

(2014) 10 J&K CK 0010

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 1467/2014 and CMP No. 2306/2014

Mehta Harshwardhan

APPELLANT

Vs

Chairman-cum-Managing Director

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Citation : (2014) 4 JKJ 194

Hon'ble Judges : Mohammad Yaqoob Mir, J

Bench : Single Bench

Advocate : M. Iqbal Dar, Advocates for the Appellant; Manzoor A. Dar, Advocates for the Respondent

Judgement

Mohammad Yaqoob Mir, J.—Petitioner, earlier vide order No. Corp HRM.CL. 1.13 dated 05.08.2013 was transferred and posted as

Branch Manager Jammu in the respondent Insurance Company. Aggrieved thereof he had filed writ petition bearing SWP No. 1515/2013,

wherein it was projected that the petitioner is suffering from malignancy so would not be in a position to get necessary medical treatment at Jammu.

Confronted with that position, counsel for the respondents had made a submission to the effect that the respondents will accord consideration to

the request of the petitioner for being posted at Srinagar at the place where he shall have lesser responsibilities in comparison to that of a Branch

Manager. On the said basis petition was disposed of in terms of the order dated 05.06.2014 in the following manner:--

... Having regard to the case set up and stand taken by Ld. counsel for the parties, petition is disposed of with a direction giving liberty to the

petitioner to voice his grievances in a representation to be submitted to the respondents. In the event such a representation is made, respondents

shall accord consideration to petitioner's case and take a decision in the matter within two weeks from the date the representation is made. Till a

decision is taken on his representation, petitioner may be allowed to continue at Srinagar.

Petitioner continued to remain posted there; now on his due turn of promotion he has been considered and promoted to the post of Deputy

Manager vide communication impugned No. CORP.HRM.CL. 1:4 dated 02.07.2014, it has been conveyed to him that on selection for promotion

to the cadre of Deputy Manager (Scale-III) he has been posted in Srinagar D.O. 351200, as such, to take the charge on or before 21.07.2014.

Petitioner again aggrieved of his posting has filed the instant petition seeking quashment of the said communication (referred to as order in the

memo of petition) on the following grounds:--

a) The said posting adversely affects his status, reputation, dignity, as such, is stigmatic;

b) As per transfer policy, officer who is due for retirement after two years reckoned from 1st April of the year in which transfer/posting is affected,

are not to be transferred;

c) The petitioner on promotion can be posted as Senior Branch Manager in the same Branch.

d) The petitioner on 05.08.2013 was transferred to Jammu Branch which was challenged by the medium of writ petition SWP No. 1515/2013 in

terms whereof respondents were to consider the representation of the petitioner seeking posting in view of his ailment;

e) By the impugned order of posting petitioner will lose service benefits i.e. facility of vehicle, petrol for the vehicle, internet facility, in total he shall

have to suffer loss of Rs. 50,000/- per month.

2. Respondents (Insurance Company) in its objections highlighted that the normal period of posting at one place is five years. Petitioner has

remained posted at the Branch Office, Residency Road Srinagar since February, 2006, as such, has continued there for more than seven years. He

was transferred to Jammu but in compliance to the orders of the Court passed in SWP No. 1515/2013 was retained, but now he has been

promoted to the post of Deputy Manager which is the post equivalent to Senior Branch Manager and posted in D.O. 351200 which is located in

Srinagar and is at the distance less than 2 kms. from the Residency Road Branch.

3. It is also projected that at the place of his posting he will have lesser responsibilities which will suit him in view of his ailing health. Furthermore, it

is stated that no service benefits in any way are getting affected, however, certain facilities attached to the post of Branch Manager such as, vehicle,

petrol facilities and internet are attached to the said post to have access to the clients for promoting business of the Insurance Company. Petitioner

does not have vested right to be posted according to his choice when he has already remained posted in the Branch Office, Residency Road

Srinagar for seven years as Branch Manager, therefore, cannot be posted there as Senior Branch Manager (Deputy Manager). He is the resident

of Chandigarh, Punjab. In view of his health condition, as projected that he wants to remain at Srinagar even on his promotion, has been accepted.

4. The contention raised that the present posting affects the status of the petitioner or is stigmatic, is totally without any (sic). For all practical

purposes petitioner has been promoted as Deputy Man (sic) Earlier he has enjoyed all facilities and service benefits as attached to the post of

Branch Manager. Certain facilities are solely attached to the post aimed for promoting business of the Company; same cannot be said as service

benefits to be enjoyed by a particular officer. There is conflict in the stand of the petitioner; when he is ailing suffering from dangerous diseases, will

it be appropriate to remain posted on the post which has some more responsibilities for promoting the business of the Company. In the earlier

disposed of writ petition it was the stand of the respondents that they will consider the request of the petitioner for posting him at Srinagar at the

place where he has lesser responsibilities and it is in the light of the said order, as quoted hereinabove, the petitioner even on promotion has been

posted at Srinagar, otherwise on promotion he was due to be transferred to any other part of the country.

5. Petitioner, in the memo of the petition, cleverly appears to have concealed the facts of his posting at Residency Road Srinagar and on promotion

his posting at D.O. Srinagar instead he has referred to only Branch number so as to show that his transfer is not in accordance with the earlier

order of this Court. Transfer from Residency Road to Division Office of the Insurance Company, which is at the distance of less than 2 kms, is not

in effect the transfer but in effect posting on promotion. Petitioner claiming that the posting is stigmatic, is totally baseless. If it be so then no officer

would like to be promoted as Deputy Manager in Division Office of the Insurance Company.

Petitioner had projected that in view of Clause-G of the Job Rotation And Transfer Policy For Officers, when the officer is due for retirement

within two years reckoned from 1st April of the year in which transfer/posting is affected shall not be transferred unless necessitated by extenuating

circumstances, provided he will not be holding a sensitive post. This Clause is of no help to the petitioner because he has been promoted and on

promotion he has been posted as Deputy Manager which position is otherwise saved by the said Clause. Petitioner has not challenged his

promotion; he has simply challenged his posting. When posting at Srinagar is in view of the ailing health otherwise on promotion could have been

transferred to any part of the Country, such type of submission is totally bereft of any legal backing and logic.

6. In the aforesaid background no case, whatsoever, is made out for quashing the order of promotion to the extent it is challenged vis-À-vis

posting. Petition dismissed as above along-with connected CMPs. Interim direction dated 15.07.2014 shall cease to be in operation.