

(2021) 07 GAU CK 0125

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3905 Of 2020

Mrinal Chandra Das

APPELLANT

Vs

State Bank Of India And 6 Ors

RESPONDENT

Date of Decision : 20-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 14, 226

Citation : (2021) 07 GAU CK 0125

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : T J Mahanta, S S Sharma

Final Decision : Disposed Of

Judgement

1. The scope of judicial review in matters of transfer in service is well settled. Interference in exercise of the extra-ordinary jurisdiction conferred

upon this Court by Article 226 of the Constitution of India is circumscribed as transfer is normally an incidence of service which is made to meet the

exigencies of the authority. Ultimately, it is the prerogative of the authority to determine and decide as to how the services of an employee can be best

utilised. At the same time, there are certain well-defined exceptions in which such order of transfer can be the subject matter of interference in

exercise of powers of judicial review. The exceptions are broadly violation of the statutory rules or norms governing the service conditions, including

transfer and secondly, the element of mala fide which might have played a role in issuing such transfer order. Interference is also warranted in certain

cases of frequent transfer or transfer being done at the behest of persons who are not directly part of the system.

2. With this backdrop, let us now come to the facts of the case in hand.

3. The petitioner has put to challenge orders of transfer dated 25.08.2020 as well as 22.09.2020 issued by the authorities of the State Bank of India

(Bank) and for a direction to allow him to join at Dadara, Kamrup (R) as per order dated 28.05.2020 or Raha as per order 18.09.2020. The petitioner

is also agreeable that alternatively, he may be posted in any place near Guwahati so that he can take proper care of his ailing mother, who also suffers from a disability.

4. The petitioner is a Deputy Manager (Scale-II) and was posted at the Nagaon Main Branch of the Bank in August, 2018. While serving there, an

office order dated 28.05.2020 was issued promoting the petitioner to the rank of Assistant Branch Manager (Scale-III) and transferring him to Dadara

Branch. However, on the alleged ground of paucity of officers, the petitioner was not released from the Nagaon Branch. However, within a short

span, another order dated 25.08.2020 was issued modifying the earlier order of transfer and transferring the petitioner to Ziro in the State of

Arunachal Pradesh. The petitioner immediately submitted a representation dated 26.08.2020 for modification of the transfer order followed by filing of

a writ petition before this Court which was registered as WP(C)/3632/2020. Incidentally, the Bank authorities had also acted in the meantime and vide

order dated 18.09.2020 modified the impugned order dated 25.08.2020 and posted the petitioner at Raha Branch as the Branch Manager. Under such

circumstances, the earlier writ petition, namely, WP(C)/3632/2020 was withdrawn with liberty vide order of this Court dated 21.09.2020. However,

even before joining at the new place of posting i.e., Raha, the Bank authorities issued another order of transfer dated 22.09.2020 whereby the earlier

order dated 18.09.2020 was cancelled and the petitioner was once again posted at Ziro in the State of Arunachal Pradesh. The petitioner had again

approached the authorities by submitting two representations whereby the ill-health and disability of his aged mother were highlighted. As no action

was seen to be taken, the present writ petition was filed and this Court vide order dated 30.09.2020 while issuing notice came to a prima facie finding

of arbitrariness and unreasonableness on the part of the authorities and accordingly, the impugned order dated 22.09.2020 was stayed until further

order. It appears that the Bank authorities had filed IA(C)/1996/2020 for modification of the order dated 30.09.2020. However, the said application

was dismissed with the observation that no interference of the stay order was called for and also further observed that any modification/alteration of the stay order would render the writ petition infructuous.

5. I have heard Shri TJ Mahanta, learned Senior Counsel assisted by Shri PP Dutta, learned counsel for the petitioner. I have also heard Shri KN

Choudhury, learned Senior Counsel assisted by Shri DJ Das, learned counsel for the respondent-Bank.

6. The materials placed before this Court have also been carefully examined.

7. Shri Mahanta, learned Senior Counsel submits that the entire exercise of the Bank in transferring the petitioner to Ziro in the backdrop of his first

transfer to Dadara vide the order dated 28.05.2020 is absolutely arbitrary, whimsical and unreasonable. Passing of successive orders of transfer within

a short span of time is prima facie demonstrative of the mala fides involved in the decision making process. While admitting that transfer is an

incidence of service, it is submitted on behalf of the petitioner that in the name of exigencies, the petitioner cannot be made the victim. No discernible

reason exists in the order dated 25.08.2020 as to why the transfer of the petitioner was modified from Dadara to Ziro. It is submitted that the so-called

explanation sought to be given in the affidavit-in-opposition dated 18.11.2020 of 'paucity of officer to release the petitioner' is most perfunctory. The

learned Senior Counsel submits that the order dated 28.05.2020, in which the petitioner placed against Sl. No. 49 involves 84 numbers of officers and

therefore, the explanation of paucity of officer cannot arise at all. It is further submitted that acting on his earlier representation as well as the fact of

filing of a writ petition in this Court, being WP(C)/3632/2020, the said order being modified vide subsequent order dated 18.09.2020 whereby the

petitioner was posted at Raha, it is failed to be understood what exigencies would have arisen within a short span of next four days to again transfer

the petitioner to Ziro. The fact that the said writ petition was withdrawn on 21.09.2020 in view of the order dated 18.09.2020 transferring the petitioner

to Raha is also a relevant factor. Incidentally, the impugned order of transferring the petitioner again to Ziro was passed on 22.09.2020 i.e., exactly a

day after withdrawal of the writ petition.

8. The learned Senior Counsel for the petitioner has also drawn the attention of this Court to various documents relating to the ailment of his mother,

namely, osteoporosis, backache, osteoarthritis of both knees. Attention has also been drawn to the policy of the Bank regarding transfer, as circulated vide circular dated 07.02.2019. As per the said circular, an employees is given certain concession in matters of routine transfer for disability suffered by their dependents, which includes hard of hearing. The said submission is also supported by annexing a certificate of disability of the mother of the petitioner which is issued by the Joint Director of Health Services. Shri Mahanta, learned Senior Counsel, accordingly, submits that under the aforesaid facts and circumstances, the present is a fit case for interference by this Court.

9. The case projected by the petitioner is confronted with stiff resistance on behalf of the respondent-Bank. Shri KN Choudhury, learned Senior

Counsel appearing for the Bank submits that the order which has been impugned has been issued in exigency of service and wholly in the interest of

public which may not be interfered with by this Court. The learned Senior Counsel submits that the petitioner for the last about nine years is in or

around Guwahati and Nagaon, including Sonapur. By referring to the averments made in the affidavit-in-opposition filed on 18.11.2020, it is submitted

that there were valid grounds for modification of the earlier orders involving the petitioner. It is submitted that apart from the fact that the respondent

no. 5 has retired in the meantime, the respondent no. 7 was retained at Raha as his presence was felt necessary for creation of a centre at

Jongalbalahu Fish seeding firm to encourage the growth of self-reliant and independent fisherman. It has also been stated that in similar activities, the

said respondent no. 7 was found to have performed admirably. In the course of hearing, in response to a query put by this Court, it was clarified on the

part of the Bank that the initial transfer of the petitioner from Nagaon to Dadara vide order dated 28.05.2020 was not connected with the transfer of

one Somesh Kumar, whose name is against Sl. No. 12 in the said order and was transferred as Assistant Branch Manager to the Nagaon Branch.

The said query was put in view of the fact that an explanation was given that there was paucity of officers to release the petitioner from Nagaon.

10. Countering the submissions concerning the disability certificate vis-a-vis the circular dated 07.02.2019, the learned Senior Counsel for the Bank

has submitted that apparently, the said certificate is dated 16.10.2020 and therefore, is much after the cause of action. Shri Choudhury, learned Senior

Counsel has also categorically refuted any mala fide involving the issuance of the impugned order of transfer just after a day of withdrawal of the

earlier writ petition, being WP(C)/3632/2020. It is submitted on behalf of the Bank that Bank was not at all aware of filing of the said writ petition and

the order of modification was done by the Bank independently and without even being informed about the filing of the writ petition. Attention of this

Court has also been drawn to the averments made in paragraph 13 of the affidavit-in-opposition whereby all the justifications have been put forward.

11. The rival submissions of the learned counsel for the parties have been duly considered.

12. Let us first deal with the facts of the case sequence wise. The petitioner who was at Nagaon was transferred to Dadara on promotion vide the

order dated 28.05.2020. However, the petitioner was not released from Nagaon and vide the second order dated 25.08.2020, the petitioner was

transferred from Nagaon to Ziro Branch. The petitioner was made to understand that he was not released due to paucity of officers, which he was

otherwise ready and willing to join. It appears that acting on the representations of the petitioner against the move to transfer him to Ziro, the petitioner

was transferred to the Raha Branch as Branch Manager vide order dated 18.09.2020. The fact of filing WP(C)/3632/2020 against the order dated

25.08.2020 in the meantime, cannot be totally ignored, including the action of its withdrawal on 21.09.2020 in view of the order dated 18.09.2020. Even

assuming that the respondent-Bank was not aware of filing of the earlier writ petition, the Bank has to independently and fully justify the order dated

22.09.2020 passed just after a day of withdrawal of the writ petition whereby the petitioner has again been transferred to Ziro. Though in paragraph

13 of the affidavit-in-opposition, the reason for again transferring the petitioner to Ziro has been sought to be justified, such justification, in the opinion

of the Court appears to be perfunctory and irrelevant. So far as the respondent no. 5 is concerned, it has been submitted that he has already retired on

28.02.2021 and the vacancy arising on his transfer from Ziro cannot be said to be necessary to be filled up by the petitioner only. The explanation

regarding the respondent no. 7 at Raha as his role in a campaign period of 10 days from 10.03.2020 to 20.03.2020 was found admirable in effecting

recovery and so far as handling of financing fisheries are concerned cannot be accepted as a sufficient ground for the impugned action. If that

justification is to be accepted than the respondent no. 7 can never be transferred from Raha in his entire life time. It has also been urged on behalf of

the Bank that from 2011 onwards, the petitioner has been posted 'in and around Guwahati'. It is seen that from 2011, the petitioner was posted at

Guwahati, Sonapur and lastly, at Nagaon. Guwahati, Sonapur and Nagaon are independent places of postings which were issued by the Bank on their

own volition. Though it appears that the order dated 18.09.2020 by which the petitioner was transferred to Raha was issued after considering the

representation of the petitioner and by giving the benefit of doubt that the Bank was not aware of filing of WP(C)/3632/2020, the said order was an

independent action of the Bank without any direction of this Court, as a result of which the writ petition was withdrawn on 21.09.2020. In that view of

the matter, the impugned order dated 22.09.2020 issued just after four days does not appear to be justified at all. Though it is the prerogative of the

respondent Bank to post any officer at any place of posting, the Bank coming within the definition of any other authority under Article 12 of the

Constitution of India, it has a bounden duty to act fairly, reasonable and in a transparent manner. Though in the affidavit-in-opposition dated 18.11.2020

certain explanations are sought to be given, in view of the absence of such justification or even a hint thereof in the impugned order dated 22.09.2020,

the same cannot be accepted by this Court. The Hon'ble Supreme Court in a catena of decisions has settled the law in this regard. Reference to the

case of Mohinder Singh Gill Vs. The Chief Election Commission, reported in 1978 AIR 851 may be made in which the Hon'ble Supreme Court after

quoting with approval, the landmark case of Police Commissioner of Police, Bombay Vs. Gordhandas Bhanji, reported in AIR 1952 SC 16 has laid

down as follows:

â?? 8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by

the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the

beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw

attention to the observations of Bose, J. in Gordhandas Bhanji²: AIR 1952 SC 16

â?? Public orders, publicly made, in exercise of a statutory authority cannot be

construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.â??

Orders are not like old wine becoming better as they grow older.â??

13. Even otherwise, as discussed above, the explanations/justifications put forward in paragraph 13 of the affidavit-in-opposition appear to be

perfunctory and superficial. Though Shri Choudhury, learned Senior Counsel for the Bank may be correct in contending that transfer is an incidence of

service and the impugned order has been issued for exigencies, the same has to be tested under the scanner of Article 14 of the Constitution of India

by balancing the fundamental right of the petitioner to be treated fairly and transparently. Therefore, without even going to the aspect of the issue of

disability of the mother of the petitioner vis-a-vis the circular dated 07.02.2019, this Court is of the view that a case for interference is made out.

Accordingly, the writ petition is allowed by setting aside the impugned order dated 22.09.2020 by which the petitioner was sought to be transferred to

Ziro. The petitioner may accordingly, be allowed to continue at Nagaon or be posted to Dadara or Raha. This Court is further of the opinion that since

the representation of the petitioner dated 26.08.2020 was already favourably considered, in case, the Bank is unable to transfer the petitioner to either

of the two locations, namely, Dadara or Raha, the Bank may, if the exigency so desires, transfer and post the petitioner to any post in or near

Guwahati considering the ailment of the aged mother of the petitioner.

14. The writ petition stands disposed of in the above terms. No costs.