

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.40485 OF 2015

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DATED : 01.02.2016

Between :

Manthri Ramesh S/o.M. Ganapathi Rao,
Aged 49 yrs, Occu : Scale-I, Officer,
Working as Branch Manager, Central Bank of India,
Srikakulam Branch, Srikakulam District.

.. Petitioner

And

The Central Bank of India,
Rep., by its Chief Managing Director,
Central Office, Narimani Point,
Mumbai & 2 others.

.. Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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ORDER :

Petitioner is presently working as scale-I Officer. Petitioner has given the details of various postings from the date of joining in service as clerk in the year 1993. When he was working in Scale-I level he was posted to Visakhapatnam in December, 2012; he was granted promotion by proceedings dated 16.08.2013 as Scale-II Officer. Having regard to his personal difficulties, petitioner refused the promotion and also requested for retention in the same place, where he was posted. However, instead of retaining him in Visakhapatnam town, he was transferred to Athili Branch, by proceedings dated 01.11.2013 and within short time i.e., June, 2014 again he was transferred to Srikakulam. While he was working in Srikakulam Branch, by proceedings dated 31.10.2015 he is now transferred to Bangalore. Challenging the said proceedings, this writ petition is filed.

2. Heard learned counsel for the petitioner and Sri C.V.Rajeev Reddy, Standing counsel for the respondents and with the consent of both the counsels, this writ petition is disposed of at the admission stage.

3. Learned counsel for the petitioner contends that petitioner is not allowed to work at a particular place for a long time and he has been subjected to frequent transfers. In the said manner, since 2011 he has been transferred to various places. Having regard to his domestic problems as well as disinclination to work in higher cadre,

petitioner refused promotion when granted to him in August, 2013 with an option of continuation in Visakhapatnam to attend his personal problems. But however, he was shifted again out of Visakhapatnam within short time.

4. Learned counsel for the petitioner submits that there is no justification to transfer the petitioner within short time of his posting in Srikakulam. As per the transfer norms, an officer is entitled to work at a place for a period of three years and even before his tenure is completed in Srikakulam, he is now shifted.

5. By relying on the material papers filed along with the counter affidavit filed on behalf of the Bank, learned counsel for the petitioner submits that even assuming that the performance of the petitioner was not up to the mark, petitioner ought to have been given some more time for improving himself. He has made endeavor to improve his performance and to some extent has achieved good progress. He further submits that there are several officers whose performance is also assessed as bad and on that factor their names were also recommended for transfer. However, many of them were retained by transferring the petitioner. Learned counsel therefore, submits that the same amounts to arbitrary exercise of power and is liable to be set aside on that ground alone.

6. Learned Standing counsel submits that there is no arbitrary exercise of power. As the performance of the petitioner was assessed to be not satisfactory, he was transferred. According to the transfer policy, ordinarily an officer is liable for retention for a period of three years wherever he is posted. However, the transfer policy also provides for transfer from one zone to another zone, if persons are identified as non-performers. Since petitioner is identified as non-performer he is transferred, though he has not completed stay of three years at the place of his posting in Srikakulam. Learned Standing

counsel submits that for the reasons already assigned in the relevant proceedings, the other officers who are also assessed to be not performing well, were retained. The said reasons are germane to the decision and there is no arbitrary exercise of power.

7. It is further contended that there is no infringement of legal right vested in the petitioner and in matters of transfer, the jurisdiction of the writ Court is limited and petitioner has not met the parameters for interference by this Court under Article 226 of the Constitution of India.

8. I have given my anxious consideration to the submissions of the learned counsels and I am of the opinion that petitioner is not entitled to the relief as claimed in the writ petition.

9. The transfers and posting of the officers working in the respondent-Bank are regulated by the transfer policy notified by the Bank on 12.10.2015. Para 2.1 prescribes tenure of three years at a particular station. Para 5.7 enables the competent authority to shift the officer, whose performance is not good called as “Non-Performer”, to shift to any other place, even though a person has not completed minimum tenure of three years. Thus, the transfer policy enables competent authority to transfer an officer even before he completes his tenure and in the instant case, petitioner is transferred on the ground of his non-performance.

10. By proceedings dated 20.08.2015 petitioner was informed that he has not achieved the targets on various parameters for the assessment period ending March 2015 and June 2015 and he was advised to improve the performance. Petitioner was also informed that the performance for the second quarter ending September, 2015 is under “Watch” and shall be “Reviewed” in October, 2015. He was also informed, if performance is not improved his name would be recommended to Central Office for further course of action including

transfer out of zone.

11. It appears, the performance of the petitioner was assessed in October 2015 as informed to him and having found that he has not met with the performance parameters, his name was recommended for transfer and accordingly, he is transferred.

12. In the recommendations, five names are shown including the name of the petitioner. Learned counsel for the petitioner sought to contend that persons by name Sri A. Rama Krishna, Ashok Shinde and Shashi Kapoor, whose names are shown against Sl.Nos.1, 4 and 5 respectively are not transferred, even though their performance is not found to be satisfactory and the same amounts to arbitrary exercise of power. However, as seen from the letter dated 23.10.2015, their performance was analyzed and in order to give further chance, those persons were retained. It is also seen that there is improvement in their performance and therefore, the competent authority decided to give one more chance to them. Thus, it cannot be said that the competent authority has arbitrarily shifted the petitioner while retaining the others.

13. In matters of transfer and postings, it is the prerogative of the competent authority to choose the person to work at a particular place depending on the necessities of the Organization. The scope of interference by the writ Court in matters of transfer is very limited. It is not a case where arbitrarily petitioner is shifted by retaining the others similarly situated, as discussed above. It is not a case of mala fide exercise of power by the competent authority.

14. Learned counsel for the petitioner further contended that there are certain personal difficulties. That his wife is suffering from severe ailments and his children are pursuing their education and transferring him at this stage would cause grave prejudice. If there are

certain personal difficulties to employees, it is always open to the employees to make representation to the competent authority and it is for the competent authority to consider such representation. Petitioner made such a representation on 19.11.2015. The Court on that ground cannot mandate continuation of the person at the place, where he was working prior to the order of transfer. Moreover in the instant case, as stated by the learned Standing counsel the incumbant is already posted and joined and therefore, petitioner cannot be retained. Hence, I do not see any merit in the writ petition.

15. Accordingly, the writ petition is dismissed. However having regard to the fact that petitioner has already submitted a representation addressed to the Chairman and Managing Director on 19.11.2015, the said representation shall be considered by the Executive Director, to whom power is delegated as stated by the learned standing counsel, and pass appropriate orders as warranted by law, as expeditiously as possible, preferably within a period of two (2) weeks from the date of receipt of copy of this order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

**P.NAVEEN
RAO,J**

1st February, 2016
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