(2003) 12 AHC CK 0004

In the Allahabad High Court

Case No : Writ Petition No. 923 of 2002

Ravindra Nath Bharti APPELLANT

Vs

Bank of Baroda and Others RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Bank of Baroda (Officers) Service Regulations, 1979 — Regulation 2, 23, 23(5)
Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 — Section 12(2), 19
Constitution of India, 1950 — Article 226
Jawaharlal Nehru Universities Act, 1966 — Section 5(2)
Manipur University Act, 1980 — Section 1(4)
Regional Rural Banks Act, 1976 — Section 1, 11, 11(1), 11(4), 17

Citation : (2004) 5 AWC 4329

Hon'ble Judges : Pradeep Kant, J;Kamal Kishore, J

Bench : Division Bench

Advocate : L.P. Misra, for the Appellant; Pushpa Saxena and Jaideep Narain Mathur, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Kant, J.—The Petitioner, a scale-V officer in the Bank of Baroda, feeling aggrieved by the order dated 15.6.2002 and also by order dated 18.6.2002 rejecting his representation against the aforesaid order, has filed this Petition under Article 226 of the Constitution of India.

2. The Petitioner was initially promoted to the officers'' cadre in Junior Management Grade Scale (J.M.G.S.-I) on 1.10.1972. In July, 1972, he was posted in Personnel Department at the Zonal Office of the Bank at Lucknow. The Petitioner was allowed conversion in J.M.G.S.-II from ''Main Stream Banking'' to "Personnel Specialist" after screening interview by a committee duly constituted for the purpose. On 1.2.1983, the Petitioner was promoted as Middle Management Grade Scale-II in the Personnel Specialist Category and again on 16.8.1990, he was promoted in Middle Management Grade Scale-III in Personnel

Specialist Category and likewise he was further promoted on 13.3.1995 as Senior Management Grade Scale-IV (S.M.G.S.-IV) as an officer in Personnel Specialist Category. In the year 1996, i.e., on 9.9.1996, the Petitioner was transferred to Lucknow and was posted in Main Stream Banking, though he had not made any request for being posted in the Main Stream Banking nor he applied for change of his category. The case of the Petitioner was that despite the fact that no request was made by the Petitioner to change his category, he was posted in Main Stream Banking namely in the changed category for giving exposure in operational banking under the orders of the General Manager (Human Resource Management), who, according to the Petitioner, was not competent to pass such an order as it was the sole prerogative of the Chairman-cum-Managing Director of the Bank. The very fact that he was posted in Main Stream Banking for giving exposure in operational banking was orally informed though it was never indicated that his category has been changed nor the category could have been changed under the Rules, unless the concerned officer so applies for and his request is accepted by the Bank. After expiry of a period of more than a year, the Petitioner gave a representation requesting that he be posted back as an officer of Personnel Specialist Category. The representation is dated 25.3.1998. However, before this representation was made the Petitioner in the year 1997, was asked for this consent for being posted on deputation in the Regional Rural Bank to which the Petitioner indicated that he belonged to the Personnel Specialist Category hence was not desirous for being posted in Regional Rural Bank or in operational Banking. The Petitioner, however, remained posted in Main Stream Banking which necessitated him to file another representation on 2.2.2001 for conversion of his category. On his representation, the Deputy General Manager (Central Office), Mumbai, enquired from the Deputy General Manager, East Zone, Bank of Baroda, Allahabad, as to under what circumstances the Petitioner was posted in operational Banking. However, no orders for conversion of his category were passed. Later on by means of order dated 12.1.2002, the Petitioner was promoted as S.M.G.S.-V, mentioning in promotion order that his posting shall be indicated subsequently. The posting of the Petitioner on promotion being made as S.M.G.S.-V has been made as Chairman of the Regional Rural Bank, Allahabad.

3. Raising his challenge to the aforesaid order, the learned Counsel for the Petitioner has mainly raised the following points: (1) The Petitioner being an officer belonging to Personnel Specialist Category could not be posted in Main Stream Banking which is a different category than the category to which the Petitioner belongs ; (2) Such a change in category is only permissible in case the incumbent makes a request for the change of category and the same is allowed by the Chairman and Managing Director of the Bank ; (3) The posting of the Petitioner in the Main Stream Banking on his transfer to Lucknow could have been only for a period of one or two years for giving exposure in operational Banking and since the Petitioner did not at any point of time ask for the change of his category, the aforesaid change was itself bad for which no orders were

passed by the Chairman and Managing Director of the Bank but were passed by the General Manager (Human Resource Management) , who was having no such authority.

4. It has further been submitted that the Petitioner''s category of the "Personnel Specialist" has been throughout recognized since 19.11.1982 when such a conversion was allowed from Main Stream Banking to Personnel Specialist Category, which fact is also reflected in the seniority list of the officers of the M.M.G.S.-II dated 1.2.1983 and that of the officers of M.M.G.S.-III dated 16.8.1990 in which against the name of the Petitioner Code No. 18 was mentioned which Code indicates that the Petitioner belonged to the Personnel Specialist Category. The Petitioner continued to remain in the said category when he was promoted as S.M.G.S.-IV and, therefore, the change of category on his transfer to Lucknow on 9.9.1996 was bad ; (4) The posting as Chairman, Regional Rural Bank, Allahabad, is an appointment on deputation which could not be done without consent of the Petitioner. Not only the Petitioner has not given any such consent but in the year 1997, when he was asked for his consent for being posted on deputation, he expressed his disinclination in absolutely unambiguous terms ; and lastly since the Petitioner did not belong to the Main Stream Banking, he had no required knowledge or experience and his posting as Chairman, Regional Rural Bank would not only be adverse to his interest but may also cause loss to the Bank holding the Petitioner responsible for a job which is foreign to him and which has been forced upon him without his will.

5. In support of his arguments, the learned Counsel also drew the attention of the Court to the letter dated 28.1.2000, by which the Petitioner was required to submit his explanation or comment about certain shortcoming when he was posted at Lucknow in the operational Banking to which the Petitioner submitted his reply dated 29.4.2000, by stating that he was an officer of Personnel Specialist Category and, therefore, he had no adequate exposure to create higher magnitude.

6. In response, the learned Counsel for the Bank has submitted that the Petitioner initially joined service as clerk in the Bank which duties he performed right from the year 1967 till 1972 when he was promoted on 1.10.1972 in Junior Management Grade. The Petitioner had worked for ten long years, i.e., upto 1982 in the Main Stream Operational/General Banking, the fact which is admitted to him and which confirms, that he has adequate knowledge of General Banking. The category of the Petitioner was converted from Main Stream Banking in the Specialist Category on 19.11.1982, though thereafter he was promoted to M.M.G.S.-I, M.M.G.S.-II and M.M.G.S.-III.

7. The Petitioner was posted at Zonal Office of the Bank at Lucknow on 9.7.1996 and was given job of General Banking and not of Personnel Specialist Category. He was promoted from scale-IV to scale-V which is Senior Management Grade Scale-V, while considering his past performance of six years working in Lucknow in General Banking. He had functioned both in Zonal Office and at Hazratganj

Branch Office, Bank of Baroda, Lucknow. He has excellent performance and efficiency in General Banking. It has also been asserted that since the Petitioner wanted his stay at Lucknow because of his own personal interest, he continued with the said posting and when he has been asked to go out of Lucknow, he has raised all these pleas to impress upon that he being an officer of different category, could not have been posted in the present category. The claim of the Petitioner that he has refused for being sent on deputation to Regional Rural Bank in the year 1997, it has been submitted that firstly no consent would be required for being posted as Chairman, Regional Rural Bank and secondly the Petitioner made certain representations for change of his category in the year 1998, i.e., when he came to know that he may be posted in the Regional Rural Bank and thereafter again after a lapse of four years in the year 2001. Making of such representations do not establish that the Petitioner was not capable of discharging duties in Main Stream Banking or that in any way he suffered any disadvantage for that reason.

8. The High Court initially did not pass any interim order against the posting of the Petitioner as Chairman in the Regional Rural Bank but later on, on 18.7.2002, an interim order was passed and, thereafter, the Management of the Bank passed an order of transfer of the Petitioner to Madhapur Kutch, Gujarat as a Generalist Officer. An argument has been raised by the counsel for the Bank that the transfer order of the Petitioner from Lucknow to Madhapur Kutch, Gujarat, was a fresh cause of action but the same has not been challenged, therefore, no relief can be granted to the Petitioner.

9. The Petitioner, while refuting the aforesaid submission urged, that the order of transfer to Kutch, Gujarat, has been passed only for interregnum period, during which the petition remains pending before the High Court as is evident from the letters dated 13.9.2002 and 14.9.2002. The submission, therefore, is that the order of transfer to Kutch, Gujarat, having not been passed after superseding the order impugned, and having been passed for the limited period till the petition is decided, need not be challenged as the said order would stand exhausted on the decision of the writ petition irrespective of the fact that the writ petition is allowed or dismissed. In case the petition is allowed the Petitioner would be entitled to remain in the Personnel Specialist Category and would not be required to join as Chairman, Regional Rural Bank, Allahabad, and if the petition is dismissed, the Petitioner would have to join at Allahabad but in either of the two conditions, the order of transfer to Kutch, Gujarat would not survive on final disposal of the writ petition.

10. We do agree that the order of transfer from Lucknow to Kutch, Gujarat, appears to have been passed only for the period, during which the petition remains undecided and on the outcome of the present writ petition, the aforesaid order would lose its significance automatically. Therefore, non-challenge to the aforesaid order does not affect the Petitioner''s claim in the present writ petition in any manner.

11. The Regional Rural Banks Act, 1976 (Act No. 21 of 1976) (hereinafter referred to as the Act) has been enacted to provide for incorporation, regulation and winding up of Regional Rural Banks with a view to develop the rural economy by providing, for the purpose of development of agriculture, trade, commerce, industry and other productive activities in the rural areas, credit and other facilities, particularly to the small and marginal farmers, agricultural labourers, artisans and small entrepreneurs, and for matters connected therewith and incidental thereto. The Act extends to the whole of India. Section 3 of the Act deals with establishment and incorporation of Regional Rural Banks wherein Sub-clause (3) reads as under:

(3) It shall be the duty of the Sponsor Bank to aid and assist the Regional Rural Bank, sponsored by it, by:

(a) subscribing to the share capital of such Regional Rural Bank,

(b) training personnel of such Regional Rural Bank ; and

(c) providing such managerial and financial assistance to such Regional Rural Bank during the first five years of its functioning, as may be mutually agreed upon between the Sponsor Bank and Regional Rural Bank:

Provided that the Central Government may, either on its own motion or on the recommendation of the National Bank, extend the said period of five years by such further period, not exceeding five years at a time, subject to such conditions as it may deem fit to impose.

12. Subject to the Provisions of the Act, the general superintendence, direction and management of the affairs and business of a Regional Rural Bank shall vest in a Board of Directors, who may exercise all the powers and discharge all the functions which may be exercised or discharged by the Regional Rural Bank as given in Section 8 of the Act.

13. Section 9 deals with Constitution of Board of Directors which says that the Board of Directors shall consist of the Chairman appointed under Sub-section (11) and other members as detailed in said section.

14. Section 11 lays down the procedure for appointment and removal of Chairman by the Sponsor Bank. Section 11 of the Act says that Sponsor Bank shall appoint an individual to be the Chairman of a Regional Rural Bank and specify the period, not exceeding five years, for which such individual shall, subject to the provisions of Sub-section (4), hold office as the Chairman. Proviso attached to Sub-Section 1 of Section 11 says that no appointment of such an individual shall be made, if such an individual is an officer of the Sponsor Bank, except after consultation with the National Bank and in any other case, except with prior approval of the Central Government. The power to terminate the term of office of the Chairman at any time before the expiry of the period specified in Sub-section (1) vests with the Sponsor Bank subject to the consultation being done with the National Bank in case the Chairman is an officer of the Sponsor

Bank and in any other case, except with the prior approval of the Central Government.

15. Section 17 deals with the staff of the Regional Rural Bank, which besides giving power to Regional Rural Bank for making appointment of officers and employees as may be found necessary or desirable in the manner prescribed, also provide that the Sponsor Bank, if requested so to do by a Regional Rural Bank sponsored by it, to send such number of officers or other employees on deputation to the Regional Rural Bank as may be necessary or desirable for the efficient performance of its functions.

16. The point of controversy in making appointment as Chairman of the Regional Rural Bank requires consideration in the light of the object of the incorporation of the Regional Rural Banks under the Act and the understanding of the meaning and import of the provisions of Sections 3, 11 and 17 of the Act. Regional Rural Banks have been established in the State of U. P. and the Bank of Baroda is the Sponsor Bank for one of them.

17. Section 3(3) of the Act obligates a duty upon the Sponsor Bank namely the Bank of Baroda to aid and assist the Regional Rural Bank sponsored by it, during the first five years of its functioning and providing managerial and financial assistance. The duty cast upon the Sponsor Bank would not be limited to a period of five years only, but for giving full effect to the object of the Act, the Sponsor Bank would always be responsible for effective control and management of the Regional Rural Bank. The Sponsor Bank cannot be excluded nor can stand excluded from the responsibility so entrusted upon it u/s 3 of the Act for responsible management and handling the affairs of the Regional Rural Bank. In doing so, the duty also lies upon the Sponsor Bank to make appointment of the Chairman for which specific power is vested in Sponsor Bank u/s 11 of the Act. The person who can be appointed as Chairman, may be an individual not being officer of the Sponsor Bank or an officer of the Sponsor Bank. In case such an individual is officer of the Sponsor Bank, the appointment as Chairman could be made only after consultation with the National Bank, and in case he is not an officer of the Sponsor Bank or for that matter in any other case, with the prior approval of the Central Government.

18. The officers and employees of the Sponsor Bank who may be sent on deputation to the Regional Rural Banks are governed by the proviso attached to Section 17 of the Act. Section 17 stands excluded in its applicability to the Chairman of the Regional Rural Bank which appointment is governed by Section 11 and not by Section 17.

19. Placing reliance upon proviso to Section 17 of the Act, the learned Counsel for the Petitioner has asserted that officers and other employees of the Sponsor Bank can be sent on deputation only if they give consent for the same and has cited the case of Writ Petition No. 2403 of 1990, Sudarsh Awasthi v. Bank of India and ors. decided on 25.5.2001, by a Division Bench of this Court. In this

case, the Petitioner Sudarsh Awasthi, while holding the post of General Manager of the Bank of India, was deputed as General Manager of Gramin Bank, Farrukhabad, which post he did not join resulting in holding of disciplinary proceedings and passing of removal order against him. Argument of the learned Counsel for the Petitioner that his posting in Regional Rural Bank could not have been done without his consent was answered by a Division Bench of the Court, in his favour after rejecting the Bank''s claim that obtaining of prior consent before passing an order of transfer on deputation by the Sponsor Bank was not necessary. Relying upon the terms and conditions of the appointment order, the Court found that there was no condition in the appointment order that he could be transferred from Bank of India to any other Bank without his consent.

20. In the aforesaid case there was no dispute that the officer of the Bank was sought to be sent on deputation and this being the admitted position between the parties, there was no occasion for the Division Bench to consider the question as to whether the appointment of the officer in that writ petition was on deputation or not. It being the case of both the sides that Sudarsh Awasthi was being sent on deputation, the only question, which was considered, was as to whether he could have been sent on deputation with or without his consent.

21. In view of provisions of proviso to Section 17 of the Act, taking into consideration other aspects in this regard, the Division Bench found that the order for sending Sudarsh Awasthi on deputation without his consent was bad and consequently the order was quashed. The case of Sudarsh Awasthi (supra) was not the case of Chairman being appointed u/s 11 of the Act.

22. The learned Counsel for the Petitioner has also cited the cases which found mention in the judgment of Umapati Choudhary Vs. State of Bihar and Another, , Dr. Ashok Kumar Roy v. United Bank of India (1990) 2 CLJ 46 , State of Punjab v. Inder Singh (1997) 8 SCC 372and Jawaharlal Nehru University Vs. Dr. K.S. Jawatkar and Others, .

23. In the case of Umapati Chaudhary (supra), the Appellant Umapati Chaudhary, on request being made by the Bihar Shiksha Board, was admittedly sent on deputation to the Board from the University where he was working as Lecturer and thereafter on redesignation of post of Assistant Registrar (Sanskrit Education) as Controller of Examination, he was not only confirmed but was also permanently absorbed with the consent of the borrowing and lending department. A notification to that effect was also issued. The aforesaid orders were challenged by some employees of the University by means of a writ petition in which learned single Judge, while defining the nature of appointment of Umapati Chaudhary, held that it was not substantive but only a temporary appointment and that if the substantive appointment on the post of Controller of Examination is to be made, then permissible procedure to make substantive appointment has to be followed, and that the post of Controller of Examinations was not permanently filled by a qualified person. A direction was, therefore, issued to the State Government to proceed forthwith to decide the mode of

appointment and service conditions of the post of Controller of Examinations and make substantive appointment on the said post. The aforesaid order was challenged before the Supreme Court where the Apex Court held that ''the concept of deputation is consensual and involves a voluntary decision of the employer to lend the services of his employee and a corresponding acceptance of such services by the borrowing employer. It also involves the consent of the employee to go on deputation or not. In the case in hand all the three conditions were fulfilled.

24. There was no dispute in the aforesaid case that Umapati Chaudhary was sent on deputation nor there was any consideration of any provision as that of Section 11 of the Regional Rural Bank Act.

25. The case of State of Punjab and Ors. v. Inder Singh and Ors. (supra) is a matter involving employees of the State of Punjab and the police department. The constables in the police department were later on deputed to the Criminal Investigation Department (C.I.D.) of Punjab Police. When they were sought to be repatriated to their parent departments, they were to go back as constables or head constables if (in the meanwhile) on deputation they earned any promotion in their parent departments. The question before the Supreme Court was that after having put in long years of service namely 20 on deputation, where they have been holding higher ranks, could they be denied their repatriation on the ground that when they go back to their parent department, they had to work either as constables or head constables. The Supreme Court, after considering the whole aspect of the matter, affirmed the order of the High Court to the extent that option be given to all those Respondent who have put in 20 years'' qualifying service to seek voluntary retirement from the C.I.D. in the ranks they are holding and they will be deemed to have worked in C.I.D. up to the date of this judgment and except as the aforesaid the appeals filed by the State of Punjab and ors. were allowed and the orders of the High Court were set aside. The Apex Court, therefore, held that working on deputation could not give any right to remain on deputation.

26. The deputationist, thus, would remain a deputationist and would have no right to remain on deputation till his retirement unless permanently absorbed otherwise.

27. In the case of Dr. Ashok Kumar Roy v. United Bank of India (supra), the learned single Judge of Calcutta High Court, interpreting Section 11(1) of the Act, held that appointment of an officer of the Sponsor Bank to the Regional Rural Bank on deputation without his consent is ultra vires.

28. In the case of Jawahar Lal University v. Dr. K. S. Jawatkar (supra), the Jawahar Lal Nehru University u/s 5(2) of the Jawahar Lal Nehru University Act, 1966, established a Centre of Post-graduate studies at Imphal and appointed the Respondent as Assistant Professor on a regular basis and also confirmed him w.e.f. 29.8.1979. In the year 1981, the Jawahar Lal Nehru University decided to

transfer the centre to the Manipur University. u/s 1(4) of the Manipur University Act, 1980, the Governor of Manipur made an order dated 31.3.1981, which provided for transfer of the members of the faculties of the centre to the Manipur University. The question was whether the transfer of the centre resulted in transfer of Respondent''s service to Manipur University. The Supreme Court, while rejecting the appeal of Jawahar Lal Nehru University, held that the Respondent continues to be an employee of the Appellant University. The contract of service entered into by the Respondent was a contract with the Appellant University and no law can convert that contract into a contract between the Respondent and the Manipur University without simultaneously making it either expressly or by necessary implication, subject to the Respondent''s consent. The provision in Manipur University Act for the transfer of the services of the staff working at the said centre must be construed as enabling such transfer with the consent of the employee concerned. Since the transfer of the centre could not result in automatic transfer of the Respondent''s service, he continues in the employment of the Appellant University.

29. The Supreme Court further observed that: ''there is also no doubt that his employment could not be transferred by the Appellant University to the Manipur University without his consent, notwithstanding any statutory provision to that effect whether in the Manipur University Act or elsewhere'' and that ''... The position in law is clear, that no employee can be transferred, without his consent, from one employer to another. The consent may be express or implied''.

30. Reliance has been placed on the aforesaid cases in buttress of submission of the learned Counsel for the Petitioner that the transfer and posting of the Petitioner as Chairman, Regional Rural Bank is an appointment on deputation which cannot be done without his consent.

31. We had already taken note of Sections 3, 11 and 17 of the Regional Rural Bank Act, which are relevant for testing the aforesaid arguments and, therefore, without restating the meaning and scope of the aforesaid provisions, we would mention Regulation 23(5) of the Bank of Baroda (Officers'') Service Regulations, 1979, which reads as under:

The following points may be kept in mind while deputing officers to other organisations:

(a) It would be necessary to obtain the consent of the officer before he is asked to proceed on deputation to an outside organization unless the employer and the employee are bound by any special statutory provisions in this regard (e.g., deputations to Regional Rural Banks).

(b) An officer should normally be advised about the duration of such deputation.

(c) Unless there are any special statutory provisions as in the case of Regional Rural Banks, refusal by an officer to take up an assignment on deputation to an organization outside the Bank would not amount to an act of misconduct on his part.

32. The aforesaid Regulations of 1979 have been framed in exercise of the powers conferred by Section 19 read with Sub-section (2) of Section 12 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) by the Board of Directors of Bank of Baroda in consultation with the Reserve Bank of India and with the previous sanction of the Central Government.

33. The regulations are binding and they apply to all the officers of the Bank as provided in Regulation 2 Sub-clause (1). The aforesaid regulations makes the consent of the officer essential before he is asked to proceed on deputation to an outside organization unless employer and employee are bound by any special statutory provisions in this regard. Sub-clause (a) of Regulation 23(5) gives example of deputation to Regional Rural Bank, which does not require any consent of the officer of the Sponsor Bank for being sent on deputation. Sub-clause (c) of the aforesaid regulations again reiterates that if there are special statutory provisions as in the case of Regional Rural Banks, refusal by an officer to take up assignment on deputation to an organization outside the Bank would not amount to an act of misconduct on his part. The pain and simple meaning of the aforesaid regulations would be that if an officer of the Bank is to be sent on deputation to an outside organization, in which definition of outside organisation, Regional Rural Bank do not fall, the officer cannot be sent on deputation without his consent but for the purpose of deputations to Regional Rural Banks, no such consent would be necessary.

34. In the cases relied upon by the Petitioner, no such provision with respect to taking of consent was under consideration by the Courts except in the case of Dr. Ashok Kumar Roy v. United Bank of India and Ors. (supra) wherein the provision of Section 11 of the Act was considered by the learned single Judge of Calcutta High Court.

35. By appointment of an officer of the Sponsor Bank as Chairman of the Regional Rural Bank, the employer is not changed and he remains under the control of the Sponsor Bank as is evident from the scheme of Section 11 itself, which is subject to consultation with the National Bank.

36. The statutory provision of Regulation 23(5), which does not militate with the provisions of Section 11 of the Regional Rural Banks Act, fortify the submission of the learned Counsel for the Bank that for appointing an officer of the Sponsor Bank as Chairman of the Regional Rural Bank, it is not necessary to have his consent. This also is in furtherance with the object of the establishment and incorporation of Regional Rural Banks u/s 3 of the Act wherein under Sub-section (3) a duty has been cast upon the Sponsor Bank to aid and assist the Regional Rural Bank, sponsored by training personnel of such Regional Rural Bank and by providing such managerial and financial assistance to such Regional Rural Banks during the first five years of its functioning, as may be mutually agreed upon between the Sponsor Bank and Regional Rural Bank but for giving full effect to

the aforesaid provision, the responsibility and the duty which lies upon the Sponsor Bank would not cease after five years of functioning of Regional Rural Bank.

37. For making appointment of an officer of the Sponsor Bank as Chairman of the Regional Rural Bank, the only mandatory requirement is that such an appointment has to be made only after consultation with the National Bank. It is not in dispute that such a consultation has been done in the instant case. The word ''appoint'' used in Section 11 in the context of the appointment of the Chairman in Regional Rural Bank with respect to the Sponsor Bank would mean his transfer or posting and not a fresh appointment to a different service or in a different cadre of service in an outside organisation.

38. In the case of Ashok Kumar Roy v. United Bank of India (supra), Regulation 23(5) of the Regulations of 1979 has not been considered by the Calcutta High Court whereas the Division Bench of Patna High Court in the case of Ram Narain Sinha and Ors. v. Union of India and ors. 1985 LIC 1477, by interpreting the purpose and object of Section 3 of the Act, has held that for appointment as Chairman of Regional Rural Bank u/s 11, the consent of the officer is not required.

39. In view of the aforesaid provisions of Regulation 23, coupled with the fact that employer of the officer of the Sponsor Bank is not changed on being posted as Chairman of the Regional Rural Bank, we find ourselves in respectful agreement with the view taken by the Patna High Court in the case of Ram Narain Sinha and Ors. v. Union of India and Ors. (supra).

40. Challenge to the order of transfer and posting as Chairman on the ground that the Petitioner belongs to Specialist Category, namely, Personnel and, therefore, his posting cannot be done in the Main Stream Banking or General Banking, has been refuted by the learned Counsel for the Respondent by raising the following points: (i) Categorization is not available for higher positions in the Bank ; (ii) An officer belonging to a particular category may be posted on any position without changing his category as is very commonly prevalent in the Bank ; (iii) In the matter of promotions, no such distinction is available for higher position and the Petitioner himself has been promoted to S.M.G.S.-V on appreciation of his work in General Banking which post he was holding for the last six years ; and (iv) In any case the Petitioner, who was recruited in the clerical cadre, had performed all the duties of General Banking even after his promotion to the officers cadre in the year 1972. He continued with the General Banking/Main Stream Banking and it was in the year 1982, i.e., after ten years that his category was changed to the ''Personnel'' but again since the year 1996, he has been exclusively performing the duties of Main Stream Banking/General Banking and, therefore, it cannot be said that the Petitioner is either unfit for holding the aforesaid post or for want of change of his category from specialist to Main Stream Banking/General Banking, he could not have been transferred and posted as Chairman of Regional Rural Bank.

41. The learned Counsel for the Petitioner has drawn the attention of the Court to various documents indicating that the Petitioner had been treated in the category of personnel, right from the year 1982 and that his posting at Lucknow in Main Stream Banking was not with his consent regarding which he made representation also for conversion in the year 1998 but the Bank on its own continued the Petitioner in the Main Stream Banking and did not allow him to go in his own category but this stand would, in no way, defeat the right claim of the Petitioner of being in his own category.

42. It is undisputed that the Petitioner was initially working in the clerical cadre from where he was promoted in the officers'' cadre in the year 1972 in Main Stream Banking where he worked for ten years and thereafter his category was changed but right from the year 1996, he again worked continuously in the General Banking, without formally changing his category and stayed at Lucknow throughout. After putting in service in General Banking continuously for six years right from the year 1996, his promotion was considered along with other eligible candidates from the combined seniority list and he was promoted as such vide order dated 12.1.2002 to S.M.G.S.-V in the rank of Assistant General Manager.

43. The promotion order, which has been brought on record, does not indicate anywhere that his promotion has been made in a particular category may be of personnel or Main Stream Banking/General Banking. The promotion has been made in the rank of Assistant General Manager in S.M.G.S.-V. The promotion has been given to the Petitioner on performance of his work in the Main Stream Banking/General Banking. Lots of arguments have been advanced by both the sides on the power of the Bank to change the Specialist Category of an officer either on the request made by the officer concerned or otherwise in terms of Clause 10 of the Promotion Policy for Officers (Annexure-K to the Regulations). But in our opinion the judgment need not be burdened for the simple reason that the Petitioner, who has initially worked for ten years continuously in the Main Stream Banking and was continuously working for the last more than six years at the time of promotion in the same system, cannot say that he cannot be entrusted the work of Main Stream Banking/General Banking more so when he has been promoted under the same conditions for which he has taken advantage of working in General Banking. In the Promotion Policy for officers, the eligibility criteria for promotion from S.M.G.S.-IV to S.M.G.S.-V is that an officer should have completed a minimum of 3 years of satisfactory service in Senior Management Grade/Scale-IV.

44. It is not the case of the Petitioner that he was promoted from S.M.G.S.-IV to S.M.G.S.-V in the personnel category nor is the case that his promotion to the higher post of S.M.G.S.-V was not made on consideration of his performance of the last six years in General and Main Stream Banking. Once the Petitioner was considered for promotion, taking into consideration his work and performance in the General Banking/Main Stream Banking, it would not be open for him to accept the promotion on the higher post but to refuse his posting in the same

very category.

45. The Petitioner has not been promoted by treating him an officer in the Personnel Specialist Category but as an officer working in the General/ Operational Banking, and on consideration and appraisal of his work in Main Stream Banking.

46. We are not adjudicating upon the question as to when and under what circumstances, the category of an employee of the Bank can be changed, since the said question is not of much significance in the case in hand. The Petitioner has not only the experience of ten years or so in the Operational Banking since before, when his category was changed, but also he had been working in the same system for about six years, as a scale-IV officer, when his promotion as scale-V officer was considered and having found suitable, was promoted as such.

47. According to his own showing, his request for change of his category or posting him in the ''Personnel Specialist'' Category has not been accepted and, therefore, he continued in the General/Operational or Main Stream Banking.

48. Promotion policy of the Bank also says that promotion to the post of scale-V Officers are to be made from amongst all the eligible scale-IV officers. The Petitioner was found eligible for the promotion, as an officer working in the Main Stream Banking and not as a Specialist Officer, therefore, the Petitioner cannot have any valid grievance, either against his promotion or his posting as Chairman Regional Rural Bank, on the ground that he cannot be posted in the Main Stream Banking System.

49. By posting an officer in the manner aforesaid, the category to which the Petitioner originally belonged loses all significance. The experience of the Petitioner in the Main Stream Banking System/General Banking has been appreciated by the Bank which is evident by the promotion which has been granted to the Petitioner from scale-IV to scale-V and an inkling of which is also found to be seen in the order rejecting the representation of the Petitioner challenging his transfer and posting as Chairman, Regional Rural Bank.

50. Thus, the challenge made by the Petitioner to the impugned orders fails. The Petitioner is, however, granted 15 days time to join at the transferred place and in case the Petitioner reports for duty, he shall be allowed to join and shall be paid regularly.

51. For the payment of salary for the period during which the Petitioner did not join at his transferred place, a decision be taken by the Bank, keeping in mind the interim order of stay passed in the present writ petition and by regularizing the aforesaid period of absence, if necessary, by allowing him leave as may be permissible under rules, for the aforesaid period. This shall be done within a maximum period of six weeks, from the date of receipt of a copy of this order and this payment shall also be made within the aforesaid period.

52. Subject to the aforesaid directions, the writ petition is dismissed. Costs easy.

