



2024:DHC:8708



\$~1 and 2

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 23rd October, 2024*

+ W.P.(C) 1599/2021

RAM BABU MAHTO Petitioner
Through: Mr. Brajesh Kumar, Advocate.

versus

BANK OF INDIA THROUGH ITS MANAGING
DIRECTOR & ORS. Respondents
Through: Mr. Aditya Kumar, Advocate.

2

+ W.P.(C) 1648/2021

SANJAY PRASAD Petitioner
Through: Mr. Brajesh Kumar, Advocate.

versus

BANK OF INDIA THROUGH ITS MANAGING
DIRECTOR & ORS. Respondents
Through: Mr. Aditya Kumar, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. These writ petitions have been preferred on behalf of the Petitioners under Article 226 of the Constitution of India assailing the impugned orders whereby their claims for subsidised accommodation have been rejected. Directions are sought to the Respondents to disburse the sums claimed towards subsidised accommodation to the Petitioners from the date the dues



2024:DHC:8708



were payable as per the eligibility. Since common question of law arises in both the writ petitions with respect to the eligibility for grant of subsidised accommodation and arguments are common, both writ petitions are decided by this common judgment.

W.P.(C) 1599/2021

2. Posted at Ahmedabad as Chief Manager at the Service Branch of Bank of India ('Bank'), Petitioner requested for transfer to Delhi Zone, which was acceded to. A common transfer order dated 01.06.2018 was passed by the Bank transferring and posting Chief Managers 'on request' and name of the Petitioner was included in Annexure-A, which the Petitioner now claims was a typographical error as his name ought to have been included in Annexure-B. Petitioner submitted his joining at Delhi Zone on 11.07.2018 and made an application for approval of subsidised accommodation which was not approved and he represented for reconsideration of the decision.

3. Petitioner was informed vide letter dated 13.07.2018 that his request for subsidised accommodation cannot be considered as he joined Delhi Zone on transfer at his own request. Representation submitted to the Zonal Manager was rejected on 03.09.2018 and representation for reconsideration was rejected by the Head Office on 09.10.2018. Petitioner represented thereafter to the Grievance Redressal Officer as also to the Executive Director and Appellate Authority but there was no response. On expiry of the lease period of the accommodation, in which the Petitioner was residing, on 19.08.2019, Petitioner took another accommodation on lease and again made an application dated 26.09.2019 for approval of subsidised accommodation for the lease period from 19.08.2019 to 18.07.2020. The



application was rejected and the decision was communicated vide Inter-Office-Memorandum ('IoM') dated 01.10.2019, wherein referring to Clause 8 of the transfer order, it was reiterated that once the request was declined, the same cannot be entertained again. Further representations also met the same fate. Petitioner avers and admits that HRA was disbursed to him *albeit* he never claimed the same as he was entitled to subsidised accommodation.

W.P.(C) 1648/2021

4. Request of the Petitioner, working as Chief Manager at AMO Khargone, Khandwa Zone to Delhi Zone was considered and allowed by the Competent Authority of Bank of India and a common transfer order was issued on 01.06.2018 wherein name of the Petitioner was included in Annexure-A to the transfer order which is now stated to be a typographical error, as according to the Petitioner, his name ought to have been included in Annexure-B. After joining at Delhi Zone, Petitioner made an application on 19.07.2018 for approval of subsidised accommodation w.e.f. 01.07.2018. Various representations to different authorities including the Grievance Redressal Officer were rejected and reference was made to Clause 8 of the transfer order and Circular of 2017 in this regard by the Bank.

5. Learned counsel for the Petitioners contends that on request of the Petitioners, they were transferred to the Delhi Zone by a common transfer order issued on 01.06.2018, Annexure-A to which was a List of Officers posted as Chief Managers on promotion to Scale-IV while Annexure-B was list of Chief Managers transferred on request. Petitioners were already working as Chief Managers at their previous places of posting and hence their names ought to have been included in Annexure-B. Bank erroneously placed reliance on Clause 8 of the transfer order, which provided that Chief



2024:DHC:8708



Managers, whose requests had been considered as mentioned in Annexure-A, will not be entitled for travelling/transportation/joining leave etc., which are normally available, overlooking that Clause 8 was inapplicable to the Petitioners as their names were to be included in Annexure-B. Even otherwise, Clause 8 did not deal with subsidised accommodation and Petitioners were never informed separately that they will not be entitled to this benefit on transfer on request. Moreover, subsidised accommodation cannot be treated at par with allowances such as travelling/transportation/ joining leave etc. mentioned in Clause 8 as every officer is entitled to this allowance during his entire tenure, *dehors* the place and manner of posting.

6. It is further contended that Petitioners have been discriminated inasmuch as similarly placed Chief Managers, who were transferred on their own request in the year 2020, were paid subsidised accommodation and in fact, an IoM No. 282 dated 15.07.2020 was issued stipulating that officers mentioned in Annexure-B will not be entitled to travelling/transportation/ joining leave which are normally available, but will be entitled for subsidised accommodation. Representations pointing out this crucial fact were also not favourably considered by the Bank and rejected arbitrarily.

7. It is also argued that reliance of the Bank on IoM dated 07.10.2017 to urge that the Bank has taken a policy decision that subsidised accommodation allowance will not be paid to officers transferred on request and whose transfers are made after accepting the terms of transfer, is wholly erroneous and misplaced as this IoM will apply only in cases where officers are relieved after accepting the terms and conditions *inter alia* waiving subsidised accommodation as mentioned in paragraph 2 of IoM. Moreover,



paragraph 3 of the IoM carves out an exception and provides that request for subsidised accommodation can be considered on case-to-case basis notwithstanding the embargo in paragraph 2.

8. It is strenuously urged before this Court that the Bank has incorrectly taken a preliminary objection to the maintainability of the writ petition on the ground that Petitioners have not come to the Court with clean hands as they failed to disclose that they were informed in writing that they will not be entitled to subsidised accommodation. Bank claims having communicated this fact to the Petitioner in W.P.(C) 1599/2021 vide IoM dated 02.06.2018 and to the Petitioner in W.P.(C) 1648/2021 vide IoM dated 21.06.2018, but the correct fact is that the IoMs placed on record before this Court, were never served upon and/or received by the Petitioners prior to their being relieved to join the Delhi Zone and therefore, there is no merit in this objection.

9. Learned counsel for the Bank, *per contra*, submits that vide IoM dated 07.10.2017 it was amply clarified by the Bank that in cases of request transfers, officers concerned will not be entitled to claim subsidised accommodation and acceptance of condition regarding forgoing of certain benefits/allowances will be a pre-condition of being relieved. Both Petitioners were well-aware of the IoM and the Bank's Policy on request transfers. In light of this categorical policy of the Bank, which is uniformly applied across the board, Petitioners cannot claim subsidised accommodation.

10. It is vehemently contended that these writ petitions ought to be dismissed outrightly as Petitioners have not come to the Court with clean hands. The argument is that in W.P.(C) 1599/2021, Zonal Manager,



2024:DHC:8708



Ahmedabad Zone, vide IoM dated 02.06.2018 informed Chief Manager, Ahmedabad Service Branch that the Head Office had decided to transfer and post the Petitioner to Delhi, subject to his agreeing that he shall not claim travelling/transportation/joining leave and subsidised accommodation etc., which are normally available to officers under transfer. Petitioner was in fact the Chief Manager, Ahmedabad, Service Branch and therefore, the IoM was actually addressed to him and his stand that he was unaware of this fact is *ex facie* false and incorrect and a deliberate attempt to mislead the Court. In W.P.(C) 1648/2021, Petitioner was posted as Branch Head at Khargone Cluster, Khandwa Zone and all communications from Zonal Office and other higher authorities of the Bank are said to the Branch Head. IoM dated 07.10.2017 was sent to Zonal Managers of all Zones and HR Department of the Bank and Petitioner cannot claim ignorance of the same. Moreover, upon reporting to Delhi, vide IoM dated 21.06.2018, he was informed that he would not be entitled to subsidised accommodation. In all the orders rejecting the claim of the Petitioners, reference was made to the policy decision of the Bank.

11. To rebut the allegations of discrimination vis-à-vis officers posted in the year 2020 on request, learned counsel submits that no parity can be claimed with those officers and no reliance can be placed on the transfer order dated 15.07.2020 inasmuch as this was an exceptional and a one-time measure taken by the Bank to provide succour to its employees during the Pandemic COVID-19 period. An unprecedented action in unprecedented times cannot be relied upon by the Petitioners to claim a benefit which they are not entitled as per the Bank's policy and which they had knowingly foregone at a time when they wanted transfer to place of their choice.



12. Heard learned counsels for the parties and examined their rival submissions.

13. The narrow controversy requiring examination by this Court is whether Petitioners are entitled to subsidised accommodation on their transfers to the Delhi Zone of the Bank on their request. Both sides have addressed rival submissions to support their case. Bank has placed heavy reliance on IoM dated 07.10.2017 which incorporates and reflects a policy decision of the Bank that officers requesting for transfer will not be entitled to certain benefits which include travelling/transportation/joining leave etc. and subsidised accommodation. There is no contest or challenge to this IoM by the Petitioners. It must be mentioned that the IoM itself carves out an exception in paragraph 3 which stipulates that any officer, employee can make a representation for providing subsidised accommodation and the same shall be examined on case-to-case basis depending on the merits of the case. Petitioners, however, have never claimed benefit of the exception on setting out any special circumstance peculiar to them and instead assert a right to claim subsidised accommodation stating that this allowance is available to all officers irrespective of the transfer being a normal transfer or on own request.

14. Assertion of the right to claim subsidised accommodation is predicated on three-fold arguments: (a) Petitioners were wrongly placed in Annexure-A of the common transfer order dated 01.06.2018 which was a list of officers posted as Chief Managers on promotion to Scale-IV in which Clause 8 was incorporated denying certain benefits to the said officers; (b) Petitioners were unaware that on request transfers, they will be deprived of benefit of subsidised accommodation as no such communication



2024:DHC:8708



imposing a pre-condition to exercise the choice was ever communicated to them and/or was received by them; and (c) discrimination with officers posted on request in the year 2020.

15. Insofar as the first argument is concerned, Bank has taken a categorical stand that Petitioners were placed in Annexure-A appended to the common transfer order dated 01.06.2018 but this issue was redressed on the very next day by the Head Office vide e-mail dated 02.06.2018, copy of which has been placed on record and demonstrates that Annexure-A was rectified to read as '*Transfer of Chief Managers on request*' and Annexure-B was rectified to read '*Postings of Chief Managers on Promotion to Scale IV*'. Therefore, nothing turns on this argument of the Petitioners and Clause 8 will govern the transfers, which contains a stipulation that officers mentioned in Annexure-A will not be entitled to certain allowances which are normally available on transfer.

16. As for the second argument that Petitioners were unaware of IoM dated 07.10.2017, this argument cannot be accepted. First and foremost, a bare perusal of the IoM reflects that this was issued by the Head Office and information was disseminated to the Zonal Managers, All Zones and HR Department of the Bank. Being Chief Managers of their respective branches, it is only natural that they were aware of the policy decisions and in any case, ignorance can be no excuse. More importantly, in the case of the Petitioner in W.P.(C) 1599/2021, it is brought on record that vide IoM dated 02.06.2018, the Zonal Manager, Ahmedabad Zone, had informed the Chief Manager, Ahmedabad Service Branch that the transfer of the Petitioner will be subject to his agreeing that he shall not claim the subsidised accommodation amongst other allowances and this was in consonance with



2024:DHC:8708



IoM dated 07.10.2017. It is also stated in the affidavit filed by the Bank that Petitioner was in fact himself the Chief Manager at the relevant time and the IoM was addressed to him. While this fact is not under dispute that Petitioner was the Chief Manager on 02.06.2018 but to support this plea Bank additionally relies on IoM dated 03.06.2016, whereby Petitioner was transferred and posted at Ahmedabad Service Branch as Chief Manager and in similar fashion, the IoM was addressed from the Zonal Manager to the Chief Manager, Mani Nagar Branch. The matter can be seen from another angle, which further fortifies the stand of the Bank that Petitioner was well aware of IoM dated 02.06.2018, receipt of which he denies in the rejoinder. It was clearly mentioned in IoM dated 02.06.2018 that Petitioner would be relieved and transferred on request only if he agreed that he will not claim certain allowances which included subsidised accommodation and it was only on acceptance of this pre-condition that he was to be relieved. Petitioner has not denied the existence of this letter and in fact in the rejoinder makes a categorical averment that the IoM was received at Delhi Zonal Office on 05.06.2018. This condition was never waived by the Bank and therefore implicit in the transfer of the Petitioner was his acceptance of this condition, failing which the Bank would not have relieved him to join the Delhi Office. Moreover, at the cost of repetition, it be mentioned that the policy of the Bank incorporated in IoM dated 07.10.2017 was circulated to all the Zonal Officers and even assuming for the sake of argument that IoM dated 02.06.2018 was not received by the Petitioner, it would make no difference as entitlement to allowances are governed by policy decisions and Petitioner cannot claim exclusion, particularly, when he sought no special consideration in the exceptional clause of IoM dated 07.10.2017. Similar is



2024:DHC:8708



the position for Petitioner in W.P.(C) 1648/2021. Ignorance of a policy cannot inure to their advantage and as rightly submitted by learned counsel for the Bank that instructions with respect to non-entitlement *qua* subsidised accommodation was sent to all Zonal Officers, which would include the Zone in which the Petitioner was serving and more so when he was the Branch Head. In the absence of any challenge to IoM, this Court is unable to hold that Petitioners would be entitled to subsidised accommodation on their transfer to Delhi zone of the Bank when the transfers were on their request.

17. As far as the plea of discrimination is concerned, the same also merits rejection. It is pertinent to note that Petitioners have not set out a case that prior to 2020, any officer on request transfer was given subsidised accommodation and the sole ground is that in the year 2020, transfer orders were issued whereby subsidised accommodation was granted to some officers transferred on request. Bank has categorically responded to the allegation and established that these transfer orders were issued during the Pandemic COVID-19 as an extraordinary measure to alleviate the hardship of the officer employees and hence, in my view, no parity can be claimed. There is no gainsaying that in the unprecedented times of the Pandemic several unprecedented orders were passed and measures were taken by employers to give a succour to the employees and their families but that cannot be used by the Petitioners in their favour to claim an allowance against the policy uniformly applied by the Bank across the Board. Moreover, the mere fact that Petitioners have been unable to point out any case prior to the year 2022, where subsidised accommodation was given to any officer transferred on his own request, is indicative of the fact that Bank was not granting this allowance to officers posted on their request.



2024:DHC:8708



18. For all the aforesaid reasons, this Court finds no merit in the writ petitions and the same are dismissed.

JYOTI SINGH, J

OCTOBER 23, 2024

Aj/shivam