is legal and valid.

5. The petitioner is governed by a set of service rules known as SBI Officers Service Rules. Rule 47 of the said service rules provides that every officer is liable for transfer to any office or branch of the bank or to any place or deputation to any other organisation, in India. Therefore, the petitioner has an all India transfer liability. Since arguments were advanced in respect of transfer policy of the respondent/bank, the same is also required to be looked into to arrive at a just conclusion.

6. Counsel appearing for the petitioner relied upon the provisions of Clause "C" of paragraph 3.5 of the transfer policy issued vide memorandum dated 3.3.1983. In order to appreciate the contention of the counsel appearing for the petitioner, it is necessary to extract the said provisions:-

"3.5 - For consideration of transfer on compassionate grounds broadly the following criteria should be follows:- a) .....

b) .....

c) In case of illness of any member of officer"s family the request for transfer to a place (other than Delhi/New Delhi) where hospital facilities are available should be considered only when continued hospitalization beyond six months is required, The request for transfer to Delhi/Delhi should be considered when the treatment is not available outside".

7. It is the specific case of the respondents that the aforesaid transfer policy

issued on 3.3.1983, came to be modified under transfer policy issued in June, 1998 in consultation with SBI Officers Association, whereunder it was, inter alia, provided that on the request of the Association, such officers who have wholly dependant unmarried children having permanent physically handicapped factor of 60% or more, would be considered for transfer within reasonable distance. It was further provided therein that this should be certified by a competent expert of Government Hospital and the dependant child should be produced before Medical Board and this exemption would be available only in respect of wholly dependant unmarried children. The son of the petitioner, as is indicated hereinabove, is married and has been allotted with a kiosk near I.P.Estate in order to run a photostat machine. Therefore, he cannot be said to be a dependant on his father. Accordingly, the said clause in the transfer policy issued in June, 1998 is not applicable to the case of the petitioner. In my considered opinion, even the clause relied upon by the petitioner of 1983 policy is not applicable in his case, for it is not shown that continuance hospitalisation is necessary for the said son of the petitioner beyond six months. The son of the petitioner is married and is engaged in business. Therefore, the said clause-C also has no application in the instant case, apart from the fact that the said provisions stand modified by the provisions of the subsequent transfer policy of June, 1998. It is specifically stated in the counter affidavit that the aforesaid order of transfer is made in the exigencies of service. It is not the case of the petitioner that his son requires any special medical treatment, which is available only at Delhi. In all cases of transfer some inconvenience is bound to exist but when the order of transfer is made on administrative ground in the interest of organisation, such personal inconvenience is not an acceptable reason for quashing of the transfer order. The provisions of the transfer policy, which have been scrutinised and examined, prove and establish that the petitioner is also not entitled for exemption from transfer as his son is now married and is not dependant on his father.

8. It is a settled legal position that the courts would not normally interfere in the transfer of an employee unless the transfer is tainted with malafide or the same is in violation of the statutory rules. In the case of *Union of India and Others Vs. S.L. Abbas*, it has been held by the Supreme Court in the following manner:-

"Unless the transfer order is vitiated by malafide or is made in violation of statutory provisions, the Court/Tribunal cannot interfere with it. Not following the instructions/guidelines are not sufficient to quash the order as being malafide and the authority is not obliged to justify the transfer by adducing the reasons therefore."

9. Reference may also be made to a decision of the Supreme Court in *Mrs. Shilpi Bose and others Vs. State of Bihar and others*, . In the said case, the Supreme Court has held as follows:-

"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 malafide. 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.

10. As it is found that the impugned transfer order was purely issued on administrative exigencies of service and that there was no violation of the mandatory statutory Rules, and Therefore, the aforesaid decision of the Supreme Court applies in full force to the facts of the present case. I have also found that no malafide is also proved. While issuing Rule, an interim order was passed by this court staying the operation of the order of transfer, by order dated 19.6.98. The said order, however, came to be vacated by an order dt. 14.1.1999 whereunder the petitioner was directed to join duty within four weeks from the said date. I am informed that pursuant to the aforesaid order, the petitioner reported for duty on 29.1.99 at the Zonal Office of the bank at Jaipur and that thereafter he has not reported for duty. Be that as it may, on the facts and circumstances stated above, I do not find any merit in this petition and the petition stands dismissed.