

(2014) 07 OHC CK 0013
In the Orissa High Court
Case No : W.P.(C) No. 10216 of 2014

Niranjan Dash

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2015) 119 CLT 677 : (2014) 2 ILR 1018 : (2014) 2 OLR 844

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : Amitav Bagchi and D. Nanda, Advocates for the Appellant; R.K. Rath, Sr. Counsel, P.V. Balakrishna and R. Biswal, Advocates for the Respondent

Judgement

Dr. B.R. Sarangi, J.—The petitioner, who is working as a Deputy Manager (Accounts) MMGS (II) Officer Cadre under the State Bank of India has filed this application challenging his order of his transfer from Puri to Berhampur by making zonal transfer from Bhubaneswar Zone-I & II to Berhampur Zone on the administrative ground as per list 5-C of Inter Module Annual Transfer Exercise-2014, Annexure-5 and consequential relieve order dated 19.05.2014, Annexure-6 by the authority. The petitioner assails the said order Annexure-5 and consequential relieve order of transfer, Annexure-6 on the ground that the same are in violation of the transfer policy of the bank under Annexures-2 and 9 respectively. The short facts of the case are that initially the petitioner was appointed as a Clerk-cum-Cashier and was posted at Bhubaneswar Main Branch. Subsequently, he was promoted to the post of OJM (I) and was posted at Angul Branch under Sambalpur Module. Thereafter the post of the petitioner was upgraded to MMGS (II) on 2.8.2008 and he was posted at Forest Park Branch, Bhubaneswar. In October, 2006 he was transferred to S.B.I. Mahisapata, Agricultural Development Branch in the district of Dhenkanal and in the same month of October, 2006 he was transferred to Dhenkanal Main Branch where he continued till May, 2007. Again he was transferred to SBI Forest Park Branch, Bhubaneswar on May, 2007 as Deputy Manager where he continued till

30.06.2009. Thereafter he was posted as Branch Manager at Dumuduma in June, 2009 where he continued till 9.7.2012. On 10.7.2012, he was shifted to Regional Branch Office (I), Bhubaneswar till 14.11.2012 and on 15.11.2012 he was shifted to RBO (II), Bhubaneswar till 10.08.2013. On 11.8.2013 he was transferred to Puri Main Branch as Deputy Manager Accounts where he served till 19.05.2014. By virtue of the impugned order of transfer under Annexure-5, he has been posted at Berhampur by way of zonal transfer from Bhubaneswar Zone-I & II to Berhampur Zone. It is stated that the said order of transfer is violative of transfer policy framed by the Bank under Annexures-2 and 9 respectively.

2. Mr. Amitav Bagchi, learned counsel for the petitioner, strenuously urged that the bank has formulated transfer policy for Officers of JMSS-I and MMGS-II on 10.10.2005 as per Annexure-9. Clause 7.4 thereof states the age of Officers. Under clause-7.4.1, an officer who has attained the age of 57 years and/or due to retire within three years on superannuation, may request for a transfer to one of the three choice centres provided he is not posted at the centre of his choice within three preceding years. Requests without specifying three different centres of choice will not be entertained. As per clause-7.4.2, such an officer may also request for retention at the existing centre of his posting provided that he has not completed 2 years of continuous stay at the centre. Under Clause-6.3, an officer would be considered for posting in another module normally after a stay of 8 years in a module. On such transfers the officers have to serve in another module for a minimum period of 3 years. Referring to Annexure-2 he further urged that clause-7.0 provides special cases of transfer and clause-7.1 provides transfer on compassionate grounds. Under clause-7.1.3, the need for such transfer will be considered in the case of urgency i.e. (i) Own sickness, (ii) Sickness of spouse/children and (iii) Sickness of dependent parents. Clause-7.4 of the policy states transfer of physically handicapped officers. Under clause-7.4.2 physically handicapped officers on their promotion would normally be posted, if vacancy exists, in the same city/town. In case of non-availability of vacancy, it would be ensured that such officials are transferred to places nearest to their original place of posting and they should not be transferred to far off or remote places. Clause-7.5. provides request of transfer. Under clause-7.5.4, while effecting transfers, the transferring authority will take into account the valid transfer preferences, if any, so that the officers may be accommodated without infringing the guidelines spelt out in this policy. As per clause-6.1, the minimum and maximum period of retention of an officer at the same branch/office would generally be minimum for a period of two years and maximum for a period of three years in respect of category of employee like that of the petitioner. But under clause-6.3 it is stated that an officer would be considered for posting in another module normally after a stay of 6 years in a zone. On such transfers the officers have to serve in another module for a minimum period of three years. It is stated that the petitioner had only rendered nine months" service in his present place of posting at Puri Main Branch and therefore he should not have been transferred as he had not completed minimum tenure of

two years in a particular station. In addition to that, it is further urged that the petitioner being an aged officer, he should not have been disturbed as two years of service is left for his superannuation. Therefore, at the fag end of his career, the petitioner should not have been disturbed by placing from Bhubaneswar Zone-I & II to Berhampur Zone. In addition to that the petitioner suffers from Arterial Blockage in the Heart and was admitted to Kalinga Hospital from 5.10.2000 to 23.12.2000 where he under went Angio Plasty and stunting, categorized as a patient in the High Risk Group. Therefore, he requires to visit the cardiologist every month for check up and from October, 2000, he is under continuous monitoring and medication. As per clause-1.4 of transfer policy under Annexure-2, an officer may be put to hardship consequent on transfer due to factor of his ill health or a member of his/her family (depending on him/her) requiring special medical facilities. In addition to that the petitioner has one son and two daughters. The son having been completed B. Tech was turned a psychiatric patient which has added to the sufferings and domestic instability. Out of two daughters, one has been given in marriage and one is still a student of engineering whereas the wife of the petitioner is a house wife, with scanty education and exposer to the outside. Therefore, the petitioner states that at the fag end of the career, if he will be transferred from Bhubaneswar Zone-I & II to Berhampur Zone, it will cause great dislocation in his family set up. More so, he had never thought of his zonal transfer in view of the policy under Annexure-9 as it indicates that an employee is to continue in one zone for a period of eight years and that eight years period has not been completed so far it relates to the petitioner in Bhubaneswar-I, II Zone. Therefore, as per the policy of transfer under Annexure-9, on completion of eight years in Bhubaneswar Zone-I & II, he would have retired on attaining the age of superannuation. But by changing the policy under Annexure-2 reducing the length of continuance in a particular zone to six years, now he is being subjected to transfer which leads a great family dislocation. At the same time, he being an ailing person and is under control of medication from October, 2000, the order of transfer is violative of the policy decision framed by the bank. Therefore he has approached this Court.

3. Mr. R.K. Rath, learned Sr. Counsel appearing for the Bank-opposite parties referring to the counter affidavit urged that the claim made by the petitioner referring to Annnexure-9 is no more subsisting. Annexure-9 has been superseded by a fresh policy decision of the Bank in Annexure-2. Therefore, as per such policy decision since the petitioner has already stayed for six years at Bhubaneswar Zone, he is liable for transfer. It is further urged that the terms of service of the petitioner are governed by State Bank of India Officers Service Rules. Therefore the petitioner cannot go beyond the rules and the decision of the bank on flimsy grounds. Rule 47 of the State Bank of India Officers' Service Rules states that every officer is liable for transfer to any office or branch of the Bank to any place or deputation to any other organization in India. Therefore the petitioner is bound by the said Rules and is liable to be transferred to any Bank's office in India. It is stated that since the petitioner has stayed for more than 6

years 10 months in Bhubaneswar Zone-I & II, as per the policy decision Annexure-2, he is liable to be transferred. Accordingly the impugned order was passed and he was relieved pursuant to Annexure-6, therefore the claim made on the basis of non-existence of policy under Annexure-9 cannot be considered in view of the new policy under Annexure-2. It is further urged that transfer is an incidence of service and it is completely the prerogative of the employer to transfer his employees at any point of time to anywhere and the Courts have no jurisdiction to interfere with the same. The impugned order has been passed in administrative exigencies and therefore the same should not be interfered with by this Court invoking the extra ordinary jurisdiction under Article 227 of Constitution of India. To substantiate his contention, he relies upon the judgments of the Apex Court in Union of India and Others Vs. S.L. Abbas, , State of Punjab and others Vs. Joginder Singh Dhatt, and State of U.P. and Others Vs. Gobardhan Lal, .

4. In view of the above factual backdrop of the case in hand it is to be considered as to whether this Court can exercise power under Article 226 of the Constitution of India and can interfere with the order of transfer passed by the authority.

5. In any service when the relationship is that of master and servant, transfer, retirement, promotion etc. are incidents of service. Usually the master has full power to transfer his servant whenever he wants because transfer is ordered looking to the character and quality of work, the servant does. Thus, if the master is of the opinion that a particular servant is required at a particular place for a particular duty, the master has a right to transfer such a servant from one place to another. This power of the master is not absolute and should not be exercised capriciously. At the same time, the master should avoid to transfer his servant simply to accommodate the other favoured servant. Furthermore an order of transfer of a servant should be passed in public interest or in the interest of the institution itself where the servant serves. Exigencies of administrative purpose also sometimes persuade the master to transfer the servant from one place to another.

6. The Hon"ble Supreme Court in Mrs. Shilpi Bose and others Vs. State of Bihar and others, has observed as under:--

"The Courts should not interfere with transfer orders which are 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. An employee 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 of affected party should approach the higher authorities in the department."

From the judgment rendered by the Apex Court, it is evident that the executive

instructions even if were not followed, the Court should not interfere with the order of transfer.

7. Effective utilization of the service of an employee is in the very core of administrative exigency. It is an accepted position in law that even if a service is transferable, an employee in public employment cannot be transferred on mere ipse dixit of the superior authority having power to make an order of transfer. The administrative exigency and/or public interest must be fulfilled before passing the order of transfer against an employee. A transfer is a very important incidence of service and often the order of transfer which may appear innocuous causes serious hardship to the concerned employee. It should be noted in this connection that how best the service of an employee can be utilized must be left to the wisdom of the employer and for that purpose, to the appropriate authorities in a public service. Whether the service of an employee can be better utilized in some other place is not a justifiable issue in a court of law. It will be sufficient to sustain an order of transfer if it can be shown that the service is a transferable one and by the impugned order of transfer, no condition of service or the norm laid down for such transfer has been violated and that a proper consideration of administrative exigency and/or public interest has been made by the concerned authority and on being satisfied of such administrative exigency and/or public interest, the order of transfer has been made.

8. Referring to Shilpi Bose case (supra) and Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , it is held that a judicial review of an administrative action is of course permissible, but orders of transfer are interfered when:--

"(a) the transfer is malafide or arbitrary or perverse;

(b) when it adversely alters the service conditions in terms of rank, pay and emoluments;

(c) when guidelines laid down by the department are infringed and lastly;

(d) when it is frequently done;

(e) if there is a statutory infraction."

Therefore, whenever a public servant is transferred, he must comply with the order but if there be any genuine difficulty in the proceeding of transfer, it is open to him to make representation to the competent authority for modification or cancellation of the transfer order.

The said view has been reiterated in S.L. Abas case (supra), Joginder Singh Dhatt case (supra). Gobardhan Lal case (supra).

9. In view of the law laid down by the Apex Court, there is no dispute that the Court should not interfere with the order of transfer which is within the complete domain of the employer. The Apex Court has time and again expressed its disapproval of courts below interfering with the order of transfer of public servant

from one place to another. It is entirely for the employer to decide when, where and at what points of time an employee is to be transferred from his present posting and ordinarily Courts have no jurisdiction to interfere with the impugned order of transfer.

10. Mr. Bagchi, learned counsel for the petitioner, fairly submits that in view of the counter affidavit filed by the opposite parties that the policy under Annexure-9 is no more in existence, he confines his submission to the policy under Annexure-2. In addition to that, he submitted that he has not alleged malafide against any authority nor any statutory infraction in exercise of transfer of authority for his own from one place to another at the fag end of his career. At the same time, he does not dispute the employer's jurisdiction to transfer him one zone to other but he emphatically states that the situation under which the petitioner being transferred, he only draws the attention of the authority to reconsider the decision in the ends of justice.

11. It is stated that before transfer, the petitioner had submitted a representation vide Annexure-4 but the same has not yet been considered in proper perspective. In addition to that, the petitioner being suffering from cardiological problem, his suffering has been doubled due to the psychiatric problem of his only son, who is under treatment at Bhubaneswar. It is stated that pursuant to the policy decision Annexure-9, the petitioner had to continue in a particular zone for a period of eight years and if such eight years would be taken into consideration, then on attaining the age of superannuation, he would have to retire at Bhubaneswar zone itself and, accordingly, he has made his future planning. But unfortunately with the change of policy, Annexure-2, the said period of stay in one zone has been reduced to six years. He admits that the petitioner has stayed in Bhubaneswar zone for more than six years 10 months. Therefore otherwise he is liable for transfer under the new policy. He further states that in the event transfer is implemented, it will cause gross dislocation in the family set up of the petitioner as he being an employee of the Bank owes responsibility to discharge his duty as per instruction of the higher authorities. He further states that no doubt the authority has power to transfer the petitioner but while transferring him ought to have looked to the grievance of the petitioner, but without doing so, the impugned order of transfer has been passed by the authority. It is also made clear that the petitioner is not willing to continue in any place within Bhubaneswar town and rather if the authorities are kind enough they can accommodate him in and around Puri or Bhubaneswar town according to his suitability so that he can reach his treating doctor within a span of one or two hours. It is stated that facilities are also available at Berhampur, but since he is under a long time treatment, i.e., from October, 2000, his treating doctor is well acquainted with ailment, better than any other doctor.

12. In view of such position, the opposite party Bank is directed to relook the difficulties of the petitioner and modify the order of transfer under Annexure-5 and consequently the relieve order, Annexure-6 allowing the petitioner to

continue in and around Bhubaneswar or Puri Town, till he attains the age of superannuation in the interest of justice taking a pragmatic view in the peculiar facts and circumstance of this case. The decision shall be taken within a period of one month hence. With the above observation and direction, the writ petition is disposed of.