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**(2019) 09 UK CK 0010**  
**In the Uttarakhand High Court**  
**Case No : Writ Petition (SB) No. 327 Of 2019**

Yogesh Sharma

APPELLANT

Vs

UCO Bank HRD Department Kolkatta And Others

RESPONDENT

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**Date of Decision :** 02-09-2019

**Acts Referred:**

Constitution Of India, 1950 — Article 226

**Citation :** (2019) 09 UK CK 0010

**Hon'ble Judges :** Ramesh Ranganathan, CJ;Alok Kumar Verma, J

**Bench :** Division Bench

**Advocate :** Siddhartha Singh, Rajendra Dobhal, Shubhang Dobhal

**Final Decision :** Disposed Of

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## Judgement

Ramesh Ranganathan, CJ

1. Heard Mr. Siddhartha Singh, learned Advocate for the petitioner and Mr. Rajendra Dobhal, learned Senior Advocate assisted by Mr. Shubhang Dobhal, learned Advocate for the respondents and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioner is, admittedly, orthopedically disabled suffering from a disability of 55%. The Government of India, by its proceedings dated 15.02.1988, informed all Public Sector Banks that physically handicapped persons, employed in all Public Sectors Banks in all cadres, should normally be exempted from routine periodical transfers; such persons should not, normally, be transferred even on promotion if a vacancy exists in the same branch/office, town/city; when transfer of a physically handicapped employee becomes inevitable on promotion, to a place other than his original place of appointment/vacancy, it should be ensured that such transfers are kept nearest to his original place of posting; and, in any case, he should not be transferred to far off/remote places. The said circular further states that this concession would not be available to such physically handicapped employees of the Bank who are transferred on the

ground of disciplinary action or are involved in fraudulent transactions.

3. The petitioner has been working as an Officer in JMGS-I at the Haridwar branch of the respondent-bank. On promotion as an Officer in MMGS-II, he was transferred and posted at Jaspur in Udham Singh Nagar District located at a distance of around 150 kms from Haridwar. While both Haridwar and Jaspur are in the plains, the petitioner has invoked the jurisdiction of this Court contending that his transfer, from Haridwar to Jaspur in Udham Singh Nagar District, is contrary to the policy dated 15.02.1988, in terms of which even on promotion, and if a vacancy exists in the very same branch or its vicinity, he should be continued/posted there, failing which in the same town/city; and, even in cases where the transfer becomes inevitable, he should be kept nearest to the original place of posting.

4. Transfer from one place to another is made in the exigencies of administration. No employee can claim, as of right, that he should be transferred to a particular place. It is, however, not in dispute that the said circular date 15.02.1988 is binding on the respondent-bank; and, in terms thereof, certain concessions, with regards to transfer, are provided to employees who are physically disabled. The obligation cast on the Bank is either to retain such employees in the same branch or to post him in the same town/city even on promotion; and, even otherwise, to a place in the vicinity of the original place of posting.

5. In his supplementary affidavit dated 09.08.2019, the petitioner has stated that there were five branches in District Haridwar; Govindpuri branch at Haridwar is a Scale-II branch, the Haripur Kalan branch is also a Scale-II branch with a Manager in Scale-I working thereat, and Scale-II branch in Roorkee is also vacant. These three branches are said to be in the vicinity of the branch in which the petitioner was hitherto working as a Scale-I Officer.

6. In the counter affidavit, filed in reply thereto, all that is stated is that no Scale-II branch of the respondent-bank in Haridwar is lying vacant; the Haripur Kalan branch is a Scale-I branch as on 31.03.2019 as its loans and advances are below 3 crores; as the petitioner has been promoted as a Scale-II Officer, he cannot be posted to Haripur Kalan; and, in Roorkee branch, a person has already been posted who is working.

7. Reference is made by Mr. Rajendra Dobhal, learned Senior Counsel, to the Circular date 17.08.2018, classifying branches where a MMGS-II Officer can be posted. In terms of the said Circular, a branch, which has a minimum advance of Rs.3 crores, is a branch where an MMGS II officer can be posted; and an MMGS III Officer can be posted in a branch where the minimum advance is Rs.5 crores. It is evident, therefore, that the petitioner can only be posted in a Scale-II branch where the loans and advances exceed Rs.3 crores but is below 5 crores. The question which necessitates examination is whether there exist any such branch in close proximity to the Haridwar branch where the petitioner was working, wherein the post in the cadre of MMGS-II is vacant. While the petitioner

has no doubt referred to three such branches, and the counter affidavit denies vacancies in two of them, there is no specific denial regarding the vacancy at Govindpuri branch in Haridwar.

8. Mr. Siddhartha Singh, learned counsel, would contend that, in Scale-III branches, a Scale-II Officer is posted; and if a Scale-III Officer is posted thereat, a Scale-II post would fall vacant. It is not for us, in the proceeding under Article 226 of the Constitution of India, to administer the bank; and it is for the respondent-bank to decide whether a Scale-III post should be filled up by a Scale-III Officer, or it would suffice if the said post is held by a Scale-II officer. The petitioner's entitlement is to be posted only in a vacant MMGS-II post in proximity to the Haridwar branch, where he is working, and nothing more.

9. Though the petitioner cannot choose the place to which he should be transferred to, it is always open to him to point out the Scale-II branches, in proximity to the Haridwar branch where he is presently working, where he can be posted. Suffice it, in such circumstances, to permit the petitioner to make a representation within one week from today, furnishing details of all such branches, in close proximity to the Haridwar branch, wherein the posts of MMGS Scale-II Officers are vacant. On such a representation being made, the second respondent shall consider the said representation; examine whether the petitioner's claim of a vacancy existing, in MMGS Scale-II posts, in those branches is valid; and take an appropriate decision, strictly in terms of the Circular dated 15.02.1988, within two weeks from the date of receipt of the petitioner's representation. Till a decision is taken on the representation, and is communicated to him, no coercive steps shall be taken against the petitioner with respect to the Transfer Order.

10. We make it clear that, in case the petitioner does not submit his representation, as afore-directed, within one week from today, it is open to the respondent-bank thereafter to take such action as it considers appropriate, without awaiting the petitioner's representation, thereafter.

11. The writ petition stands disposed of accordingly. No costs.

12. Let a certified copy of this order be issued to the learned counsel for the parties, on payment of the prescribed charges, by 03.09.2019.