
(2019) 07 PAT CK 0343

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12958 Of 2019

Prafulla Kumar

APPELLANT

Vs

Bank Of India A Body And Ors

RESPONDENT

Date of Decision : 31-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0343

Hon'ble Judges : Ashutosh Kumar, J

Bench : Single Bench

Advocate : R.K.P. Singh, Bal Bhushan Choudhary, Ajay Kumar Sinha, Ajit Kumar Sinha, Manini Jaiswal, Sukriti Juneja

Final Decision : Disposed Of

Judgement

1. Heard Mr. R.K.P. Singh, learned advocate for the petitioner and Mr. Ajay Kumar Sinha, learned advocate for the respondent/bank.
2. The petitioner, who is a Clerk in the Bank of India, posted in the Boring Road, Patna branch has been transferred to the Rohtas branch of the bank vide order dated 23.05.2019.
3. It has been submitted on behalf of the petitioner that the order of transfer suffers from the vice of non-application of mind and is also vindictive in as much as even though the petitioner is an office bearer of the Union, he has been transferred, which is against the mandate of the Shastri Award as well as of the bipartite settlement.
4. It has further been submitted that the order cannot be sustained in the eyes of law for the reason that since petitioner is a Clerical staff, he could only have been transferred within 100 KM of the place where he is posted and that also after observing many formalities and taking into account considerations which have been set forth in the guidelines for transfer in the bank.
5. Mr. Ajay Kumar Sinha, learned advocate for the respondent/bank has

countered the aforesaid submissions on the ground that there is no vested right of an employee even if he be the office bearer of a Union, to remain posted at a particular place. He further submits that the guidelines with respect to transfer in a bank though provides for some considerations for such office bearers but the consideration is limited only to the President, Vice President and the Secretary of the Union and not for all office bearers of the Union. Even otherwise, he submits that as a matter of right, even an officer bearer cannot claim to remain posted at one particular place.

6. The guidelines with respect to transfer/rotation of clerical staff members has been annexed with the writ petition. It notes that since bank is a sensitive service industry, the staff should not remain at a particular place for a long time and should necessarily be transferred/rotated within the branches/offices which will ensure updating of their knowledge and shall also sharpen their skills which ultimately would result in enhancing their competence and capabilities.

7. What is important to note is that the guidelines cares for holding transferability of clerical staff members to be a measure of preventive vigilance as well. With respect to the office bearers of the Union or the representatives of the Union, the guidelines indicate that such office bearers be transferred after completion of the term as Branch Union Representative for a term of maximum of three years or after completion of five years whichever is later. In case the aforesaid person is re-elected as Branch Union Representative for successive second term, he/she may be transferred after completion of the said term as Branch Union Representative. However, it cannot be claimed as a matter of right.

8. The learned counsel for the parties have also shown to this Court a Circular of the Bank of India issued from the Head Office and circulated to all the Zonal Offices listing various considerations which have to be taken into account before transferring a clerical staff. The aforesaid considerations are based on the bipartite settlement and the Shastri Award.

9. The guidelines have been framed for smooth and uniform implementation of the term of settlement under the Shastri Award. The deployment of clerical staff is required to be done anywhere within a district, irrespective of the distance involved, or up to a distance of 100 KM from the existing place of posting. If it is proposed that a staff has to be deployed beyond the aforesaid geographical limits, the matter ought to be referred to the Head Office, Personnel Department along with full details of the staff concerned and comment of the office on such staff.

10. It has also been clarified in the aforesaid guidelines that from the centre/branch which has surplus staff, deployment shall be made to a deficit centre/branch but before that, a deficit centre/branch has to be declared. Even with respect to deployment from surplus centre to deficit centre, certain other parameters have to be taken into account and those are that for such deployment in a hardship centre, two years period would be the normal tenure.

If the deployment is not in any hardship centre, the tenure would be for three years.

11. Even while identifying such staff members who are required to be deployed to the deficit centres, it has to be ensured that the staff with the shortest tenure at the current place of posting has to be chosen first and the person with the longer tenure be not disturbed.

12. These guidelines are to be followed as far as practicable and they are not intended to be principles in derogation of the law of transfer.

13. This Court has noticed that the petitioner is not the Branch Representative of any Union but is an Assistant Secretary of the Provincial Union which may have a presence in a branch but it does not make him a Branch Representative of the Union.

14. It has been submitted on behalf of the petitioner that he is the Organizing Secretary of the bank. This post has got no recognition in terms of the Shastri Award or the guidelines which have been referred to above.

15. In any view of the matter, the petitioner appears to have been transferred from Patna, Boring Road Branch to a branch of Bank of India in Rohtas which is a far-off district headquarters. The order of transfer does not indicate that the considerations which ought to have weighed with the authorities have at all been taken into account.

16. The learned advocate for the petitioner has though harped on the fact that the order is punitive in nature and also reflects a vindictive/biased approach of the management, but it appears that whichever proceeding has been initiated against the petitioner, it is post transfer and not before the order of transfer.

17. Mr. Sinha, learned advocate for the respondent/bank though has stated that there have been complaints against the petitioner in a particular branch and that a departmental proceeding was also under contemplation but realizing that such statements would give a different turn to the litigation, has chosen to drop the aforesaid grounds and does not press them. He, on the contrary, submits that the policy regarding transfer in accordance with the Shastri Award does not take into account any such requirement of insulating an office bearer of the Union completely from transfer from one branch to another.

18. Para 535 of the Shastri Award recognizes that transfers are rendered necessary by the exigencies of the administration and the proper view to take is that the transfers are normal incidence of working of a bank which must be left to the discretion of those who guide the policy of the bank and manage its affairs.

19. Para 535 of the Shastri Award however takes note of the cases of office bearers. Sub-Clause-II of paragraph 535 of the Award indicates that wherever an activist of a trade union is to be transferred, because of the fact that he is still in the formative stage and is vulnerable to victimization, his transfer would raise

suspicion about such decision being taken for ulterior purposes. In order to avoid such suspicion, as far as possible, a procedure be followed in which the President, Vice President and the Secretary of the Union be transferred only in very special cases and in case they are sought to be transferred, five days notice be put up on the notice board of the bank of such contemplated action.

20. In cases of such transfer of representatives of the Union, a record shall be made by the bank of any such representation, oral or written made by the Union and the reason for the bank refusing such request on grounds of inadequacy of the reasons for forestalling such transfers and the decision in that regard be, as far as possible, communicated to the Union as well as to the employee concerned.

21. The Shastri Award as also the guidelines of transfer in the bank do provide office bearers of a Union with some protection against transfer for the purposes of preventing their victimization but the principles of transfer in service jurisprudence remain inviolate.

22. The Supreme Court in *Shilpi Bose (Mrs) & Others versus State of Bihar & Others* 1991 Supp(2) SCC 659, while dealing with the powers of the Court to interfere with an order of transfer has cautioned that Courts should not interfere with transfer orders if made in public interest or for administrative reasons unless such transfer orders are made in violation of any mandatory/statutory rule or on grounds of mala fide.

23. An employee holding a transferable post has no vested right to remain posted at one place or other and is liable to be transferred from one place to other. Transfer by a competent authority does not violate anyone of the legal rights of the employees. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order; instead the affected party should think of approaching the higher authorities in the department. The reason for the Courts to exercise such restraint is that in case of continuous interference with the day-to-day transfer orders issued by the authorities/employer, a chaos would be caused in the internal administration which would not be conducive to public interest.

24. In *Union of India & Others versus S.L. Abbas* (1993) 4 SCC 357, the Supreme Court has held that who should be transferred where, is a matter of appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provision, the Court ought not to interfere with it.

25. While ordering the transfer, there is no doubt, the authorities must keep in mind the guidelines issued in that regard on the subject and the guidelines, as far as possible, be adhered to (Also refer to *State of U.P. & Others versus Gobardhan Lal* (2004) 11 SCC 402 and *N.K. Singh versus Union of India & Others* (1994) 6 SCC 98).

26. Now to the beefy issue of malice and bias while passing the order of transfer.

27. Malice in normal parlance means spite or ill will. As part of natural justice, any administrative order should be free of bias and malice. However, the difficulty arises only when one attempts to define as to what would be deemed to be malice or an action infested with bias. No hard and fast rules or guidelines could be provided for ascertaining whether an order is free from or infested with bias or malice and it has to be decided in the facts of each case, depending upon the materials available on record for that particular case.

28. In the case in hand, the petitioner submits that his transfer beyond the geographical limits of 100 KM and that also when he is an office bearer is an index of malice in law if not malice in fact.

29. The aforesaid contention of the petitioner does not appear to be acceptable to the respondent/bank as according to Mr. Sinha, learned advocate for the respondent/bank, Rohtas is a deficit centre and the branch where the petitioner is posted is a centre with surplus staff.

30. Though charge has been framed against the petitioner prior to the order of transfer but that is on a complaint of one of the customers of the bank with minor charges.

31. However, what can be clearly noticed from the conspectus of facts brought before this Court is that necessary factors have not gone into the decision making in transferring the petitioner from Patna to Rohtas. Rohtas being the deficit centre has not been notified by the bank and it has not been taken into account whether the petitioner's tenure was the shortest for him to be deployed to such deficit centre.

32. The dispatch, urgency and the necessity of transferring the petitioner from Patna to Rohtas also does not appear to be discernible clearly. Whether the petitioner is the bank representative of a Union or not is not the question and in the event of the petitioner being the Organizing Secretary of the association of Clerks in the bank, he is required to be given some protection against any vindictive order of transfer.

33. As has rightly been observed as a preface to the Shastri Award, any transfer of an office bearer of an association is prone to be looked with suspicion unless the guidelines are followed to the letter and spirit. Complete adherence to such guidelines may not be possible nor is it demanded, nonetheless, the order of transfer should not ordinarily be passed in complete derogation/departure of the guidelines which have been provided by the Head Office to all the Zonal Offices, about which reference has been made earlier in the order.

34. For the aforesaid facts, this Court deems it appropriate in the facts of this case to order the following:-

(i) The order by which the petitioner has been transferred from Boring Road Branch of Bank of India, Patna to a branch in Rohtas dated 23.05.2019 is set aside.

(ii) The bank is directed to place the petitioner in any branch away from the Boring Road Branch where the petitioner was earlier posted within a period of seven days, which place of posting the petitioner shall immediately join.

(iii) The bank shall, thereafter, take into account the factors which should necessarily weigh with the authority before transferring an office bearer of a Union and in case, after taking such grounds into consideration, it is felt that the petitioner be transferred to any deficit centre, the bank authorities will be at complete liberty to do so after observing the formalities provided in the guidelines which have been referred to above.

35. The aforesaid directions have been passed keeping in view that the bank has itself provided for such impedimenta to be followed in cases of transfer particularly of the office bearers of the Union.

36. With the aforesaid observation/direction, the writ petition stands disposed off.