

(2001) 03 CAL CK 0001
In the Calcutta High Court

Case No : Writ Petition No. 90 of 2000 and G.A. No's. 643 and 2950 of 2000

Sailendra Kumar Sarangi

APPELLANT

Vs

Syndicate Bank and Others

RESPONDENT

Date of Decision : 30-03-2001

Acts Referred:

Syndicate Bank Officers Service Regulations, 1979 — Regulation 49

Citation : (2002) 2 LLJ 348

Hon'ble Judges : Prabir Kumar Samanta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prabir Kumar Samanta, J.—The law relating to the transfer of Government Servant has more or less been crystalised in the meantime by various decisions of the High Courts as well as the Supreme Court. The principle enunciated therefrom is that a transfer order made to satisfy the administrative exigencies cannot be questioned as it is entirely for the employer to decide when and where a public servant is to be placed. The Court will not ordinarily interfere with an order of transfer which is made to satisfy the exigencies of service. The Supreme Court in Jeet Mohinder Singh Vs. Harminder Singh Jassi, held in particular that merely because a Government servant happens to be posted twice at a particular place within a short range of time an inference as to his having been brought to a particular station for a particular purpose cannot be drawn. In another case, Union of India and Others Vs. S.L. Abbas, it has been held that the guidelines framed for transfer of an employee do not confer a legally enforceable right upon the employee to challenge the order of transfer which has been made to satisfy the administrative exigencies. At the same time it is also the dictum of the Supreme Court that a transfer order which is mala fide and not made in public interest but for collateral purposes, with oblique motives and in colourable exercise of power is vitiated by abuse of power and is open to challenge before the Court being wholly illegal and void. Reference may be made to the decision

of the Supreme Court in B. Varadha Rao Vs. State of Karnataka and Others, and of this Court in: S.V. Singh Vs. Union of India (UOI), and S. V. Singh v. Union of India and Ors. 91 CWN 1099.

2. In this particular case a definite transfer -policy was framed at a meeting between the representatives of the Management of the Syndicate Bank and the Representatives of Officers of the said Bank on March 26, 1998. The transfer policy provided inter alia that the officers are liable to be routed once in three years and Branch Managers once in three to five years and they are also liable to be transferred outside the State once in five years. As held by the Supreme Court as above, such guidelines and/or the transfer policy of the respondent/Bank simplicitor do not confer a legally enforceable right upon the writ petitioner to challenge his order of transfer if it is established that the same was made to satisfy the administrative exigencies.

3. In view of the aforesaid principles of law relating to the transfer, it is necessary to consider in this writ petition whether the transfer order of the writ petitioner was mala fide and not made in public interest but in colourable exercise of power which would result in declaring the same as illegal and void.

4. The order of transfer of the writ petitioner has been challenged in this writ petition substantially on the grounds that the same was not bonafide as it was made with the oblique motives of the respondent No. 3 for harassing writ petitioner and that the administrative exigencies for transfer of the writ petitioner as shown and/or sought to be made out were colourable one for the purpose of exercise of the power of transfer. To substantiate the aforesaid allegations the petitioner has pointed out in this writ petition several facts and circumstances relating to his transfer.

5. Here in this case, the facts relating to the transfer of the writ petitioner speak a volume. The allegation made in the writ petition that the respondent No. 3 who issued the impugned order of transfer had ill-feeling against him as he had developed a doubt against the petitioner that he was the man behind the anonymous complaint which was received by the head office of the bank against the respondent No. 3 can be reasonably linked with the facts and circumstances in which the order of transfer was made by the respondent No. 3 and the manner in which the petitioner was treated at the instance of the said respondent No. 3 after he was made to transfer.

6. The facts relating to the transfer of the writ petitioner as emerged in this proceeding are as follows:

The petitioner is an officer of the respondent/Bank and is placed in the Middle Management Grade. He was posted as Branch Manager in Cuttack Branch, during the period from July, 1995 to July, 1998. He was transferred to Patna Regional Office and joined there on July 15, 1998. He was thereafter again transferred to Central Accounts Office, Calcutta and joined there on May 20, 1999. By the impugned order made on December 17, 1999 the petitioner was again

transferred back to Patna Regional Office. The respondent No. 2, one Abdul Kuddus Ali who was posted as Chief Officer, Zonal Office, Calcutta was transferred to the post, vice the petitioner. It has been specifically pleaded that the respondent No. 2 came at around 2 P.M. to the Central Office, Calcutta and handed over a memo dated December 17, 1999 which was issued to him whereby he was relieved from Zonal Office," Calcutta on December 17, 1999 itself and was directed to proceed immediately and report himself for duty at Central Accounts Office, Calcutta Branch Office, vice the petitioner. Till then the petitioner had no knowledge whatsoever of his order of transfer. At around 3.42 P.M. a Fax Message relating to his aforesaid transfer was received by the petitioner whereby he was asked to hand over charge to the respondent No. 2 and thereafter to proceed to Patna on transfer. The formal impugned order of transfer was finally communicated to the petitioner at 4-45 P.M. The respondent No. 2 refused to comply with the procedures for taking over charge by handing over a copy of the charge taking report to the petitioner. He informed the petitioner that he had been instructed by the respondent No. 3 to relieve the petitioner immediately and to take charge of the office thereafter. As a result of which the respondent No. 2 took possession of the keys from the Manager and an Officer Subordinate to the petitioner after office hours and thereafter displayed a copy of a formal notice dated December 17, 1999 in the Notice Board at the Central Accounts Office at Calcutta that the petitioner had been relieved from his post. On the next day on December 18, 1999 the petitioner went to the bank and found that his name had been struck out from the Attendance Register by noting that he has been transferred to Regional Office, Patna and relieved accordingly. The petitioner was also not given a joining time of 7 days as per Regulation 49 of the Syndicate Bank Officers Service Regulations, 1979. In these state of things, by a letter dated December 19, 1999 the petitioner wrote to the respondent No. 3 intimating that he had not been permitted to hand over charge and the keys and other effects were taken over after office hours unauthorisedly and the respondent No. 2 did neither prepare nor hand over the report of taking over charge to the petitioner. In response to the said letter the respondent No. 3 alleged an act of insubordination against the writ petitioner. In this connection, the important and relevant materials which emerge in this case are that the respondent No. 1 drew up an elaborate contingency plan to meet the apprehension regarding Y2K problems in the computer system of the bank and consequently by a letter dated September 29, 1999 it was made known to all officers working in the computerised environment in the Central Accounts Office at Calcutta and all branches in Metropolitan Centres and all administrative Offices that no leave whatsoever would be sanctioned to them for the period between December 15, 1999 and January 15, 2000. Subsequently, by yet another communication dated November 10, 1999 the respondent No. 3 himself reiterated the above instructions and directed the sanctioning authorities that it would not grant leave of whatsoever kind especially to the core personnel such as the heads of the service branches including Central Accounts Office and other offices as mentioned therein for the purpose of implementing Y2K contingencies

plan from December 15, 1999 to March 15, 2000. More importantly to meet the said contingency plan a specialised committee was formed and the petitioner was made the Chairman of the said Committee.

7. Furthermore, the respondent/Bank had formulated a scheme dated December 3, 1999 for granting relief to its cyclone affected employees who are the permanent residents of Orissa and had suffered a super cyclone. The petitioner is also an officer having his residence in Orissa. The said scheme provided relief measures such as special leave for a period not exceeding 15 days depending upon the ground level situation to enable the employees to attend the domestic exigencies and interest free loan to the extent of one month salary on a repayment basis. The petitioner applied for both the interest free loan as well as the special leave. By a letter dated December 22, 1999 a loan of Rs. 17,400/- was granted by the Regional Manager, Calcutta, who was under the administrative control of respondent No. 3 but surprisingly the self same regional office refused to deal with the SLP by holding that the petitioner did not come under the Calcutta Regional Office as he had been transferred in the mean time. Further to add misery to the writ petitioner he was asked to vacate the official quarter at Calcutta within 7 days by a letter dated December 23, 1999 issued by the Deputy General Manager, Calcutta while the petitioner applied for sanction of 15 days special leave for undertaking reconstruction work of his damaged house at Orissa. The petitioner in the circumstances by a letter dated December 31, 1999 applied for leave in the Regional Office, Patna, by forwarding his leave application dated December 22, 1999. The respondent No. 3 instead of dealing with the said letter further by a letter dated January 5, 2000 informed the petitioner that his absence from duty with effect from December 18, 1999 was being treated as unauthorised absence with cut in wages, postponement of increment and a break in service affecting terminal benefit and pension. The harassment of the writ petitioner also did not rest at that. Further on January 11, 2000 while the petitioner deposited a cheque for collection at Central Accounts Office, Calcutta, the same was returned back on the ground that bank account of the petitioner had been closed even though the petitioner never made any request for closure of his account in the said office nor any notice was served on the petitioner informing such closure of his account by the Central Accounts Office.

8. The respondent/Bank contested the writ petition through the affidavit-in-opposition filed by the respondent No. 3. The said respondent No. 3 in the affidavit-in-opposition to the writ petition did not specifically deny the specific allegation made against him by the petitioner that he passed the impugned order of transfer with the vindictive motive of dislodging him from the Calcutta Office as he was of the opinion that the petitioner was behind the anonymous complaint made against him to the head office which he had expressed to the fellow Managers of the petitioner on the eve of the Managers meet at Bhubaneswar. However in support of the aforesaid order of transfer a case was made out in the affidavit-in-opposition that because of fixation of a particular target of recovery

percentage of huge debts of the respondent/Bank, by March 31, 2000 and of the responsibilities involved therein such as good administration of bank and banking service, maintenance of efficient, honest and experienced administrative service and for taking immediate steps for facilitation of the banking business of the respondent/Bank in the Regional Office at Patna and also for improvement of monetary system of the banking business by recovering huge debts which resulted in accumulation of huge non-performing assets the writ petitioner was transferred to Patna Regional Office. In the said affidavit-in-opposition there was no denial whatsoever to the averments made that the respondent No. 3 himself by his communication dated November 10, 1999 issued instructions to all the sanctioning authorities not to grant leave of whatsoever kind to the core personnel for the purpose of implementing Y2K contingency plan for the period from December 15, 1999 to March 15, 2000. It was also not disputed that to meet the contingency plan a specialised committee was formed of which the petitioner was the Chairman. It was further not disputed that the petitioner was the head of the Central Accounts Office at Calcutta and was a core personnel for the purpose of implementing the said contingency plan during the period from December 15, 1999 to March 15, 2000. Thus, the averments made in this writ petition which were specifically directed against the mala fide motives of the respondent No. 3 were not specifically denied nor the facts relating to the responsible involvement of the petitioner in the implementation of Y2K contingency plan of the respondent/Bank during the relevant period was denied. The oblique motives of the respondent No. 3 in passing the impugned order of transfer of the writ petitioner remained uncontroverted. In the affidavit-in-opposition no cogent reason was supplied for exercising the power of transfer by making a departure from the particular instruction relating to the Y2K contingency plan except for the ground that the petitioner is an honest and responsible officer who was considered to be able to reach the recovery percentage of huge debts of the respondent/Bank by March 31, 2000 being posted in Patna Regional Office. Therefore, on the face of the statements made in the affidavit-in-opposition it cannot but be held that the allegations made by the petitioner do not appear to be totally unfounded. Reference may be made to the paragraph 11 of the decision in Sahu Jain Ltd. Vs. Deputy Secretary, Ministry of Finance and Others, It held that where the affidavit-in-opposition does not reveal any legal excuse, mere non-admission of factual statements and bare denials would not make the grievance of the petitioner as unfounded.

9. Again if this be the ground alone for transfer of the writ petitioner for achieving a certain recovery percentage of huge debts of the respondent/Bank by March 31, 2000 then again no case has been made out by the respondent/ Bank as to why the said order of transfer was not made for a limited period till March 31, 2000. All other things apart from the fact remained that the petitioner was transferred to the Central Accounts Office, Calcutta by an order of transfer dated May 10, 1999 from the selfsame Regional Office at Patna. If the petitioner is such an honest and indispensable officer for achieving the recovery percentage of

huge debts of the bank by March 31, 2000 then also the reasons have not been disclosed justifying his transfer from the said Regional Office at Patna in the midst of an accounting year. Reasons have also not been disclosed as to why the petitioner was made the Chairman of a specialised committee for implementing Y2K Contingency Plan during the period from December 15, 1999 to March 15, 2000 in the Central Accounts Office at Calcutta, if it was in the minds of the authority concerned that he is such an indispensable officer without whom the Regional-Office at Patna would not be able to achieve the recovery percentage of its huge debts by March 31, 2000.

10. One other fact of the matter cannot be ignored in these circumstances. In terms of Regulation 49 of the Syndicate Bank Officers Service Regulations, 1979, the petitioner was not given even 7 days' time to join his transferred post at Patna. Ordinarily a breach of the said Regulation does not confer a legally enforceable right upon an employee to challenge an order of transfer but the same may certainly in the facts and circumstances of a particular case raise a serious doubt into the mind as to the bonafide exercise of the power of transfer of an officer. The said breach of a Regulation may not independently and irrespective of other facts and circumstances establish a transfer to be a mala fide one but may certainly in the face of relevant facts and circumstances of a case come in aid of establishing the same to be a mala fide one.

11. The mala fide and/or colourable exercise of power and/or oblique motives of the authority concerned are to be presumed from all the facts and circumstances relevant to a particular action. A particular action independently with eyes shut to the relevant circumstances which give rise to such an action is not indicative of anything except for the action taken. Such action must have some foundation on the circumstances relating thereto. Those are the materials which constitute the elements in law for the purpose of judging as to whether such an action is really needed to be taken for administrative exigencies or taken with mala fide motive. Because mala fide and/or the oblique motives are not visible objects but are visible through the mind by formulating an impression upon putting all relevant facts and circumstances together which give rise to an action.

12. In these facts and circumstances under which the petitioner was made to transfer and the manner in which the petitioner was treated after the order of transfer was made, I am of the view that the concerned respondent authority was actuated with the mala fide motive of harassing the petitioner rather than satisfying the administrative exigencies of the respondent/Bank . Such an order of transfer of the petitioner cannot be sustained in the eye of law. I, therefore, set aside the order of transfer of the writ petitioner and allow this writ petition. There will be however no order as to costs.

13. Let xerox copy of this judgment duly signed by the Assistant Registrar of this Court be made available to the parties upon their undertaking to apply for and obtain certified copies thereof on payment of usual charges.