
(2013) 11 DEL CK 0242
In the Delhi High Court
Case No : Writ Petition (C) 6318 of 2000

State Bank of India

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (2013) 11 DEL CK 0242

Hon'ble Judges : A.K. Pathak, J

Bench : Single Bench

Advocate : Rajiv Kapur and Ms. Vatsala Rai, for the Appellant; Sanjoy Ghose, for the Respondent

Final Decision : Allowed

Judgement

A.K. Pathak, J.—Briefly stated, facts of the case as unfolded are that respondent no. 2 was working as a "Clerk" with the petitioner-State Bank of India (SBI) right from 1966. He was posted at Chandni Chowk Branch, Delhi. During his long service spread over to a period of 25 years he remained posted in Chandni Chowk Branch, Delhi. During this period, only one interdepartmental transfer took place in the year 1989 when he was posted in C & I Division from the accounts branch. On 19th December, 1991 he was transferred to Shakurpur Branch, Delhi of SBI. Respondent no. 2 filed a civil suit bearing No. 368/1991 before the Sub-Judge, 1st Class, Delhi wherein an application under Order 39 Rules 1 and 2 CPC was filed praying therein that transfer order be stayed. This application was dismissed vide order dated 31st October, 1991.

Respondent no. 2 raised an industrial dispute through the union which was referred by the Central Government to the Central Government Industrial Tribunal, New Delhi (CGIT) for adjudication on 23rd March, 1993 in the following terms:

Whether the action of the management of State Bank of India in transferring Shri

Roop Kumar Trikha, Clerk from Chandni Chowk Branch to Shakurpur Branch was fair and justified? If not to what relief the workman is entitled to?

2. It was alleged before the Industrial Adjudicator that respondent no. 2 was Assistant Secretary of the Association's Unit at Chandni Chowk Branch. Respondent no. 2 was also one of the important functionaries of Union as he was holding position of Secretary of S.B.I. Workers Cooperative Thrift and Credits Society. Thus, his transfer was against the transfer policy of the bank which prohibited the transfer of office bearers of the Association. It was further alleged that respondent no. 2 was transferred from Accounts Division to C & I Division of the Chandni Chowk Branch on 7th November, 1989, thus, could not have been further transferred before expiry of five years, in terms of the transfer policy.

3. Per contra, SBI alleged that the transfer of respondent no. 2 from Chandni Chowk Branch to Shakurpur Branch was on administrative grounds and was permissible. Industrial dispute was also barred by principles of res judicata.

4. Both the parties placed reliance only on the documents and did not lead any ocular evidence. It was stated by them that the matter may be dealt with on the basis of documents filed by the parties.

5. Upon scrutiny of documents, more particularly, transfer policy Industrial Adjudicator has concluded that transfer of respondent no. 2 was contrary to the transfer policy which envisaged that transfer of clerical staff could not have been affected before expiry of five years from the date of his previous transfer. Respondent no. 2 was transferred from Accounts Division of the Chandni Chowk Branch to C & I Division of Chandni Chowk Branch of SBI on 7th November, 1989, thus, could not have been transferred to Shakurpur Branch on 19th December, 1991. It was further held that respondent no. 2 could not have been transferred since he was Assistant Secretary of the Association. It was further noted that though transfer was affected on administrative grounds but no such grounds were disclosed. Simple use of words "administrative grounds" was not sufficient, more so, when transfer order was challenged on the ground of malafide.

6. Learned counsel for the respondent no. 2 has challenged the maintainability of writ petition on the ground that in terms of Office Memorandum No. H-52027/8/99-IR (Imp. I) dated 19th March, 1999 issued by Ministry of Labour, Government of India, petitioner was required to take permission of the Screening Committee of Administrative Ministry in consultation with the Ministry of Law and Justice and Ministry of Labour before filing the writ petition in the High Court against the Award of Tribunals. Petitioner had earlier filed a writ petition being CWP No. 934/99 challenging the Award in question, which was dismissed by a Single Judge of this Court on 10th May, 2000. However, liberty was granted to petitioner to approach the Court in case permission is granted by the Government to petitioner. It is contended that petitioner has not taken permission of the Ministry of Labour and Employment which fact has come to his

notice pursuant to a RTI query. In response to a query raised by the respondent no. 2 Ministry of Labour and Employment, Government of India vide letter dated 26th May, 2006 had informed that Administrative Ministry, that is, Ministry of Finance, Department of Economic Affairs (Banking Division) did not seek permission/clearance from the Ministry of Labour and Employment relating to the Award in question. Thus, writ petition is not maintainable. Per contra, learned counsel for the petitioner has vehemently contended that prior approval has been taken from the Administrative Ministry which in this case is Ministry of Finance, Department of Economic Affairs (Banking Division). Reliance has been placed on the letter dated 20th July, 2000 written by the said Ministry to the General Manager of petitioner. I have considered the rival contentions of both the parties on this point and am of the view that writ petition is maintainable since petitioner has already obtained prior approval from the Administrative Ministry, that is, Ministry of Finance, Department of Economic Affairs (Banking Division). Letter dated 20th July, 2000, in no uncertain terms says that approval of the "Screening Committee" has been given to petitioner for filing the writ appeal against the impugned Award dated 25th September, 1998 passed in Industrial Dispute No. 32/93 by the CGIT, New Delhi. By this letter, petitioner has also been asked to keep the Ministry informed about the developments in the case. In terms of the Office Memorandum dated 19th March, 1999, petitioner was required to take approval of "Screening Committee" of the Administrative Ministry which in the case of petitioner is Ministry of Finance, Department of Economic Affairs (Banking Division). It was for the Administrative Ministry to consult the Ministry of Labour and Ministry of Law and Justice, if so desired. It was not mandatory for the Administrative Ministry to consult other Ministries, as mentioned in the Office Memorandum, in each and every case, since the word used in the Office Memorandum is "invariably". Thus, I am of the view that writ petition challenging the impugned Award is maintainable.

7. Respondent no. 2 was not holding a non-transferable post. He was holding a transferable post and under the conditions of service applicable to him he was liable to be transferred and posted in other branches of SBI. Respondent no. 2 had no legal or statutory right to insist for going to a post at one particular place of his choice. In *State of Madhya Pradesh, and Another Vs. S.S. Kourav and Others*, it has been held that transfer orders issued on administrative grounds, expediency of those orders cannot be examined by the court. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any actual background foundation. In *State Bank of India Vs. Anjan Sanyal and Others*, Apex Court has held thus, "An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issue the order had not the competence to pass the order".

8. In this case, main thrust of respondent no. 2 before the Industrial Adjudicator was that his transfer was against the transfer policy formulated by the SBI. As regards malafides, no evidence was led before the Industrial Adjudicator nor has been discussed in the impugned Award. Industrial Adjudicator has not held that transfer was actuated with malafides and resulted in victimization of respondent no. 2. It has been held that transfer was against the transfer policy as formulated by the Bank. Respondent no. 2 was working as a Clerk and the transfer policy governing the services of clerical staff, as was effective on the date of transfer of the petitioner, reads as under:-

4. Transfer Policy for clerical staff:

A Transfer Policy for clerical staff was evolved last year and circulated through our letter no. PER/IR/6857 dated the 24th February, 1983. To begin with, clerical staff with 5 years or longer stay at one office were covered for transfer within the same centre, the policy does not cover single branch centres. The policy was made effective from the 1st May, 1983, and was to be reviewed after 6 months. From the comments received from the LHOs and in our further discussions with the Staff Federation, certain points emerged and it was felt that implementation of the policy would be facilitated if these could be taken care of. Accordingly, certain clarifications were issued to the LHOs vide our letter no. PER/IR/16025 dated the 5th April, 1984. One various provisions of the Transfer policy have been consolidated and are as under:-

(i) Transfers would be made within the same centre/municipal/urban agglomeration area. The policy will at present not apply at the centres where there is only one office of the bank.

(ii) Clerical staff, i.e. all categories of staff in clerical scale of pay, with 5 years or longer stay at an office are liable to be transferred to another office provided that:

(A) The Central/working Executive Committee members of the Circle Award Staff Union and their local unit secretaries at Branches need not be subjected to transfer under the policy for the present. The position in this regard will be reviewed in 1985.

Note:-

The above office bearers will, however, continue to be subjected to transfer rendered necessary by the exigencies of administration as hitherto. In regard to the transfer of office bearers as specified in paragraph 535 of the Sastry Award, the procedure outlined therein will continue to be followed.

(B) employees will be listed category-wise, i.e. Head Clerk, Stenographer, Clerk, Clerk-typist, Dy. Head Cashier, Asstt. Head Cashier, Teller etc., and the transfers would be effected category-wise depending on the needs of the offices concerned.

(iii) The employees due for in-cadre promotion will invariably be transferred to

another Branch at the same station or outside if they have completed 5 years stay at one office. In regard to transfer of this category of staff outside the station, a policy for the same should be framed by Local Head Offices in consultation with the Circle unions.

(iv) Transfer of employees, who are appointed on in-cadre promotion such as Teller, Dy. Head Cashier, Asstt. Head Cashier on the basis of Branch seniority, need not be effected under this policy except when considered absolutely necessary. (This is so because in some circle, some of the in-cadre special allowance carrying posts are filled on the basis of branch seniority and if such employees are transferred, problems concerning inter-se seniority arise at the Branches where such employees are transferred).

(v) The employees should be normally transferred in order of their length of stay at an office. Provided that:-

(A) employees who have attained the age of 55 years, may not be transferred.

(B) Those employees, who are normally due for transfer but whose services are considered essential or it is not considered expedient to transfer them for other justifiable administrative reasons, may not be transferred immediately but their cases should be reviewed subsequently and transfers effected in a phased manner.

(C) Request of employees for retention at an office on extreme grounds of sickness, duly accompanied by a medical certificate from the Bank's doctor/specialist or on any other ground of extreme compassion may be considered on merits. Their cases should also be reviewed subsequently.

(vi) At the branches headed by Chief Managers and at the administrative offices, inter divisional and inter-departmental changes will be deemed to be transfers under this policy. The position will, however, be reviewed in 1985. The number of employees transferred at a time from an office may normally not exceed 10 to 20 percent of the total strength of the cadre at that office.

(vii) The movement of clerical staff from one office to another should be effected in a phased manner without causing undue hardship or dislocation to the concerned employees.

(viii) The policy will be reviewed in early 1985.

5. Re-deployment of Surplus staff:

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6. It is again clarified that the above guidelines have been laid down to facilitate movement of staff, without causing undue inconvenience to employees, but these would, on no account, override the management's right to affect transfers on administrative grounds as per the Bank's requirements and exigencies of service, in terms of the provisions of the Award.

(Emphasis laid by this court)

9. A perusal of note appended to Clause 4 makes it clear that office bearers of the Union were also amenable to transfer on account of exigencies of administration. Clause 6 further envisages that the transfer policy was merely guidelines and laid down to facilitate movement of staff, but the same was not to override the management's right to affect transfers on administrative grounds as per the bank's requirements and exigencies of service, in terms of the provisions of the "Sastry Award".

10. In this case, transfer of respondent no. 2 was made on administrative grounds, which was permissible under the policy in vogue, thus, Industrial Adjudicator has committed a patent error of law in holding that the transfer was contrary to the transfer policy of by the petitioner bank.

11. A Division Bench of this court in Dr. A.K. Bhardwaj Vs. Union of India (UOI) and Others held thus:-

transfer of an employee is not only an incidence inherent in terms of his appointment but is also implicit as an essential condition of service in absence of any specific indication to the contra in the law governing the service condition. A Government servant holding a transferable post has no vested right to remain posted at one place or the other as per his choice. Transfer order issued by a Competent Authority does not violate any of his legal rights. It is well settled that a transfer order has not to be interfered with unless the same is vitiated by malafides and is in violation of any statutory provision.

For the foregoing reasons, writ petition is allowed and impugned Award is set aside.