

(2019) 09 UK CK 0137
In the Uttarakhand High Court
Case No : Writ Petition No. 432 Of 2019 (SB)

Yogesh Sharma

APPELLANT

Vs

Zonal Manager UCO Bank And Another

RESPONDENT

Date of Decision : 20-09-2019

Acts Referred:

Citation : (2019) 09 UK CK 0137

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

Bench : Division Bench

Advocate : Siddhartha Singh, Rajendra Dobhal, Shubhang Dobhal

Final Decision : Disposed Of

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 appearing on behalf of the respondents-Bank and, with their consent, the writ petition is disposed of at the stage of admission.

2. The petitioner questions his transfer by the proceedings dated 09.07.2019 from Haridwar to Jaspur in District Udham Singh Nagar. He is, admittedly, a physically handicapped suffering from a disability of 55%. He had, hitherto, invoked the jurisdiction of this Court by filing WPSB No.327 of 2019 seeking application of the Government of India Circular dated 15.02.1988 which, substantially, exempts physically handicapped employees from being transferred from the place they are working to another. Transfer of the petitioner from Haridwar to Jaspur in District Udham Singh Nagar was on promotion from JMGS-I cadre to MMGS-II cadre.

3. The petitioner's claim in WPSB No. 327 of 2019 was that, even on promotion, the Government of India Circular dated 15.02.1988 required him to be posted in the same branch and, if that was not possible, to a branch nearest to the place

where he was working; and, consequently, his transfer to Jaspur branch, which was located at a distance of around 150 Kms. from his present place of posting, was contrary to the Government of India Circular dated 15.02.1988. We had, by our order dated 02.09.2019, disposed of the writ petition permitting the petitioner to make a representation to the second respondent pointing out the Scale-II branches, in proximity to the Haridwar branch where he was presently working, where he could be posted. The second respondent was directed to consider his representation, and take an appropriate decision, strictly in terms of the Circular dated 15.02.1988 within two weeks. On his representation being rejected by proceedings dated 09.09.2019, the petitioner has again invoked the jurisdiction of this Court.

4. In his representation, the petitioner had referred to four branches i.e. Govindpuri Haridwar, Haripur Khurd, Haripur Kalan and Roorkee Ramnagar branches, to contend that the Scale-II posts in these branches were vacant; and, instead of posting him thereat, he was transferred to Jaspur in District Udham Singh Nagar which is far away from his present place of posting at Haridwar.

5. We had directed the respondents to file a counter affidavit regarding the vacancies at these branches. In the counter affidavit, it is stated that Haridwar main branch is a Scale-III branch; the total sanctioned posts of Officers, in the said branch, are three; three Officers have already been posted thereat; the Govindpuri, Haridwar Branch is also a Scale-III branch which has a sanctioned strength of two posts, and two Officers have been posted thereat; the Haripur Kalan branch is a Scale-I branch which has a sanctioned strength of two, and two Officers have already been posted there; the Haripur Khurd branch is a Scale-I branch where two posts are sanctioned and two Officers were posted; the Padartha branch is also a Scale-I branch where two posts are sanctioned, and two Officer have been posted.

6. With respect to the Ramnagar Roorkee branch in Haridwar District, the respondents state, in their counter affidavit, that it is a Scale-III branch and has a sanctioned strength of three Officers; two Officers have been posted thereat; because of scarcity of Scale-II Officers in Dehradun Zone, of UCO Bank, no Scale-II Officers could be posted thereat; the required number of Scale-II Officers, in Dehradun Zone is 54; the number of available Scale-II Officers are only 38; the total number of Scale-II branches in Dehradun Zone is 27; the entire area of Uttarakhand State comes within Dehradun Zone of UCO Bank; and the total branches in the State of Uttarakhand is 57.

7. The counter-affidavit discloses that in none of branches, other than the Ramnagar Roorkee, branch, is there any vacancy. It is, however, admitted that there is a vacancy in Ramnagar Roorkke branch. The respondents, however, contend that, though there is a vacancy in Ramnagar Roorkee branch, the acute shortage of Scale-II Officers has resulted in the Bank not posting any Officer thereat. It is in this context that the Circular dated 15.02.1988 should be considered. While examining the question of posting/transfer of physically

handicapped Officers, the said Circular states that it had been decided that, subject to administrative exigencies, physically handicapped persons, employed in Public Sector Banks in all cadres, should normally be exempted from routine periodical transfers; such a person should, normally, be transferred even on promotion in the same branch/office, town/city if a vacancy exists; when the transfer of a physically handicapped employee become inevitable on promotion, to a place other than his original place of appointed vacancy, it should be ensured that such employees are kept nearest to their original place of posting; and, in any case, not be transferred to a far off/ remote place. While an obligation is, no doubt, cast on the respondent-Bank to post physically handicapped Officers, even on promotion, to a place nearest to their original place of posting, the Circular prohibits them from being transferred to far off/ remote place.

8. Mr. Rajendra Dobhal, learned Senior Advocate appearing on behalf of the respondent-Bank, would submit that Jaspur branch in District Udham Singh Nagar is not located a remote place; it is also in the plains; it is a big town, and the branch is located on the National Highway itself; the distance between the present place where the writ petitioner is working, and the Jaspur branch to which he has been transferred, is around 150 Kms; it is well connected by roads, and can be covered within two and half hours from the present place of posting; the petitioner was initially appointed in a branch of the Bank at Ramnagar in District Nainital; and having been posted in District Nainital earlier, which is further away than Jaspur to which place he is now posted, the petitioner cannot be heard to contend that his transfer to Jaspur is illegal.

9. The Circular dated 15.02.1988, no doubt, necessitates compliance. The fact remains that the said circular, itself, requires the bank to post the officer taking into consideration administrative exigencies. It uses the word "normally" which denotes that it is permissible, in exceptional circumstances, to post physically handicapped officers on promotion elsewhere. The prohibition in the Circular is only to the transfer of a physically handicapped officer to a far off/remote place. A distance of around 150 Km, that too in the plains, can hardly be said to be a far off place. Since Jaspur is, admittedly, a town, it cannot construed as a remote place to which the petitioner cannot be transferred.

10. While it is no doubt true that there exists a vacancy in Roorkee, Ramnagar branch, the stand of respondents is that the acute shortage of Scale-II Officers has resulted in the respondent-bank choosing not to post any officer at the said branch, and not to fill up the vacancy thereat. It is for the Bank to administer its branches, and decide how to distribute the available officers among its different branches. It is not as if the respondent-Bank has chosen to fill up the post by posting any other officer, instead of the petitioner, in the said branch. It has chosen to keep one post in the said branch vacant, and instead fill up the post at Jaspur Branch. These are all matters for the bank to consider on administrative exigencies, and not for this Court to direct. We see no reason, therefore, to

direct the respondent-Bank to fill up the vacant post at Roorkee Ramnagar Branch by posting the petitioner thereat and, instead, keep the Jaspur branch vacant.

11. Mr. Siddhartha Singh, learned counsel for the petitioner, would submit that the petitioner, being a Scale-II Officer, can only be posted in a Scale-II or a Scale-III or a bigger branch; and he cannot be placed in a Scale-I branch. He would draw our attention to the specific assertion, in the writ affidavit, that the Jaspur branch is a Scale-I branch. We had directed the respondents to file their counter affidavit only regarding the vacancy position in the branches to which the petitioner had sought to be posted. The respondents have not been afforded an opportunity to rebut this specific allegation urged on behalf of the petitioner by Mr. Siddhartha Singh, learned counsel.

12. Mr. Rajendra Dobhal, learned Senior Counsel, fairly states that a Scale-II officer cannot be posted to a Scale-I branch. Suffice it, in such circumstances, to dispose of the writ petition directing the respondents-Bank to examine whether the Jaspur branch, to which the petitioner has been posted, is a Scale-II post and, only if there is a vacant Scale-II post, can the petitioner be posted to the said branch. It is made clear that, in case the Jaspur branch does not have a Scale-II post available, the petitioner shall then not be posted thereat, and shall instead be posted at any branch, in a Scale-II post, which does not fall under the category "far off/remote place".

13. With the aforesaid observations, the writ petition is disposed of. No costs.