
(2000) 02 DEL CK 0051
In the Delhi High Court
Case No : CWP. No. 848 of 1997

N.K. Sharma and Another

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Citation : (2000) 3 AD 1048

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : Mr. Manmohan, for the Appellant; Mr. R.K. Kapoor Advocate, for the Respondent

Judgement

A.K. Sikri, J.—This petition is preferred against Award dated 21.9.1996 passed by Central Government Industrial Tribunal in ID No. 117/88. The petitioner had challenged his transfer by raising the aforesaid dispute and by the impugned award, the CGIT has upheld the transfer of the petitioner.

2. Petitioner No.1 was elected as Deputy General Secretary of the State Bank of India Chandigarh in June 1984. He was reflected to the same office in June 1987. It is the allegation of the petitioner that respondent felt soared about the trade union activities of the petitioner No. 1 and petitioner's union and wanted to crush this union by hook or by crook. Accordingly SBI started victimising the petitioners and indulged in various acts of unfavourable practice. It ultimately resulted in transfer of the petitioner No. 1 from Section7 Chandigarh Branch to Patauda, Haryana. It is the case of the petitioner No. 1 that petitioner No. 1 who is a permanent Teller and was promoted as such on city seniority basis and posted at Sector-7 Chandigarh Branch in 1986. However due to his aforesaid union activities and as an act of victimisation and unfavourable practice in March 1988 he was transferred to Patauda branch. Petitioner union raised industrial dispute which was referred by Central Government to CGIT for adjudication with the following terms of reference:

"Whether the action of State Bank of India, Regional Officer, Haryana and U.T in Transferring Shri N. K. Sharma, Teller at their Section 7 branch to Patauda (Haryana) is legal and justified? If not to what reliefs the concerned workman entitled?"

3. After the pleadings were over, petitioner union filed an application u/s 10(4) of the Industrial Dispute Act. On this application, CGIT passed an order dated 15.12.1988 granting interim relief to the petitioner No. 1 whereby his transfer to Patauda was stayed. Respondent bank filed a writ petition against this order in this Court. During the pendency of this writ petition, on a proposal given by the respondent bank, which was agreed to by the petitioners, an order dated 15.12.1988 passed by CGIT was modified by this Court on 3.7.1989 and the writ petition was disposed of. As per this order, petitioner No. 1 was not to be allowed to join branch office at Sector 7 Chandigarh till the disposal of proceedings before the CGIT. However, the bank was to go on paying the salary to the petitioner No. 1 from July 1989 until the conclusion of the adjudication proceedings before CGIT. In view of this order, petitioner No. 1 was not allowed to join at Sector 7 branch. He did not work at Patauda either but during this period he has been paid the salary. Thereafter adjudication of the main case proceeded before CGIT. The bank produced two witnesses: Sh. Tara Chand, Stenotypist Sector-7, Chandigarh branch and Sh. S.K. Sharma, Officer in charge posted at Regional Office Haryana and U.T. Chandigarh. The petitioner union produced one witness Sh. N.K. Sharma, Teller, the concerned workman. In December 1993, arguments of both the parties were concluded and the award was reserved. However, till July 1996 when the award was not pronounced, the respondent bank filed a CW No. 2922 of 1996 in this Court praying for a direction that CGIT be directed to give its award without further delay. When the notice of this writ petition was received by CGIT, it passed an impugned award dated 23.9.1996 which was published on 14.12.1996. As noted above, in the impugned award, it is held that the action of the respondent bank in transferring petitioner No. 1 was fully justified and the petitioner No. 1 was not entitled to any relief. It is against this award, the present writ petition is preferred.

4. Before proceeding to deal with the respective contentions of the parties, let me point out certain subsequent developments which have taken place in this case. The petitioner No. 1 in the meantime, submitted his application for voluntary retirement which was accepted by the respondent bank. Thus the petitioner No. 1 is not on the rolls of the respondent as on today. The question of the validity of the transfer of the petitioner No. 1 would have become infructuous in the normal course. However, this question still needs to be decided inasmuch as certain terminal benefits payable to the petitioner No. 1 would depend upon the outcome of the petition:

5. Challenging the impugned award, Mr. Manmohan learned counsel for the petitioner argued that the transfer of the petitioner No. 1 from Chandigarh to Patauda was mala fides and there were no exigencies involved which would be

apparent from the following facts.

i) There is no post of Teller at Patauda Branch. In this connection the petitioner craves leave and liberty to refer to W-1 and W-1.3.

ii) Number of vouchers on an average at Patauda Branch are only 10-15 every day and to handle this quantum of work, one clerk/Cashier is more than enough.

iii) Transfer to Patauda would have meant demotion for the petitioner No.1 as there the petitioner would have to work as a Clerk.

iv) Petitioner No.1 would not be entitled to promotion for one year after his posting at Patauda.

v) Petitioner would not be entitled for Teller's allowance.

(vi) Petitioner's posting as a Teller in Sector

7. Branch was on account of City Seniority basis and Therefore he could not be appointed an Teller in Patauda.

vii) Post of Teller is still lying vacant at Sector-7 Chandigarh.

6. To support this submission reliance was placed on the statement of Mr.Ajay Kohli, ALO of the respondent bank given before the Conciliation Officer during the conciliation proceedings as recorded in the proceedings dated 12.5.1988 and the following part of the proceedings was highlighted.

"The Bank has filed their transfer policy Governing Award Staff. Shri Kohli informed that the Branch at Patauda was opened on 6th October, 1987 & No. of average daily vouchers at the Branch Patauda are 15 to 20. As regards Teller's appointment & creation of Teller's post, Shri Kohli informed that Teller's post is created when the No. of daily vouchers in the P.Segment increases to 100 or more. A Teller is appointed on the City Seniority basis."

7. On the basis of aforesaid portion of the proceedings, it was argued that the post of Teller is created only when daily vouchers are 100 or more. Since at Patauda daily vouchers were 15 to 20 there was no post of Teller at Patauda branch and still petitioner No.1 who was seniormost Teller was posted at Patauda. Reliance was also placed on letter dated 16.6.1990 written by Branch Manager, Patauda to Branch Manager, Sector-7 Chandigarh wherein interalia it is mentioned that there is no post of Teller at the said branch. Counsel for the petitioner also referred to cross-examination of bank's witness Sh.S.K.Sharma before the CGIT who appeared as MW-2 and submitted that the said witness in the cross-examination has made categorical admission to the effect that a Teller who gets transferred outside Chandigarh branch is not entitled to Teller allowance, such a person is not to get promotion for one year, promotion of Teller is on City Seniority basis and that petitioner No. 1 was promoted as Teller in 1986 and was posted against permanent vacancy in Sector-7 branch. He submitted that the statement shows that once these disabilities are attached to

the transfer of a Teller the petitioner could not have been transferred to Patauda branch. No doubt respondents have stated that petitioner No.1 would get Teller allowance even on his posting to Patauda, his seniority would not be affected and the restriction of one year also would not come in his way. Unfortunately it clearly suggests that transfer was not in administrative exigencies and was a result of malafides. Reliance was also placed on the transfer policy of the Respondent bank for clerical staff and particularly para 4B thereof as per which employees are listed category wise and Teller is curved out as a separate category. Therefore, according to the petitioners, petitioner No.1 could be transferred only as a Teller to which category he belonged and since there was no post of Teller at Patauda branch he could not be transferred there at all. Relying upon the same policy, it was stated the normal tenure of a clerical staff in a particular office was 5 years and only those with 5 years or longer stay at an office were liable to be transferred to any office. Petitioner had spent only 2 years in Sector-7 Chandigarh branch and his transfer was against the policy. Petitioner also relied upon the provisions of para 535 of the Sastry Award as per which transfer of office bearers or activists of trade unions, particularly where the unions were in formation stage, such transfers raised suspicion that they are inspired by ulterior motives. Accordingly in para 535 of the Sastry Award, certain directions were given which included at least 5 clear working days notice on the notice board whenever the transfer of any office bearer was contemplated to enable the concerned union/office bearer to make representation and application upon the bank to consider the same. It was contended that in the instant case, these directions were violated. Concluding his arguments, the counsel submitted that if the transfer is malafide and not in exigency of service Courts had a right to interfere and strike down these transfers and relied upon the judgments of Supreme Court in the case of *The Management of the Syndicate Bank Ltd. Vs. The Workmen*, and in the case of *B. Varadha Rao Vs. State of Karnataka and Others*, .

8. Mr.R.K.Kapoor appearing for the respondent bank submitted that the entire arguments of the petitioner were based on wrong hypothesis. There was no post of Teller. It was only a facility granted to the customers who come to the branch for encashing their cheques and instead of going to the cashier, cheques can be encased from the clerk who is having the account of the customer and such a clerk is called "Teller". Teller also belongs to clerical cadre. Therefore in the matter of transfer, instant case has to be looked from the angle of a transfer of a clerk. As far as transfer of petitioner No.1 is concerned, it was made in administrative exercise as new branch was opened at Patauda Haryana and respondent bank needed senior person with experience. The fact that at the time of his transfer the work in Patauda was less or there were 10/15 vouchers in a day was of no consideration as it is bound to be so in a newly opened branch. The statement of Sh.Verma before the conciliation officer was of no value if it is found to be against statute policy or scheme as there was no estoppel against such statute, policy or scheme. He submitted that the counter affidavit to this

writ petition was filed by Assistant General Manager which supersedes the Statement given by Sh. Verma very junior officer than Assistant General Manager and in the counter affidavit it was clearly stated that the transfer was in the exigencies of service, seniority of the petitioner was protected and petitioner was entitled to Teller allowance even on such transfer was not an impediment for his promotion. It was further submitted that no malafides were alleged, no individual named or imp ledged imputing malafides on him and Therefore petitioner had not made out any case of malafides. When there was no disadvantage incurred by the petitioner due to his transfer and the transfer was in the exigencies of service and it was a right of the management to transfer its employees which was a condition of service, the Courts were not to interfere with such transfers. He further submitted that CGIT had rightly held that transfer was valid and this Court in exercise of its jurisdiction under 226 of the Constitution would not interfere with such an Award. He further submitted that there was no violation of either Sastry Award or transfer policy inasmuch as Sastry Award itself contemplated the transfer of employees including office bearers and mentioned that the allegations of transfer of office bearers of the union though easily made, were normally unsubstantiated. He further submitted that the case of the petitioner No. 1. as stated in the statement of claim before the CGIT was totally at variance with the allegations made in the writ petition and the grounds on which the petitioners were challenging the transfer were not taken at all in the statement of claim filed the petitioners.

9. Before dealing with the respective submissions of the parties, let us first see as to how the CGIT has dealt with the issue in the impugned award. After recording the submissions of the management in paras 9 & 10 of the impugned award and that of the petitioner workman in para 11 of the impugned award, the CGIT dealt with the issue in paras 12 to 14 in the following manner:

12. After having gone through the points urged by the representatives for the parties I am of the considered opinion that there is nothing on the record to conclude that there was no vindictiveness on the part of the management in transferring Shri N.K. Sharma workman from his place of posting to Patauda. The management according to 1989 SLR 593 was fully justified because the same was passed on administrative grounds. The transfer of an employee was the prerogative of the management and no mala fide could be smelled in an original order of transfer of an employee who had continued on one post for a petty long time. In this regard I could like to refer to 1990 ISJ 368 in which it was held as follows:

"Transfer in a Government Service is an ordinary concomitant and incident of service, an employee who is appointed in a particular cadre of transferable posts his transfer from one place to another is an ordinary incident of service and it does not result in alteration of any conditions of service to his disadvantage. The transfer is a normal feature in service and no one has a right to remain at particular post or for a particular period. The norms or the policy is for the

guidance of the Officers authorised to effect and regulate the transfers. immunity against transfers would amount to gagging the right of the administration to administer and right of the employee to get work at the time and place of his choice and according to the administrative exigencies the employer, which he wants to meet.

We are of the opinion that the only conclusion which can be drawn is that the employer has a right to transfer and normally an employee with a stay for five years at a particular Branch/Office is liable to be transferred and there is no restriction imposed on the employer either by the Sastry Award of the guidelines, dated June 11, 1988. Thus, no fault can be found with the view taken by the learned Single Judge and in our opinion that is the only view possible in the facts and circumstances of this case."

13. Simply because some averments are made in the onex and the order of transfer is leveled as discriminatory and/or as actuated by mala fides, it does not become discriminatory or cannot be said to have been passed on account of mala fides. To make out a case for interference for a matter of records there should be concrete material which should be unimpeachable in character. It was so held in 1989 SLR 593 and the workman in this case has not been able to produce concrete material which could be unimpeachable in character. No special ground of vindictiveness has been established in this case by the workman and in the absence of any such evidence it is not possible to draw conclusion of vindictiveness against him on the part of the management. From the statements of the witnesses produced by the parties in this case and on the basis of the points urged before me I am of the opinion that the order of transfer of the workman does not call for any interference by this Tribunal.

14. It has been held in many cases by the different High Courts that the Court should not go into the technicalities of the matter and the Hon"ble Supreme Court in Workman of Hindustan Lever Ltd. Vs. (1984) LLJ 391 disprove the practice of raising frivolous preliminary objections at the instance of the employer to deal and feel by accusing the workman out of the dispute. I, Therefore, without going into the legalities of the objections regarding the dispute being an Industrial Dispute have come to the conclusion that the action of the management was fully justified and the workman was not entitled to any relief. Parties shall, however, bear their own costs. "

10. The aforesaid discussion reveals that Labour Presiding Officer, CGIT held that there was no vindictiveness on the part of the management in transferring the petitioner workman and the order was passed on administrative grounds. Simply because some averments are made by the petitioner workman alleging transfer as discriminatory and actuated with malafides it does not become discriminatory or cannot be said to have been passed on account of malafides.

11. The aforesaid discussion in the main award shown that although the CGIT has held that the order of transfer was not a result of victimisation and was in

administrative act, various contentions raised by the petitioner on the basis of which the award was challenged particularly on the ground that there was no post of Teller at Patauda branch, it was not in public interest to transfer the petitioner from Sector-7 branch, this was in violation of the provisions of transfer policy as well as Sastry Award etc. have not been considered by the CGIT nor there is any discussion on these aspects. There is no reasoning given by the CGIT on the basis of which it has come to the conclusion that the transfer was based on administrative exigencies. It would have been appropriate if the CGIT had given some reasons in support of its sequence after dealing with the submission of both the parties on these aspects even briefly. Counsel for the respondent could not dispute that the various contentions of the petitioner as noticed above, are not dealt with by the Labour Presiding Officer, CGIT in his impugned award.

12. Although it was insisted that this Court should go into this exercise rather than remanding the case back to the CGIT, I do not propose to indulge into this exercise and become a fact finding authority while dealing with this case under Article 226 of the Constitution. It would be appropriate to remand the case back to the CGIT so that the CGIT gives its findings on the issue after dealing with contentions of both the parties on the basis of material on record as the Court of first instance and a fact finding authority.

13. Accordingly the impugned award is set aside. The matter is remanded back to the CGIT. Since the case is old one and the CGIT has to only hear the arguments before passing the award, it is hoped that the matter would be decided by the CGIT within a period of 3 months from the first date fixed before CGIT. The parties are directed to appear before the CGIT on 15.3.2000.

14. There shall be no order as to costs.