

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24147 of 2018

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Bipin Kumar Singh Son of Shri Kailash Prasad Singh Resident of Vill and
P.O.- Rahatpur, P.S.- Balia, Dist- Begusarai

... .. Petitioner

Versus

1. State Bank Of India Through The Chairman, State Bank of India, Corporate Centre, Madam Cama Road, Nariman Point, Mumbai- 400021
2. The Deputy Managing Director and Corporate Development Officer, State Bank of India, Corporate Centre, Nariman Point, Mumbai- 400021
3. The Chief General Manager, State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001
4. The Chief General Manager (HR), State Bank of India, Corporate Centre, Nariman Point, Mumbai- 400021
5. The General Manager (Network- III), State Bank of India, Local Head Office, West Gandhi Maidan, Patna- 800001
6. The Deputy General Manager (B and O), NW- III, State Bank of India, Zonal Office, Muzaffarpur
7. The Regional Manager, State Bank of India, RBO, Muzaffarpur

... .. Respondents

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Appearance :

For the Petitioner : Mr. Bipin Krishna Singh, Advocate
For the Respondents : Mr. Rakesh Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 22-08-2019

The petitioner has put to challenge an order, dated 20.08.2018, sent through *e-mail*, whereby the petitioner has been transferred to Internal Audit Department (IAD), Hyderabad.

2. The petitioner is an officer in the State Bank of India. He was initially appointed as a Probationary Officer in 1998 and was granted promotion from time to time. In the year 2013, he was promoted to the rank of Senior Management Grade Scale-IV.



3. It is the case of the petitioner that the Bank, for administrative purposes, is divided into different Circles and the petitioner was allotted Mumbai Circle immediately after his appointment. According to the petitioner, he had served in Mumbai Circle for nearly eight and half years. It is also the petitioner's case that the respondent Bank has a system of inter-Circle transfer, wherein an officer, after having put three years of confirmed service in a Circle, can apply for an inter-Circle transfer. It was on the petitioner's request, on the ground of ill health of his old and ailing parents, that he was transferred to Patna Circle from Mumbai Circle in April, 2007. This is an admitted fact that after having joined Patna Circle in 2007, he has continuously served in Patna Circle till issuance of the impugned communication/order of transfer on 20.08.2018.

4. The petitioner has attempted to make out a case that it was during his posting at M.I.T., Muzaffarpur Branch, in July, 2016, that he had inherited negative growth in the branch because of his predecessor having indulged in 'window dressing' by debiting an overdraft account with approximately Rs.9.50 crore and crediting the said amount in the current account of the constituent. It is his further case that this 'window dressing', done by the petitioner's predecessor in M.I.T., Muzaffarpur Branch, is



equivalent, in effect, to fraud, by artificially enhancing the business profile of the Branch. The petitioner asserts that he endeavoured hard to meet the situation. However, since the petitioner failed to achieve the target, he was awarded poor appraisal marks by the controllers.

5. The petitioner was expecting promotion to Senior Management Grade Scale-V in 2018-19, but he was not called for interview inasmuch as his name did not figure in zone of consideration. Aggrieved by denial by the authorities to consider the petitioner's case for his promotion, he made a representation before the higher authorities of the Bank on 05.05.2018. It is the petitioner's case that issuance of the order of transfer is because of the petitioner's demand for his promotion to Senior Management Grade Scale-V.

6. Mr. Bipin Krishna Singh, learned counsel appearing on behalf of the petitioner, has contended that the impugned order of transfer is vindictive and malafide and against its own policy of the Bank. In support of his contention, he has drawn my attention to an *e*-Circular, dated 01.06.2019 (Annexure-9 to the reply on behalf of the petitioner to the counter affidavit of the Bank), and has submitted that there is a practice in the organization of seeking options/preferences for out of Circle transfer or transfer in Internal



Audit Department. He has further submitted that, whereas, the Officer, who had indulged in window dressing, has been allowed promotion and the petitioner, who had attempted to overcome the negative growth, has been saddled with the impugned order of transfer.

7. He has relied on a Supreme Court decision in case of *E.P.Royappa vs. State of Tamil Nadu and Another*, reported in (1974) 4 SCC 3, and has referred to paragraph 85 thereof to contend that an order of transfer, guided by any extraneous or irrelevant considerations, is unsustainable.

8. Mr. Rakesh Kumar Singh, learned counsel appearing on behalf of the Bank, on the other hand, has submitted that evidently the petitioner remained in Patna Circle for nearly 11 years after his transfer from Mumbai Circle to Patna Circle. Referring to the impugned order of transfer, he has contended that along with the petitioner, four other persons have been transferred by the same order and posted to Internal Audit Department on administrative grounds. He submits that the impugned action of the State Bank of India can neither be said to be punitive or vindictive. He has relied on a Supreme Court decision in case of *Shilpi Bose and Others Vs. The State of Bihar and Others* (AIR 1991 SC 532) and has submitted that since the petitioner has not



been able to make out a case, for violation of any administrative police of the Bank or statutory rule, in passing of the impugned order of transfer, the impugned action requires no interference by this Court.

9. I have carefully perused the pleadings on record and the documents annexed thereto. I have also considered the rival submissions made on behalf of the parties. In my opinion, the action of the Bank, in issuance of impugned order of transfer, cannot be held to be a malafide exercise on the basis of materials pleaded in the writ application. There is no allegation made against any individual nor any person has been impleaded in his individual capacity as party respondent in the writ application against whom the petitioner intends to allege malafide. In my opinion, therefore, the plea of malafide, to question the correctness of the impugned action, is not acceptable to this Court.

10. Further, I have no hesitation in reaching a different conclusion on the basis of what has been discussed hereinabove, that there is nothing on record to show that any statutory provision or policy decision of the Bank has been violated in issuance of the order of transfer dated 18.08.2018. The *e*-Circular, dated 01.06.2018, appears to have been issued allowing the officers of the Bank to submit their request for transfer to other Circles. That



would not mean that there is a policy of the Bank to transfer an Officer to other Circle only after a request is made in that regard. There cannot be any quarrel with the legal principle, which has been enunciated in Supreme Court's decision in case of *E.P.Royappa* (supra), that where the operative reasons for State action is not legitimate and relevant, but is extraneous and outside the area of permissible considerations, it would amount to malafide exercise of power and that would hit Articles 14 and 16 of the Constitution of India.

11. As I have already noted, there is nothing to show that any policy or statutory provision has been violated in issuance of the impugned order of transfer, the Supreme Court's decision in case of *E.P.Royappa* (supra) does not come in aid to the petitioner's case.

12. In my opinion, learned counsel appearing on behalf of the Bank has rightly placed reliance on Supreme Court's decision in case of *Shilpi Bose* (supra), paragraph 4 of which reads thus :-

“4. In our opinion, the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other.



Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer Orders.”

13. The legal position is well established by now, in the light of catena of decisions of the Supreme Court, that it is within the exclusive domain of the competent authority to decide when and where a public servant needs to be transferred from one place to another. An employee does not have any vested legal right to claim his posting at a particular place. It is an ordinary incident of service, the Supreme Court has ruled in case of ***B. Varadha Rao Vs. State of Karnataka***, reported in (1986) 4 SCC 131.

14. A transfer order, which is malafide and not made in public interest, but made for collateral purposes, with oblique motives and colourable exercise of power, is, however, vitiated by abuse of power, the Supreme Court has held in case of ***B. Varadha Rao*** (supra).

15. Transfer of a public servant, made on administrative grounds or in public interest, need not be interfered with by a High



Court exercising power of judicial review under Article 226 of the Constitution of India, unless there are strong and pressing grounds rendering the transfer order illegal on the ground of violation of statutory rules or on ground of malafide (See AIR 1989 SC 1774, ***Union of India vs. H.N.Kitania***). Similar view has been taken by the Supreme Court, in case of ***Gujarat Electricity Board vs. Atmaram Sungamal Poshani***, reported in (1989) 2 SCC 602, holding that an employee has no choice in the matter of transfer from one place to another, which is necessary in public interest and efficiency in public administration. It has been held in ***Union of India vs. S.L. Abbas*** (AIR 1993 SC 2444) by the Supreme Court that even the Government instructions on transfer are mere guidelines, which do not have any statutory force, unless the transfer order is held to be passed with malice or in breach of statutory prescription, a Court or Tribunal should not interfere.

16. An order of transfer of an employee is a part of his service condition and unless the Court finds that either the transfer order is malafide or the service rules prohibit such transfer or the authority passing the order lacks competence, no interference with transfer order will be desirable, See ***State Bank of India vs. Anjan Sanyal and Ors.*** (AIR 2001 SC 1748). In case of ***S.C. Saxena vs. Union of India***, reported in (2006) 9 SCC 583, the Supreme Court



has deprecated the practice of the Government employees approaching the Courts against transfer orders rather joining the transferred post. There is a long line of precedents laid down by the Supreme Court on the principle that transfer is an exigency of service and an administrative decision and, therefore, interference by the Courts with transfer orders should be in rare cases only.

17. In the light of the aforementioned discussions, in my opinion, the petitioner did not have any vested right to remain posted at a particular place, who was liable to be transferred from one place to another. There is no violation of any mandatory policy or statutory requirement made out, on the basis of the pleadings on record. The power of employer to transfer his employee is purely an executive function. Scope of judicial review in the matter of transfer is very limited and can be invoked only in exceptional circumstance when either the action is found to be malafide or in violation of any mandatory statutory prescription or policy.

18. I do not find any merit in this application. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

Pawan/-

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