

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14137 of 2019

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1. Prashant Kumar S/o Amlendu Prasad Singh R/o Mohalla Anand Vihar Colony, PS Ahiyapur, Dist.Muzaffarpur
 2. Gaurav Kumar S/o Ganga Sharma R/o Mohalla Govindpuri,Bibiganj,P.S. Muzaffarpur (Sadar), Dist.Muzaffarpur

... .. Petitioner/s

Versus

1. The Bank of Maharashtra, through its Chairman and Managing Director,Lokmangal,1501, Shivajinagar,Pune-4111005
2. The Chairman and Managing Director, The Bank of Maharashtra,Lokmangal,1501,Shivjinagar Pune-411005
3. The Assistant General Manager, Human Resource Managementj Department,The Banko of Maharshtra,Lokmangal,1501, Shivajinagar,Pune-4111005
4. The Zonal Manager,Kolkata Zone, The Bank of Maharashtra,Meleod House First Floor,3 N.S. Road Kolkatta-700001

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pushkar Narayan Shahi, Sr. Advocate Ms. Shradha Banka, Advocate Mr. Alok Kumar @ Alok Kr Shahi
For the Respondent/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Rahul, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 26-07-2019

1. Heard Mr. Pushkar Narayan Shahi, learned senior Advocate for the petitioners and Mr. Gautam Kumar Kejriwal, learned Advocate for the respondent / Bank.

2. The petitioners have challenged the order dated 01.06.2019 issued by Respondent No. 3, who is the Assistant General Manager, Human Resource Management



Department, Bank of Maharashtra, whereby the petitioners have been transferred from Kolkata Zone to Goa Zone with immediate effect.

3. It has been submitted on behalf of the petitioners that the aforesaid transfer is bad on two grounds; one being that it does not follow the policy of transfer which is normally followed by the respondent / Bank; and the other being that the order of transfer has not been issued by the competent authority.

4. Expatiating over the aforesaid arguments, Mr. Shahi, learned senior Advocate has drawn the attention of this Court to the provisions contained in Bank of Maharashtra Officers Transfer Policy, 2019. Apart from the objectives of transfer, which has been detailed in the preamble, which lists one of the grounds to be optimizing effective use of human resources apart from other factors, the normal periodicity / tenure of an officer at a given place is stated to be three years of active service as on 30th of June of a calendar year unless advised otherwise.



The norm of transfer includes a decision with respect to the rotation of officers in order to provide opportunities to those who are working in rural and semi urban centres to work in urban and metropolitan centres and vice versa. For transfer of officers outside the zone, the relevant consideration would be the length of service in the State / Zone and also the vacancies / position which are to be filled in various grades / scales in other zones. Notwithstanding the rider in such rules that a person can be transferred even before the completion of maximum tenure, stay of six years in a zone, with respect to inter-zone transfers is the rule. It has further been clarified that officers of the grade MNGS II and III, who have completed 6 years continuous service in a zone shall be transferred to another zone and such transfers shall be on an all India basis.

5. With the aforesaid clauses in the policy, Mr. Shahi, learned senior Advocate has argued that the petitioners have not completed six years at their present



place of posting and the clauses with respect to the considerations and norms of transfer have not been adhered to.

6. Though no malafides have been alleged by the petitioners but a submission has been advanced that if an order of transfer violates the principles and norms set out by the Bank only, it must be scrutinized properly.

7. The other ground raised on behalf of the petitioners is that for the officers in Scale I, II and III, the authority to transfer them would be the DGM, HRM. The order of transfer impugned in the present petition has been passed by the Assistant General Manager, HRM and there is no reference in the order that it is with the approval of the competent authority *viz* the DGM, HRM.

8. On the aforesaid grounds, it has been submitted that the order of transfer be set aside and the respondent / Bank be directed to allow the petitioners to work at the place of posting in the same zone.



9. As opposed to the aforesaid contentions, Mr. Gautam Kumar Kejriwal, learned Advocate for the respondent / Bank has submitted that the transfer cannot be said to be *mala fide* for the simple reason that the petitioners have not been hand-picked for being transferred from one zone to another but such transfer order has been passed with respect to more than 1400 employees, keeping in mind the norms of transfer and for administrative reasons. The transfer also aims at providing opportunity for gaining experience by various personnel, who have been transferred by the aforesaid order.

10. From the counter affidavit filed on behalf of the respondent / Bank, it appears that a note was put before the Deputy General Manager, HRM by the Senior Manager, HR, apprising him of the considerations which have weighed for listing officers of the Bank for being transferred under the Annual General Transfer of 2019. It specifically states that all officers who have completed six years in one zone have been selected for transfer. The



promotees from Scale I to II, who have completed three years in one zone have also been selected for transfer. Similarly, all other officers on promotion and after having served for the normal period of tenure or having completed six years and above in urban assignment were also considered for being transferred. Non-performers too were selected for being sent from one place to other. Apart from that, other considerations were also listed for the approval of the Deputy General Manager, HRM.

11. It has been submitted on behalf of the petitioners that their cases fall in none of the categories of considerations and, therefore, they are entitled to challenge such order of transfer as being a decision without application of mind or perhaps wrong application of such considerations with respect to the petitioners.

12. The argument has been reiterated on behalf of the petitioners that they have spent only one and half years in their present tenure and therefore even if the grounds of administrative exigencies or affording further



opportunities to the employees are taken into account, the order of transfer cannot be sustained in eyes of law.

13. The law with respect to the transfer is too well settled to be recounted. Nonetheless, this Court deems it appropriate to refer to the case laws cited by the respondent / Bank, defending the aforesaid order of transfer.

14. In ***Shilpi Bose Versus State of Bihar [1991 Supp 2 SCC 659]***, the Supreme Court has cautioned that Courts should not normally interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory or statutory Rule or on the ground of *mala fides*.

15. The aforesaid observation is further reinforced by the Supreme Court by holding that a government servant, holding a transferable post has no vested right to remain posted at one place or the other and is liable to be transferred to the place, which is chosen for



him by the employer. A transfer order by a competent authority does not in any circumstance violate anyone of the legal rights of an employee and if such orders are interfered with, it would only result in chaos in the administration of the organization which would not be conducive in public interest.

16. Similarly, in ***State of Haryana and Ors. Versus Kashmir Singh and Anr. [(2010) 13 SCC 306]***, the Supreme Court has reiterated the law of transfer as the same being an incidence of service which should normally not be interfered with by Courts of law. Transferring an employee is purely in the domain of administrative decision making and the administration of an organization cannot function properly unless the administrators are provided some free play in the joints in such administrative matters like transfer.

17. In ***State of Uttar Pradesh & Ors. Versus Gobardhan Lal [(2004) 11 SCC 402]***, the Supreme Court went on to explain that it is too late in the day for any



government servant to conceive that once appointed or posted in a particular place or position, he should continue at a place or posting or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. Even administrative guidelines for regulating transfer or containing transfer policy at best may afford an opportunity to the officer or the servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer / servant to any place in public interest and is found necessitated by exigencies of service as long as the official status is not affected adversely and there are no infraction of any career prospect such as seniority, scale of pay and secured emoluments.

18. On the basis of the aforesaid decisions, it has been urged by the respondent / Bank that this Court must



eschew itself from interfering with such order of transfer of the petitioners which has been done only due to administrative exigencies.

19. As noted above, it is a settled principle of law that the employer knows best where to place its employee and that transfer is only an incidence of service even if it causes some inconvenience to the transferred employee in the process.

20. Nonetheless, it cannot be lost sight of that if the organization has short-listed the employees for transferring them on certain parameters based on the transfer policy which is prevalent in the organization, such decision-making must comply with the aforesaid grounds and the correctness of such order can be tested on the fulcrum of the application of such consideration.

21. From Annexure-A to the counter affidavit, certain considerations were noted down for being taken into account for transferring several such Bank employees to different places and some to even another zones.



22. It was brought to the notice of the DGM, HRM that such persons who have completed their tenure or are under promotion and or have not performed to the satisfaction of the Bank have been chosen for such transfers.

23. From the records, it appears that the petitioners do not fall in anyone of the categories.

24. The petitioners have not completed the normal periodicity of tenure in one zone and they have not been promoted nor are they sought to be transferred to a different zone on promotion. So far as non-performance of the petitioners are concerned, it has been categorically averred in the writ petition that the petitioners have obtained more points than required for appraising their performance as good and therefore even that ground could not have been taken for selecting the petitioners for being transferred mid-term before their having finished their tenure.



25. The law of *mala fides* is also too well settled as on date.

26. The petitioners do not make any animadversion on the order of transfer on such ground but only alludes to lack of proper consideration or perhaps oversight with respect to their service condition for being chosen to be transferred within a short span of time. If the parameters which were noted down for the consideration of the transferring authority, which do not at all apply to the case of the petitioners, the petitioners would perfectly be entitled to challenge the same which they have done by filing a representation before the superior authority.

27. *Prima facie*, it appears that there has been some lack of application of mind with respect to the petitioners.

28. This Court does not even for a second suggests that the respondent / Bank does not have the competence or the authority to transfer an employee to a different zone even if full tenure has not been completed



by them. But in the present circumstances, if certain factors were listed for consideration which do not apply to the petitioners, the order does not appear to be correct in the eyes of law. In the final scrutiny, even if this Court reminds itself of its desired reluctance in interfering with such administrative orders, it cannot sustain such an order.

29. However, for the reason of allowing an organization to have complete freedom in choosing where to place its employee, this Court is not setting aside such orders of transfer but feels inclined to and directs that the representation preferred by the petitioners be considered in its correct perspective, without being prejudiced with the fact that such order of transfer has been challenged before a Court of law and the representation be disposed off with a reasoned order in accordance with law, preferably within a period of 30 days from the date of production/communication of a copy of this order. Till such time, there shall be no insistence on the petitioners to join their transferred place of posting and they ought not be



subjected to any coercive process for compelling their joining at the transferred place. Needless to state that they shall not be treated without work for the aforesaid period, i.e., till their representations are disposed off. The observations of the Court with respect to the decision making process is limited to the case of the petitioners only.

30. With the aforesaid observation / direction, this petition stands disposed off.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.07.2019
Transmission Date	

