

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(S) No. 5297 of 2020**

1. Praveen Kumar Tiwari S/o Shri Ravishankar Tiwari Aged About 34 Years Occupation Service, Posted As Manager, Central Bank Of India, R/o Sant Mata Karma Ward, District Bhatapara Chhattisgarh.

---- Petitioner

Versus

1. Central Bank Of India Through Its General Manager, Chander Mukhi, Nariman Point, Mumbai 400021., District : Mumbai, Maharashtra
2. Zonal Manager Central Bank Of India, Zonal Office (HRD), 1st Floor Arera Hills, Jail Road, Bhopal Madhya Pradesh.
3. Senior Regional Manager Central Bank Of India, Regional Office 1st Floor, Block - C Bombay Market, G.E. Road Raipur Chhattisgarh.
4. Piyush Baish Posted As Branch Manager Scale - II, Central Bank Of India Branch Uparwara (Raipur) Rural Branch, Raipur Chhattisgarh.,
5. Ashwani Ranu Posted As Branch Manager Scale - II, Central Bank Of India, St Vincent Palotii College Branch Raipur Chhattisgarh.
6. Vaibhav Bhute Posted As Branch Manager Scale - II, Central Bank Of India, Balodabazar Branch, District Baloda Bazar Bhatapara Chhattisgarh.

---- Respondents

For Petitioner : Shri Rajeev Shrivastava, Advocate.

For Respondents : Shri Anand Shukla, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16.12.2020**

1. The challenge in the present writ petition is to the order of posting dated 29.10.2020 passed by the respondents posting the petitioner at the Belar Branch, District Bastar as Branch Manager.
2. The facts of the case in the present writ petition is that the petitioner is working as a Scale II Officer under the respondents and was posted at Alirajpur under Ratlam region of the respondents-Central Bank. The petitioner made a request for transferring him to Raipur region which was acceded to and the petitioner was sent to Raipur region. Upon

being sent to Raipur region on petitioner giving his joining, the impugned order (Annexure P/1) has been passed posting the petitioner at Belar Branch, District Bastar.

3. The contention of the petitioner is that the said order of posting is contrary to the guidelines and norms of transfer framed by the respondents i.e. Annexure P/8, the request was made by the petitioner on a circular that was issued by the respondents (Annexure P/5) calling upon interested employees/officers seeking transfer from one region to another region, from one zone to another zone and from one Branch to another Branch. According to the petitioner, in the circular, it was explicitly reflected that the place of posting shall be strictly in accordance with the norms governing the respondents-establishment.
4. The further contention of the petitioner also is that as per the norms once having worked in a tribal area, the respondents should have been given a place of posting of his choice and in the past the petitioner has worked for a considerable period in the tribal area therefore before issuing Annexure P/1 dated 29.10.2020, the petitioner ought to have been posted at a place of his choice where there were vacancies available. According to the petitioner, there are a large number of vacancies available under the respondents in Raipur region itself outside the tribal area and urban area where the petitioner could have been accommodated.
5. Counsel for the petitioner drew the attention of this Court to the norms 4.1.4 & 4.1.6 stating that the respondents should have strictly adhered to these norms while posting the petitioner.

6. Per contra, the counsel for the respondents Bank submitted that it is a case where the petitioner all along though has worked in a tribal area but has worked only in semi urban area alone and has never worked at any of the rural Branches and as per the guidelines and policies of the respondents, an Officer has to work at-least for two years at a rural area before being posted at the place of his choice.
7. Further contention of the counsel for the respondents is also that the service of the petitioner admittedly is a transferable service and the scope of interference by the Writ Court in a transfer matter is minimal to the extent of the order of transfer being contrary to the service Rules governing the employee or the transfer order being vitiated with malafide.
8. Counsel for the petitioner submits that immediately after the impugned order Annexure P/2 dated 29.10.2020 was passed the petitioner has made a representation on 03.11.2020 (Annexure P/9) and again on 19.11.2020 (Annexure P/10) by way of email seeking for modification to the order dated 29.10.2020 is to the extent of being placed/ accommodated at the place outside the tribal area where the vacancies are still available with the respondents.
9. It is further contention of the petitioner is that subsequent to filing of the transfer petition, the respondents are now issued a show-cause notice to the petitioner on 14.12.2020 seeking explanation as to why disciplinary action should not be taken against the petitioner for having not complied with the order dated 29.10.2020, particularly in the backdrop of the said Belar Branch being functioning without a Branch Manager.

10. Counsel for the petitioner in support of his contention relied upon the judgment passed by the Supreme Court in the case of Kendriya Vidhyalaya Sangathan 2004 12 SCC 299 and also in the case of S.L. Abbas v. Union of India 1993 4 SSC 357.
11. It is by now a well settled position of law where the Supreme Court have in a series of judgements have categorically held that transfer is an incident to service and that the policy of the State Government does not have any mandatory force but are only guidelines on the administrative side to be borne in mind as far as possible by the respondent authorities in the course of issuance an order of transfer.
12. In case of **State of U.P. Vs. Siyaram (2004) 7 SCC 405**, wherein the Supreme Court has held as under:-

“The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was

highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. V. Shri Bhagwan**".

13. A Similar view has also been taken by the Supreme Court in case of **Union of India and others V. Janardhan Debanath and others (2004) 4 SCC 245.**

14. Again, in the case of **State of U.P. and others V. Govardhan Lal**, wherein the Supreme Court referring to the transfer policy of the State Govt. have categorically held that such policies do not have force of law nor is it mandatorily to be followed. Those are only guidelines which the authorities have to bear in mind while making the transfer. The Supreme Court in Paragraph 7 & 8 in the said judgment has held as under:-

"7 It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place 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 contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or 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 as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured

emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights. Unless as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer”.

15. So far as contention of the petitioner that the impugned transfer order is contrary to the policy of the State Government is concerned, the policies are mere guidelines and not controlled by any statutory provisions. The effect thereof is a advisory in character and thereby no legal right is conferred upon the employee. **Chief Commercial Manager, Sought Central Railway, Secundarabad & others V. G. Ratnam & others 2007 (8) SCC 212.**

16. The Supreme Court, in **Airports Authority of India V. Rajeev Ratan Pandey & others, 2009 (8) SCC 337** held that “In a matter of transfer of a government employee, scope of judicial review is limited and the High Court would not interfere with an order of transfer lightly, be it at interim stage or final hearing. This is so because the Courts do not substitute their own decision in the matter of transfer”.

17. Even otherwise, there is no challenge to the impugned order on any permissible legal grounds as aforestated, warranting interference.
18. This Court has limited jurisdiction to interfere with the transfer matter except in the cases of proved mala fide, non-competence of authority passing the transfer order and not being in conformity with the rules and regulations. The petitioner/employee cannot be permitted to remain at one place forever. Under the provisions of service rules, employer has all the powers to post an employee at a particular place in view of public interest and administrative exigency. **(See High Court of Judicature of Madras Vs. R. Perachi (2011) 12 SCC 137.**
19. Given the aforesaid legal pronouncements as it stands undoubtedly it is not a case where the service of the petitioner is not transferable and this also not the case that the order of transfer has been issued with malafide as such nor has it been strongly established. Only because the petitioner happens to be transferred to a tribal or to a far of place from regional headquarter by itself cannot be attributed to have been passed with arbitrary. As regards, the personal inconvenience that the petitioner has on his personal front, the only remedy available to the petitioner as has been held by the Supreme Court in the case of State of U.P. v. Goverdhan Lal (supra), is to approach the authorities by way of a suitable representation and on said representation being made, the authorities to consider the same sympathetically.
20. In the instant case also the first requirement of the petitioner was that on transfer from Ratlam Region to Raipur Region, and the Raipur region posting the petitioner at a particular place, the petitioner should have first complied with the order of posting and thereafter

could have approached the authorities concerned for suitable modification by requesting for a change of place of posting to a place where there is vacancy available and also the requirement of an officer of the category to which the petitioner belongs.

21. Now that the respondents have also issued an order to the petitioner on 14.12.2020 calling for a show-cause notice at this juncture this Court is of the opinion that the petitioner should join his services at the place of posting at Belar Bastar and thereafter make an appropriate suitable representation to the respondent No. 3 supported with all the relevant documents in support of his contention seeking for modification of the place of posting. That the respondent No. 3 in turn shall consider the same objectively with a sympathetic consideration and also shall keep in mind the guidelines governing the field so far as transfer on request is concerned. It is made clear that the respondent No. 3 should not be in any manner influenced by the order dated 14.12.2020 or the contents therein while deciding the representation of the petitioner.
22. With the aforesaid observation, the writ petition accordingly stands disposed of.

**Sd/-
(P. Sam Koshy)
Judge**

Jyotijha