

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION NO.37603 of 2015

Between :

T.Nuka Babu s/o. Seshaiah, 54 years,
Deputy Manager, State Bank of India,
Srinagar Branch, Vijayawada-II,
Krishna District, Andhra Pradesh.

.... Petitioner

and

The Branch Manager, Srinagar Branch,
State Bank of India, Vijayawada, Krishna
District and others.

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 06.01.2016

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO

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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION No.37603 of 2015

%06.01.2016

T.Nuka Babu s/o. Seshaiah, 54 years,
Deputy Manager, State Bank of India,
Srinagar Branch, Vijayawada-II,
Krishna District, Andhra Pradesh.

... Petitioner

Vs.

\$ The Branch Manager, Srinagar Branch,
State Bank of India, Vijayawada, Krishna
District and others.

.... Respondents

!Counsel for the petitioner : Sri P.V.Krishnaiah

Counsel for the Respondents: Sri B.S.Prasad for respondents
1 to 6

<Gist :

>Head Note:

? Cases referred:

(2015) 9 SCC 755
(2001) 5 SCC 508
(2009) 8 SCC 337
(2009) 15 SCC 178
2013 SCC Online HP 4623
(1994) 6 SCC 98
(2008) 12 SCC 292

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.37603 of 2015

ORDER:

Petitioner is working in the Middle Management Grade-II cadre. Petitioner is aggrieved by his transfer from State Bank of India, Srinagar Branch Vijayawada, Krishna District.

2. Heard learned counsel for petitioner and learned standing counsel for respondent bank.

3. Learned counsel for petitioner contended that petitioner is subjected to frequent transfers and never allowed to complete his tenure. Since the year 2009 he was transferred five times and the present one, though in higher post, is the 6th transfer. Petitioner is working in Srinagar Branch since 12.08.2014. On promotion he was retained in the same branch. Impugned transfer is not made in valid exercise of power but is made at the instance of the Officers' Association, since petitioner was complaining against their illegalities. It also amounts to arbitrary exercise of power, in as much as while retaining others promoted along with him in their respective places of posting, the petitioner is singled out. For some officers, on transfer,

they are given choice of posting, where as it appears petitioner is posted without any choice. In his reply affidavit, petitioner has mentioned names of officers who are retained or accommodated at choice of places. Petitioner also referred to earlier instances of such retention.

4. He contended that wife of the petitioner died and petitioner is looking after the welfare of his two children, without affecting his work schedule, but present transfer has an adverse impact on his children since he is transferred in the middle of academic year. Order of transfer do not disclose the reasons. It is vitiated on that ground. It is also vitiated on the ground of arbitrary exercise of power and authority and is liable to be set aside. Learned counsel by placing reliance on the decision of the Supreme Court in the case of **Nandkishore Lalbhai Mehta vs New Era Fabrics Private Limited and others**^[1], contended that fresh pleadings and evidence contrary to the original pleadings are not valid and cannot be relied upon.

5. Learned standing counsel contended that petitioner was promoted in August, 2015. On promotion, officers are liable for transfer. However, as general transfers were not immediately affected, petitioner was retained in the same place. In the general transfer exercise undertaken, several officers in various cadres are now transferred as per the transfer policy, including the petitioner.

6. According to learned Standing Counsel the transfer policy envisages that on promotion, officer is required to be transferred out side the Region in the same Module if the Officer has not completed 10 years of stay in the module. However, if the officer has not completed one year stay in the Region at the time of promotion, the officer can be retained in the same region subject to availability of vacancies and officer has not completed stay of ten years in the module. The Vijayawada module comprises of three geographical districts of

Krishna, West Godavari and East Godavari. In three Districts there is more than one Region. In Krishna district, there are three Regions i.e., III, IV and VIII. Petitioner worked in Bhavanipuram Branch w.e.f. 07.11.2013 to 11.08.2014 and in Srinagar branch w.e.f. 12.08.2014. Both branches are in Region-III. As petitioner completed one year stay in the region, on promotion he is liable for transfer outside the Region. Thus, petitioner is validly transferred and the order of transfer is made on administrative grounds. Learned standing counsel stoutly denied the allegation that petitioner was picked up alone without disturbing others and that he was transferred due to pressure exerted by the officers' union. He pointed out several other officers are also transferred in the same manner and it is not an isolated case of transfer of the petitioner. He admits of some retentions for administrative reasons.

7. Learned standing counsel placed reliance on the following decisions:

- i) **State Bank of India vs. Anjan Sanyal and others** ^[2];
- ii) **Airports Authority of India vs. Rajeev Ratan Pandey and others** ^[3];
- iii) **Rajendra Singh and others vs. State of Uttar Pradesh and others** ^[4];
- iv) **Surender Kumar vs. State of Himachal Pradesh and others** ^[5];
- v) **N.K.Singh vs. Union of India and others** ^[6]; and
- vi) **Chandra Prakash Singh and others vs. Chairman, Purvanchal Gramin Bank and others** ^[7].

8. Before considering the submissions made by the learned counsels, it is necessary to analyze the scope of judicial review in matters of transfer.

9. There are plethora of precedents in transfer matters. Some leading decisions are :

- i) Shilpi Bose vs. State of Bihar [1991 Supp (2) SCC 659];
- ii) N.K.Singh vs. Union of India [(1994) 6 SCC 98];
- iii) State of Madhya Pradesh vs. S.S.Kourav [(1995) 3 SCC 270];
- iv) Airports Authority of India vs. Rajeev Ratan Pandey (2009) 8 SCC 337];
- v) Tushar D.Bhatt vs. State of Gujarat and another [(2009) 11 SCC 678];
- vi) Rajendra Singh and others Vs. State of Uttar Pradesh and others [(2009) 15 SCC 178];
- vii) Registrar of High Court of Judicature of Madras vs. R.Perachi [(2011) 12 SCC 137];
- viii) State of Uttar Pradesh vs. Gobardhan Lal [(2004) 11 SCC 402]; and
- ix) State Bank of India vs. Anjan Sanyal and others [2001 (5) SCC 508]

10. It is clearly discernible from the precedent decisions that in matters of transfer, scope of judicial review is limited and High Court should not interfere with an order of transfer lightly, unless the transfer is vitiated either by *mala fides* or on the ground of infraction of any professed norm of principle: Only limited judicial scrutiny can be undertaken either at the interim stage or final stage. Transfer is an incidence of service, implicit as an essential condition of service; no employee has vested right to remain posted at a place of his choice; at times, several imponderables requiring formation of subjective opinion may be involved; realistic approach is to leave to the wisdom of hierarchical superiors; the wheels of administration should be allowed to run smoothly; Courts do not substitute their own decision in the

matters of transfer; there are no judicially manageable standards for scrutinizing the transfers; Courts lack necessary expertise for personnel management; in public interest, transfers involving public services have to be best left to the concerned authorities; even if an order of transfer is passed in violation of executive instructions or orders, Court should not interfere; affected party should approach higher authorities; Court should not interfere if transfer is made to equivalent post without any adverse consequence on the service prospects.

11. It is not in dispute that petitioner was posted in Bhavanipuram branch w.e.f. 07.11.2013 and later transferred to Srinagar Branch where he was working from 12.08.2014. Both these branches are in Region-III of Vijayawada Module. It is not in dispute that petitioner has completed one year of tenure in Region-III by the time he was granted promotion to the Middle Management Grade Scale-II. According to the transfer policy, on promotion, officer is liable for transfer from the region where he is working, if he has worked in that region for more than one year. Though petitioner was granted promotion in August, 2015, he was retained in the same place. In the general transfers effected, petitioner is now transferred from Region-III and posted to Region-VIII. No specific posting in a branch is given so far. On reporting to the region, petitioner would be given appropriate posting. No *mala fides* are attributed against any officer for the transfer made. Allegation is against Officers' Association. The stand of the respondent Bank is, petitioner is accommodated to the nearest possible place having regard to the specific grievance of the petitioner.

The transfers are governed by the transfer policy and it is not in dispute that in terms of the transfer policy, on promotion, petitioner is liable for transfer.

12. Petitioner sought to raise grievance primarily on two folds; firstly, he is being subjected to frequent transfers and on promotion, though

petitioner was retained, within a short period, he was again transferred and the same is illegal; and secondly, persons who were similarly situated and promoted along with the petitioner were retained and some others were accommodated to the places of their choice, but no choice of posting is granted to the petitioner. The respondents have given detailed explanation for the reasons of retention of the persons and accommodation. It cannot be said that justification for retention or local transfer is not valid or amounting to arbitrary exercise of power. It appears, on transfer, the individuals requested for particular places of transfer for their personal reasons and the said requests were considered. If it is the case of the petitioner that he also requires similar accommodation, it is for him to make a representation. But even before he reported to Region-VIII where he is transferred, he cannot make a grievance on that issue.

13. While justifying the transfer on the ground that it is in accordance with the transfer policy, it is also contended that the branch in which petitioner was working is downgraded and temporarily petitioner was continued since transfers are not affected simultaneously when promotions were effected and it is administratively inconvenient to retain the petitioner in the same place after his promotion.

14. Learned counsel for petitioner sought to contend, by placing reliance on the decision of the Supreme Court in the case of **Nandkishore Lalbhai Mehta** (supra) that conflict stands cannot be expressed and such conflict stand should not be taken note of. On perusal of the counter affidavit and additional counter affidavit, I do not see inconsistency in the stand of the respondents. They have only explained the stand on the transfer policy and effecting of transfers of individual officers referred to by petitioner.

15. As noted above, law as laid down in several precedent decisions, the Court cannot go into intricacies of the cadre

management and posting of the employees. There can be several imponderables requiring formation of a subjective opinion and Court cannot go into those administrative issues in exercise of power of judicial review. Having regard to the parameters set out by the Supreme Court in the precedents referred to above, I do not see any illegality in the transfer of petitioner warranting interference by this Court.

16. However, having regard to the grievance of the petitioner that he is being subjected to frequent transfers, that his transfer would be affecting the education of the children and that others are accommodated to the places of their choice on transfer from the region, liberty is granted to the petitioner to represent to the Chief General Manager, State Bank of India, Koti, Hyderabad, ventilating his grievances within a period of one week from the date of receipt of copy of this order and on such receipt of representation, the Chief General Manager shall objectively consider the grievance of the petitioner and pass appropriate orders as warranted within a further period of one week.

17. Subject to the above observations, the writ petition is disposed of. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 06.01.2016

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Note: 1) LR copy to be marked

2) Issue CC in two days

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.37603 of 2015

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Date: 06.01.2016

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According to the transfer policy, normally on a transfer and posting, an officer is retained at the place of posting for a period of three years, whereas he was never allowed to work at any particular station for full tenure. In support of said contention learned counsel stated that as Assistant Manager, petitioner was posted to Vanagani Branch in Guntur District on 12.08.2009. Thereafter, he was transferred (i) by order dated 31.05.2010 to Bapatla branch; (ii) by order dated 10.01.2011 to Mandadam Branch; (iii) by order dated 10.03.2013 to Tullur Branch; (iv) posted in Bhavanipuram Branch from 07.11.2013; and (v) w.e.f. 11.08.2014 he was posted to Srinagar Branch. Though on promotion petitioner was retained in Srinagar Branch, by the impugned

order he is now transferred.

According to learned counsel yielding to the pressure exerted by the petitioner is disturbed from the present place, as was the case earlier also. He further submits that on promotion, petitioner was retained having regard to the fact that petitioner did not complete one year of tenure in Srinagar Branch on the date of promotion and the said decision is in accordance with transfer policy. Once petitioner is retained on promotion, there is no justification to shift him again within short period and that too in the middle of the academic year. Ordinarily, transfers take place in June of every year.

Learned standing counsel highlighted the procedure followed in effecting the transfers. The competent authority estimates the vacancies, analyses the tenure of the officers and takes a decision to transfer. Once a decision is taken by the competent authority, the same is communicated to the concerned controlling authority to relieve the officer concerned with a direction to report to the next Officer under whom he is posted. The order of transfer is not served to the officer, but only consequential relieving orders are served. In the instant case also, in accordance with the procedure envisaged by the respondent bank, the orders of transfer were not served, but only consequential relieving proceedings are served.

10. The transfer orders filed along with the material papers disclose that several officers are now transferred including the petitioner. A glance of the transfer proceedings would show that several officers promoted like the petitioner to MMGS-2 are also transferred. Thus, it is not a case where a particular officer is transferred as he is sought to be made out. Thus, the present transfer is in tune with the transfer policy. What is required to be verified is, as contended by the learned counsel for petitioner, 4 or 5 officers promoted along with the petitioner were retained when promotions were granted in the same place where

they were working and were not disturbing even now while disturbing the petitioner.

[\[1\]](#) (2015) 9 SCC 755
[\[2\]](#) (2001) 5 SCC 508
[\[3\]](#) (2009) 8 SCC 337
[\[4\]](#) (2009) 15 SCC 178
[\[5\]](#) 2013 SCC Online HP 4623
[\[6\]](#) (1994) 6 SCC 98
[\[7\]](#) (2008) 12 SCC 292