

**(1989) 08 OHC CK 0043**

**In the Orissa High Court**

**Case No :** Original Jurisdiction Case No. 2084 of 1989

P.V.S. Murty

APPELLANT

Vs

Chief General Manager, State Bank of India and Others

RESPONDENT

**Date of Decision :** 24-08-1989

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1991) 1 OLR 348

**Hon'ble Judges :** L. Rath, J;A. Pasayat, J

**Bench :** Division Bench

**Advocate :** R.K. Mohapatra, for the Appellant; M.N. Das and M.M. Das, for the Respondent

**Final Decision :** Dismissed

## Judgement

L. Rath, J.—The petitioner, an officer of the O.J.M., Grade-I of the State Bank of India in its regional office at Bhubaneswar has moved this Court under Art. 226 of the Constitution of India seeking quashing of an order of transfer from Bhubaneswar module to Berhampur module on the ground that the order of transfer has been passed in contravention of the conditions of service applicable to him. Notice had been issued to the opposite parties for final disposal. In pursuance of the notice, the opposite parties have appeared and filed their counter affidavit to which the petitioner filed a rejoinder affidavit and the opposite parties also filed an additional counter affidavit. Further during the hearing of the case the petitioner also filed, with the permission of the Court, a petition for amendment to incorporate certain new grounds. The amendment was allowed and the opposite parties have also filed a further counter affidavit to the amended writ petition which was also accepted

2. It is the petitioner's case that on 15-2-1971 he was appointed an officer of the State Bank of India and posted to Cuttack City Pay Office and was thereafter transferred to Bhubaneswar on 26-5-1972 where he continued till 26-5-1975 when he was transferred back to another branch at Cuttack. While at

Cuttack, the petitioner proceeded on leave on 26-4- 1982 on account of illness which continued till 31-3-1983 and joined on 1-11-1983 at Bhubaneswar since during his illness he had been posted at Bhubneswar. A charge sheet was served on the petitioner during his illness on 9-8-1983 and on his joining on 1-11-1983, he was placed under suspension on the very same day. The departmental proceeding initiated against him was finalised on 31-7-86 with the imposition of punishment of the period of his suspension from 1-11-1983 to 1-8 86 to be treated not as on duty. After finalisation of the proceeding the petitioner joined service on 2-8-1986 at Bhubneswar. The departmental appeal preferred by the petitioner against the punishment imposed on him was rejected in the year 1988 against which a writ petition, O. J. C. No, 3839 of 1988, filed by him is pending disposal. in the meantime the petitioner completed fifty years of age on 28-6-1988 and thereafter in view of a fresh disciplinary proceeding contemplated against him, he was granted extension of service for one year from 28-6-1988 to 27-6-1989 subject to a review at the conclusion of the disciplinary proceeding or before, 27-6-1989 whichever was earlier. A fresh set of charges was served on the petitioner, on 4-1-1989 and during continuance of the proceeding another extension of service of one year, was granted from 28-6-1989 to 2/-6-1990 on the same terms of the extension being subject to review at the conclusion of the disciplinary proceeding or before 27-6-1990 whichever is earlier, While the disciplinary proceeding is continuing against the petitioner, he has been transferred by order issued on 14-6-1989 to Berhampur module for deployment at that end. It is this order of transfer which is impugned in the writ petition.

3. Mr. R. K. Mohapatra, learned counsel for the petitioner, impugning the transfer, has urged the same to be in violation of the conditions of transfer as stipulated in Annexure-1 to the writ petition; the guidelines framed by the Circle Management Committee of the State Bank of India on 22-2-1989 for the year 1989-90 to regulate transfer of officers of the State Bank. Besides, he has also contended the transfer to be violative of paragraphs 5, 4 and 9 of the ... Staff Circular No. 88 of 1986 of 22nd December, 1986. So far as the 1989 instructions are concerned, it is the submission of Mr. Mohapatra that paragraph 6 thereof relates to transfer of officers like the petitioner and that for the purpose the officers have been divided into three categories regarding their liability of transfer. The different categories are as follows :

(i) Officers in JMG/RDOs who have completed more than 4 years but less than 6 years of continuous stay as on 31st May, 1989 in Bhubaneswar module be considered for transfer to Berhampur/ Sambalpur module.

(ii) Officers in JMG/RDOs who have completed more than 6 years but less than 8 years of continuous stay in Bhubaneswar module may be considered for transfer.

(iii) Officers in MM-JJ/OJMs/RDOs who have completed more than 8 years of continuous stay in Bhubaneswar module may also be considered for transfer to Sambalpur Berhampur module.

It is the case of the petitioner that since he does not fall in any of the categories, his transfer is not contemplated under the instructions and hence could not have been made. Besides, it is his further case that since his service is being extended from year to year after he has reached the 50th year with condition that the period of extension may be shortened depending upon conclusion of the disciplinary proceeding, he is entitled to exercise his option to be posted at one of any three stations of his choice as stipulated in paragraph 5. 4 of the 1986 Circular which stipulates that as far as possible, officers who are due to retire within three years may be transferred to 6/ retained at one of the three stations of their choice. The transfer is also impugned since the reasons for such transfer are not recorded and the order has not been approved by the next higher authority as required under paragraph 9. 1 of the 1986 Circular.

4. The case of the opposite parties as disclosed in the counter affidavits filed by them is that the petitioner's case is covered under para- 6(iii) of the 1989 instructions and hence he is liable to be transferred. So far as violation of the 1986 Circular is concerned, it is their case that the normal age of retirement of officers like the petitioner who joined the Bank prior - to 19-7-1969 is 58 years which can be extended up to 60 years subject to periodical reviews on attaining the 50th year, 55th year and 58th year and where extension of service is granted, it is normally granted for the full term, i.e. at the 50th year till 55 years, at the 55th year till 58 years and at the 56th year till 60 years, but that when disciplinary proceeding and/or prosecution is/are pending or contemplated, short extensions are granted which has been done in the petitioner's case. It is not correct to say that the petitioner is at the retirement stage since at the close of the disciplinary proceeding his services may be extended in the normal manner and he may continue upto 60 years and as such paragraph 5. 4 of the 1986 Circular has no application. Reliance for the contention has been placed on Annexure B to the counter affidavit, the Circular No. 3- of 1988 issued- on 9-2-1986. It has also been further contended by Mr. Das that the Circular of 1986 and the instructions issued in 1939 are only guidelines for the Bank for its own- administrative convenience and do not create any enforceable right in favour of the petitioner.

5. So far as the last submission made by Mr. Das is concerned, it may be taken up first, Annexure-1, the 1989 instructions, are purported to be the guidelines regarding transfer and posting, of the supervising, staff and it is the petitioner's case, which has also not been disputed, that it has been duly approved by the Circle Management Committee. Indeed in the counter affidavits filed by the opposite parties, the 1989 instructions and the 1986 Circular have been accepted as the conditions relating to transfer of the employees of the petitioner's category and reliance has been placed on their provisions as justifying the order of transfer, it thus cannot be said that either the 1989 instructions or the 1986 Circular are/is merely for the purpose of internal guidance of the opposite parties without any obligation on their part to follow the same when a plea of discrimination or non- compliance is raised. Administrative instructions, when are

devised to regulate the action of the authorities vested with the power to administer must be held to be necessary of compulsory compliance by the administrative authorities except in the event of any just exception. If a rule is in existence either statutory or administrative, it is the requirement of an egalitarian society that the rule must be applied uniformly to all governed by it since to permit a selective approach would openly invite a charge of discrimination. The State is under an obligation to develop and nourish a spontaneous growth of uniformity and impartiality in all stages of the society throughout the State, and for such end it is essential that it itself never fails to project and protect its own image as being an even dispenser of justice. A departure from accepted policies in case of picked out individuals either for their benefit or to deny it when the same is otherwise due, and justification of the same under the camouflage of administrative immunity is neither acceptable nor palatable to our constitutional jurisprudence founded upon rule of law. This view was also adopted in *K.M. Joseph, Trivandrum and Another Vs. State of Kerala and Another*, . Dealing with a similar contention, it was observed in 1970 KLT 571 (*Junus v. Auditor General of India*);

"An executive agency must be rigorously held to the standards by which it professes its actions to be judged."

The same High Court in 1972 KLT 165 (*P. C. Abraham v. State of Kerala and others*) observed :

"The plea that while non-compliance with enacted law in the matter of application to citizens would attract a charge of arbitrariness, it would not be the case if the charge is one of arbitrariness in the matter of executive action cannot be sustained. Executive authorities are not free to act as they like even in matters where they are not guided by provisions of law. In all matters resulting in civil consequences to the citizens the executive has to treat all alike. The executive will be open to be charged with arbitrariness in the matter of its action, administrative though it be. If the facts disclose unequal treatment just as it would be subjected to a charge of arbitrariness when it discriminates against a person or persons in the matter of application of the rule of law."

The instructions of 1989 or the 1986 Circular are the policy decisions of the opposite parties having general application to staff of specific categories and any infringement thereof in their application to any particular case assailed on the charge of hostile discrimination is not liable to be thrown out merely because the policy is contained in the shape of executive instructions, but that on the contrary, the authorities must be held to have a compulsory duty to follow the policy uniformly. This submission of Mr. Das must accordingly fail.

6. In submitting that the petitioner's transfer was violative of paragraph-6 of the 1989 instruction, Mr. Mohapatra has urged that since the petitioner was under suspension from 1-11-1983 to 31-7-1986 when he was reinstated with the punishment of the period of suspension not to be treated as on duty, that period

cannot be counted of his being in service at Bhubaneswar as the same is not available to be counted as service for whatsoever purpose, if such period, i.e. 2 years 8 months 30 days or 2 years 9 months is excluded, the petitioner's total period, of stay at Bhubaneswar module would be less than 8 years and hence he would not be covered under paragraph 6(iii) so as to make him liable for transfer outside the Bhubaneswar module. Such submission of Mr. Mohapatra is based upon the further fact that for Orissa region different modules were constituted for the first time in 1981 and prior to that Orissa was only one unit and officers of the State Bank were liable to be transferred anywhere inside that unit. It has thus been contended by him that from 1981 till the order of transfer in Annexure-3 of 14-6-1989 the petitioner has not stayed continuously for 8 years in the Bhubaneswar module which consists of both Bhubaneswar and Cuttack so as to be within the scope of Clause (iii) of paragraph-6 of the 1989 instructions. The submission is wholly fallacious. Merely because the petitioner was imposed the punishment of the suspension period not to be treated as on duty, it does not have the effect of wiping out his service for the period altogether. The punishment only meant that the petitioner was not entitled to regular pay for the period and his emoluments during the period were confined to the subsistence allowance if any. During suspension, the status of an employee continues intact as an employee holding the same post under the master. There is no cessation of service but the employee is only prevented from physically discharging the duties of the post he holds. Thus, the service of an employee continues at the same place where he is suspended and during the period in a theoretical sense, his service is also rendered there. . Explaining the concept of suspension, it was observed by this Court in OJC 1667/86 decided on 29th September, 64 1986 CLT 17 at page 9 Satyanarayan Patnaik v. State of Orissa and another):

"Suspension, as is commonly understood, means only a temporary cessation of duty or office" which is put in abeyance for the time being. It does not in any way interfere with the status of the person or the body so suspended which is only temporarily restrained from working. The status continues unabated. It only means a temporary deprivation of one's "office or" position, a temporary abrogation or interruption from work throughout which period the person or body concerned continues to hold the office but during which period somebody else is merely assigned the duty to discharge the authority exercised by him or it previously."

The purpose of suspension as was observed in 67(1989) CLT 826 (Purna Chandra Misra v. State of Orissa and another) in its very nature, is one made to meet an emergent situation where it is thought best in the interest of the administration for the employee to be kept out of his normal right of discharging duties since his continuance in the office might jeopardise either a departmental proceeding drawn up or to be drawn up against him or any investigation that might be carried on against his conduct. This submission of Mr. Mohapatra-hence must fail.

7. Apart from the question whether the petitioner's case is covered under

paragraph-6(iii), it is also apparent that, his case is covered under paragraph 6(i) of the 1989 instructions which provides that an officer who has completed more than 4 years but less-than 6 years of continuous stay as on 31st May, 1989 in the Bhubaneswar module is to be considered for transfer to Berhampur/Sambalpur module. The petitioner admittedly joined service at Bhubaneswar on 1-11-1983. Therefore, by 31-5-1989 his stay at Bhubaneswar comes to 5 years 7 months and hence he is also covered under that provision and became liable to transfer

8. The submission that the petitioner was not covered under paragraph 6(iii) otherwise also" has no substance. It is the submission of Mr. Mohapatra that since the module system came into existence" in 1981 only, the petitioner's stay in Bhubaneswar module prior to that is not available to be taken into consideration for determining the period of his continuous stay there so as to make him liable for transfer. Paragraph-7 of the Instructions provides the method of calculation of the period of stay and stipulates in paragraph 7(iv), as follows :

" 7(iv). For calculating the length of service put in by an officer in a module, the periods spent by the officer in the districts presently in the module may be taken into account."

The purpose behind the instructions and classifying the officers into different categories for their transfer out of Bhubaneswar module is based upon the policy of preventing officers who have continued for long periods at Bhubaneswar to be rooted there, and instead to facilitate their shifting to other places. The instructions are based upon a public policy of preventing incumbents to grow vested interest at particular places by remaining there for long periods. Paragraph 7(iv) is the very provision embedded in the instructions to safeguard such contention as advanced by Mr. Mohapatra and provides that the periods already spent by the officers in the districts presently in the module are to be taken into account for calculating the periods of stay. The petitioner admittedly has continued in Bhubaneswar module since 1971 and hence even excluding the period of suspension, his stay in Bhubaneswar module till his transfer would be much more than 8 years" continuous stay. It has thus been rightly contended on behalf of the opposite parties that the petitioner has become liable to be transferred.

9. Next to be considered is the contention of Mr. Mohapatra based upon paragraphs 5, 4 and 9. 1 of the 1-986 Circular. For appreciation of the point raised, the provisions are extracted :

**Aged Officers :**

5.4 As far as possible, officers who are due to retire within 3 years may be transferred to or retained at one of the 3 stations of their choice. Such transfers should, however, be subject to exigencies of service and in positions which are commensurate with seniority of officers concerned.

xx xx 9. 1 While transfers as per the guidelines would be effected by the concerned transferring authorities in the event of any exception in the transfer of any officer on administrative grounds or otherwise, the reasons of such transfer may be recorded and the position should also be approved by the next higher authority."

As would be seen, the requirements of paragraph 5. 4 are not of an absolute character and that postings are to be made in consonance with the same as far as possible subject to exigencies of service and depending upon the seniority of the concerned officers. The provisions regarding the age of retirement and the provisions for grant of extension of service and the review to be carried out for the purpose of grant of extension came in Circular No. 3 of 1988 on 9th February, 1988. The Circular noted that while of retirement of officers in the Bank service is 58 years, yet paragraph 19(1) of the State Bank of India (DTCS) Order, 1979 in terms provided that the competent authority "may", at his discretion, extend the period of service of an officer after he has attained 58 years of age or has completed thirty years of service or thirty years of pensionable service, as the case may be but that there shall be no extension of service of officers who have joined the Bank service as an officer or as an award employee on or after 19th July, 1969 beyond the age of 58 years. It is the case in the counter affidavits that the petitioner was an officer prior to 19th July, 1969 and hence is entitled to extension beyond 58 years of age, The Circular further provides that the superannuation age of an officer of the petitioner's category is thirty years of pensionable service or thirty years of service (if he is not a member of the Pension Fund) or 58 years whichever occurs first and that any extension granted to such officers shall not be beyond the 60th year of age, For the purpose of grant of extension, a review is contemplated at three stages, the first being on attaining 50 years or rendering thirty years of pensionable service or thirty years of service not being a member of the Pension Fund, the second on attaining 55 years of age and the third at the age of 58 years. Paragraph 7 of the Circular stipulates that when extension is granted it is normally to be granted till the next review stage, i. e. at the 50th year till the 55th year, at the 55th year till the 58th year and at the 58th year till the 60th year. Under the same paragraph, granting of short extension is considered when disciplinary proceedings or prosecutions are pending or are contemplated. The criteria for grant of extension of service is on over-all assessment of the officer's utility to the Bank and his performance, efficiency, integrity beyond doubt and good health and when an extension has been granted, in case there is deterioration of officer's health, work or conduct, the Review Committee has the power to examine the desirability of retiring such officer.

10. The petitioner attained 50th year on 28-6-1988 and thereafter has been granted two short extensions in view of the fact that a disciplinary proceeding was pending against him. An analysis of the provisions of the Circular in annexure-B, which undoubtedly constitutes the conditions of service of the petitioner, shows that while the age of retirement is 58 years, yet an officer

becomes subject to review on his attaining the 50th year of age or after rendering thirty years of pensionable service or thirty years of service if he is not a member of the Pension Fund. After reaching such age or rendering such period of service, the Bank retains the authority of periodical review of his performance as also to consider other factors relating to him to justify his continuance in service and if he is considered suitable for continuance he is granted extensions in spells till he attains the age of retirement and even thereafter for two years if he is an officer appointed prior to 19-7-1969. Thus, even though a power is retained in the authorities to retire an officer prior to 58 years of age, yet that by itself does not alter the retirement age which is 58 years. Only because the petitioner was granted short extensions of service due to pendency of a disciplinary proceeding, it would not mean that he was due to retire and was entitled to be posted at any one of the three stations of his choice. Admittedly, no order of retirement has been passed in respect of the petitioner. It has been rightly contended by Mr. Das that short extensions of service are not a prelude to retirement but are only in terms of paragraph 7 of Annexure-B and that at the conclusion of the proceeding the petitioner may continue in service till the normal age of retirement or may be entitled to extension even thereafter till the age of 60 years. Hence, I am not persuaded to hold that Para-5. 4 of the 1986 Circular has any application to the facts of the present case.

11. Even considered otherwise, Annexure-B is of a much later date than the 1986 Circular. The conditions of service of the officers as promulgated from time to time through different executive orders are to be read together and harmonised with each other but however if there is any inconsistency between two sets of instructions so that they cannot stand together, the earlier must yield to the later. Thus even though am not expressing any opinion that there is any incompatibility between paragraphs 5. 4 and that of Annexure-B the provisions of the latter would prevail in the face of any inconsistency as indeed are the very wordings at para 5. 4 saying that it is to be given effect as far as possible, and subject to exigencies of service. This submission of Mr. Mohapatra must also accordingly fail.

12. As regards paragraph 9. 1 of the 1986 Circular, it states that transfers are to be effected as per the guidelines laid down therein and in the event of any exception made on administrative grounds or otherwise, the reasons for such transfer are to be recorded and the position is to be approved by the next higher authority. The transfer of the petitioner having been effected on the basis of the 1989 instructions that itself constitutes the reasons for the transfer and save and except paragraph 5. 4 of the - 1986 Circular nothing has also been shown to if the transfer violates any other provisions of the 1986 Circular, The submission has no merit,

13. Apart from the submissions raised Mr. Mohapatra has also Submitted regarding inconvenience to be suffered by the petitioner if the transfer is effected because of his own; health and otherwise, but, however, I do not think that such

grounds are open to be canvassed before this Court which are factual averments and the petitioner's employers are the best fudges to consider such factors and also whether any relief is to be granted to him in consideration of them. It has not been- stated that the petitioner has approached the opposite parties with his grievances for consideration and hence it would not be open for this Court to interfere with the order of transfer on that account.

Mr. Mohapatra also faintly attempted to assail the transfer as having been actuated by mala fides, but however rightly did not pursue the same and gave it up.

14. In the result, the writ application fails and is dismissed with costs. Hearing fee is assessed at Rs. 400/-