
(2000) 02 PAT CK 0077
In the Patna High Court
Case No : C.W.J.C. No. 2059 of 1998 (R)

Ramachandran K.

APPELLANT

Vs

UCO Bank and Others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2000) 48 BLJR 1789 : (2001) 88 FLR 55 : (2002) 4 LLJ 729 : (2000) 2 PLJR 503

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner seeks issuance of an appropriate writ declaring the provisions of promotion policy as contained in circular No. 203 of 1992-93 dated October 1, 1992 and in particular Paragraph 14.1 of the Promotion policy of the respondent-Bank as ultra vires of the Constitution and violative of Article 14 of the Constitution of India and further for a direction to quash the order dated September 5, 1994 issued under the signature of respondent No. 37 the Deputy General Manager whereby the petitioner has been debarred from promotion for the next three years.

2. The facts of the case lie in a narrow compass: The respondent, United Commercial Bank is a nationalised bank and is an instrumentality of the Central Government. The Petitioner was appointed as a Stenographer in the year, 1976 in the said Bank and was transferred and posted from one branch to another branch. In 1994 the petitioner was promoted to Middle Management Grade scale-II and was ordered to be transferred from Jugsalai branch to Bariarjur branch in Munger district. In 1993 the respondent- Bank issued a circular dated September 8, 1993 laying down a policy for deployment of the officers on promotion to different places. The petitioner, however, filed a representation against his posting in Munger on promotion on medical ground. It is stated by the petitioner

if in spite of the representation the petitioner is forced to be relieved, then he was prepared to refuse the offer for promotion. The petitioner was, however, served with a letter dated September 5, 1994 issued under the signature of Deputy General Manager (Personnel) under the provisions of paragraphs 14.1 and 14.2 of the Promotion Policy whereby refusal of Promotion by the petitioner was accepted and it was ordered that the petitioner will not be eligible for promotion to MMG scale II for the calendar years, 1995, 1996 and 1997.

3. Mr. V. Shivnath, learned counsel appearing on behalf of the petitioner assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel firstly submitted that the petitioner was never posted on promotion and, therefore, para 14.1 of the promotion policy is not applicable in the case of the petitioner. According to the learned counsel, the petitioner simply approached the management not to relieve him till the representation of the petitioner against his posting is considered by the Chairman-cum-Managing Director but even without disposing of the representation the impugned order debarring him from getting promotion has been passed. Learned counsel then submitted that para 14.1 of the Promotion Policy is a colourable exercise of power to punish an employee who in a given circumstance, is not able to accept the posting with an order of promotion and a valuable right of making representation has also been taken away against the order of posting, According to the learned counsel, the order debarring an employee from promotion for the subsequent years, is a punishment which cannot be imposed without initiating a proceeding in accordance with law.

4. On the other hand, Mr. P.K. Sinha, learned counsel appearing for the respondent-Bank firstly has drawn my attention to the counter-affidavit and submitted that the promotion policy was formulated after a prolonged discussion and agreement with the various officers and associations. The policy was firstly signed on August 26, 1992 with All India UCO Bank Officers" Federation and, thereafter, on August 27, 1992 with All India Federation of UCO Bank Officers" and UCO Bank Officers" Congress. The promotion policy has been formulated in terms of Regulation No. 17 of the UCO Bank Officers" Service Regulations, 1979. Learned counsel then submitted that the provisions of paragraph 14.1 of the policy are neither discriminatory nor arbitrary and the impugned order dated September 5, 1994 is in consonance of the Promotion Policy. Learned counsel further submitted that the petitioner had surrendered his promotion as is evident from his refusal letter and, therefore, the impugned order passed by the respondent-Bank is justified. Learned counsel then submitted that the petitioner, in the normal course, after completion of his tenure at Jugsalai branch has been transferred. Now the petitioner, after refusing promotion and remaining for more than full period of his tenure of 5.5 years at Jamshedpur, wants to enjoy the benefits of Promotion to MMG scale II.

5. Admittedly the petitioner was transferred to Jamshedpur in April, 1993 and was posted at Jugsalai branch of the Bank. By office order dated February 1,

1994 the petitioner was promoted to MMG scale II. A copy of the promotion order has been annexed as Annexure I to the writ application. Thereafter, by office order dated March 22, 1994 the petitioner was transferred on promotion from Jamshedpur to Bariarpur, Munger. The petitioner, against the order of his transfer, filed a representation and finally, by virtue of a communication dated April 28, 1994 the petitioner expressed that if on the basis of order of transfer he is to be relieved, then he refuses the offer of promotion. The said refusal of promotion by the petitioner was considered by the respondent-Bank and by order dated September 5, 1994, he was reverted to substantive post and ordered that he would not be eligible for promotion for three calendar years in view of the provisions of Paragraph 14.1 of the said promotion policy. The petitioner did not challenge the order dated September 5, 1994, rather, he impliedly accepted the said decision of the Bank and thereby continued to stay at Jamshedpur for about four years more. After the petitioner completed more than five years at Jamshedpur, he filed this writ application challenging the promotion policy and the impugned order passed about five years back. This very fact clearly shows that the intention of the petitioner was to continue at Jamshedpur for the subsequent years as per his convenience without challenging the impugned order debarring him from further promotion. In that view of the matter I am of the opinion that the intention of the petitioner was mala fide and he has not come to this Court with clean hands and, therefore, no relief can be granted to the petitioner.

6. Besides the above, from perusal of paragraph 14.1 and 14.2 of the Promotion Policy it does not appear that the same will amount to colourable exercise of powers by the respondents. Para 14.1 of the Promotion Policy reads as under:

"An officer who appears for promotion and gets selected and he refuses to accept promotion or posting on such promotion shall be considered ineligible for promotion for the next three calendar years after the close of the calendar year in which the refusal takes place. If he refuses second time also, he will be permanently debarred from promotion."

7. As noticed above, the policy was formulated by the Bank after prolonged discussion and agreement with the various officer's Associations and this policy was not challenged by any of the officers-associations of the respondent-Bank at any point of time. It is well settled that no Government servant or employee of public undertaking has legal right for being posted at a particular place. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order; if the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. An employee has no justification to avoid or evade the transfer order merely on the ground of having made a representation. If he failed to proceed on transfer, he would be liable for disciplinary proceeding.

8. In case of Gujarat Electricity Board and Another Vs. Atmaram Sungomal Poshani, , the Apex Court has observed as follows at p. 472 of LLJ.

"Transfer of a government servant appointed to a particular cadre of transferable posts from place to other is an incident of service. No Government servant or employee of Public Undertaking has legal right for being posted at any particular place. Transfer from one place to another is generally a condition of service and the employee has no choice in the matter. Transfer from one place to another is necessary in public interest and efficiency in the public administration. Whenever a public servant is transferred he must comply with the order but if there be any genuine difficulty in proceeding on transfer it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer order a public servant has no justification to avoid or evade the transfer order merely on the ground of having made a representation or on the ground of his difficulty in moving from one place to another. If he fails to proceed on transfer in compliance with the transfer order, he would expose himself to disciplinary action under the relevant rules; as has happened in the instant case. The respondent lost his service as he refused to comply with the order of his transfer from one place to the other."

9. So far paragraph 14.1 of the Promotion Policy is concerned, I do not find any illegality or colourable exercise of powers inasmuch as the management has every right to transfer its employee on promotion from one place to another place. If the employee refuses promotion to avoid transfer, then the management shall have every right to debar him from promotion for a particular period. The aforementioned paragraph of the promotion policy, therefore, cannot be said to be a provision without any guideline or arbitrary. Moreover, from perusal of the supplementary affidavit and the reply thereto it appears that the Promotion Policy of 1992 has been amended and another promotion policy of the officers has been issued by circular dated February 27, 1998. It appears that under the new policy it has been categorically provided that an officer on promotion shall not be allowed to seek reversion or to refuse promotion or posting on such promotion.

10. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I do not find any merit in this writ application which is, accordingly, dismissed.