

**CWP No.7671 of 2020 and
CWP No.7937 of 2020**

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**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

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**CWP No.7671 of 2020
Date of decision: 03.09.2020**

Major Anil Ahlawat

... Petitioner

Vs.

State Bank of India and others

... Respondents

AND

(2)

CWP No.7937 of 2020

Capt. Ashish Ahlawat

... Petitioner

Vs.

State Bank of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr. Gurpeet Singh, Advocate for the petitioner.

Mr. Anupam Gupta, Senior Advocate with
Mr. Akshay Jain, Advocate and

Ms. Madhu Dayal, Advocate for the respondents.

SUVIR SEHGAL J. (ORAL)

This order shall dispose of the aforesaid two petitions as the issues involved in both the writ petitions are same. However, for the sake of convenience, facts are being taken from CWP No.7671 of 2020.

Petitioner has approached this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned orders dated 19.05.2020, Annexure P-2, and 22.05.2020, Annexure P-4, passed by the respondents vide which the petitioner has been transferred from Mohali, Punjab to Hyderabad Circle.

Facts, in brief, are that the petitioner joined the State Bank of India (for brevity hereinafter referred to as 'the respondents') in the year 1992 as Assistant Manager (Security) and is working as Manager (Security) MMGS-III. During his tenure with the respondents, he remained posted at different places and in June, 2019 he was transferred from Rohtak to Mohali. On 21.05.2020, the petitioner was served with the impugned order, dated 19.05.2020, Annexure P-2, transferring him to Hyderabad Circle. He submitted a representation, dated 21.05.2020, Annexure P-3, to the competent authority to cancel his transfer mentioning various reasons, including that the transfer is violative of transfer policy of the Bank, an extract of which has been appended as Annexure P-1. Instead of considering his representation, the respondents relieved him vide impugned order, dated 22.05.2020, Annexure P-4. While issuing notice of motion hearing to the respondents, this Court by

order dated 02.06.2020 directed that as an interim measure the petitioner will not be compelled to proceed to Hyderabad and will be accommodated either at Mohali or at a nearby station.

The writ petition has been contested by the respondents by filing a response wherein it has been submitted that as stipulated in the appointment letter and service rules, the petitioner is liable to be transferred to any place in the country. Reason for transfer has also been elaborated in the response. Petitioner filed rejoinder to the written statement to which a counter affidavit dated 23.07.2020 was filed by the respondents. Another additional affidavit, dated 30.07.2020 was filed by the respondents.

Mr. Gurpreet Singh, Advocate counsel for the petitioner has argued that the petitioner, who is 57 years of age, falls in the ambit of specialized officer in the security cadre. His transfer is violative of Clause 9.5 of HR Handbook Volume I, issued by Human Resources Department, State Bank of India, Corporate Circle, Mumbai, which lays down the Transfer Policy for Specialist Officers. He contends that there was no administrative exigency justifying his transfer and vacant positions were available within the Chandigarh Circle where the petitioner could be accommodated. He urges that no time was given to him as his transfer and relieving order were passed on consecutive days, leaving him in the lurch as his wife is suffering from Pott's spine and is bed-ridden. He has relied on order dated 20.05.2020, Annexure P-6, passed by a co-ordinate bench of this Court in CWP No.11627 of 2020

Sant Singh Vs. State Bank of India by which this Court has quashed the transfer order of a MMGS-II specialized officer, who had been transferred from Patiala to Bhubaneswar Circle. He has also questioned the transfer on the ground that the petitioner is being uprooted to accommodate favourites, namely, Shiv Raj Singh Brar and Major Poonam Sharma. He has placed reliance upon the judgments in

i) ***Dr. Dev Prakash Chug Vs. State of Punjab***, 2005(4) SCT 726;

ii) ***Smt. K.Prabhavathi and others Vs. Deputy Divisional Manager, Syndicate Bank***, 1995(5) SLR 100; and

iii) ***N.K. Singh Vs. Union of India and others***, (1994)6SCC98.

Mr. Anupam Gupta, Senior Advocate assisted by Mr. Akshay Jain, Advocate and Ms. Madhu Dayal, Advocate appearing for the respondents have argued that the petitioner was appointed in service which was transferable on all India basis and have referred to the appointment letter, Annexure R-1, as well as Rule 47 of the State Bank of India Officer's Service Rules, 1992, (hereinafter referred to as 'the Service Rules'), Annexure R-4. It has been urged that the petitioner cannot claim to be posted at a particular place or in a particular circle and that in his 28 years' service career with the respondents, the petitioner has remained posted in the Chandigarh Circle for 25 years. It has been argued by the respondents that Clause 9.5 of the Handbook has to be read with Rule 47 of the Service Rules. A reference has been made to the amendment in the said Rule which was carried out and circulated vide

e-circular dated 24.07.2020, Annexure R-5. Still further, it has been argued that administrative exigency is not required to be mentioned in the transfer order. According to the learned counsel for the respondents, the judgment in ***Sant Singh's*** case (supra) is per incuriam and reference has been made to various transfers of other SMGS Security Officers. Respondents have placed reliance upon case law in support of their arguments.

I have considered the submissions of the parties and perused the paper book with their able assistance.

The Central Board of the State Bank of India framed the Service Rules in exercise of the power conferred under Section 43(1) of State Bank of India Act, 1955. As per rule 2(1), the Service Rules apply to all officers of the Bank, who are appointed or promoted to any of the grades mentioned in Rule 4, besides Specified Officers to whom the Rules are applicable. Rule 4 of the Service Rules provides the grades and scales of pay. The petitioner is a Middle Management Grade Scale-III (MMGS-III) officer under Rule 4. Rule 47 of the Service Rules governs the transferability and deputation of the officers and provides as under:

"Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any organisation, in India."

The petitioner was appointed as Assistant Security Officer vide appointment letter dated 17.06.1992, Annexure R-1. Para 4 of the appointment letter provides that *"In this connection, please note that*

yours services in the bank will be liable to frequent transfers anywhere in India and requests for posting in a particular place area will not be entertained. You are requested to give specific consent to this effect, alongwith your acceptance." The consent was given by the petitioner and the petitioner cannot now be permitted to turn around and argue that he cannot be transferred to another Circle and that he is entitled to remain posted in the Chandigarh Circle.

Rule 47, *ibid*, has been amended vide e-Circular, Annexure R-5, which has been issued during the pendency of this writ petition and provides as under-

"Every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organization, in India. Every officer, who is selected against the vacancy declared for a Circle and therefore, identified as belonging to that Circle Cadre is liable for transfer to any office or branch of the Bank within that Circle upto Senior Management Grade Scale IV. No such officer shall be entitled to seek any transfer to any Circle other than the Circle to whose cadre he/she belongs."

This amendment has been explained by the respondents in their additional affidavit dated 30.07.2020 to be prospective and the amendment introduces a new concept for recruitment within a cadre known as "Circle Cadre". This became necessary in order to ensure recruitment of junior level officers who would remain posted within the Circle of their recruitment upto SMGS-IV or 12 years, whichever is later as the respondents were facing acute shortage of these officers. A special

recruitment drive for certain selective Circles has been undertaken by the respondents vide Annexure R-6. From the above, it is clear that the amendment does not apply to the incumbents, whether they are general or specialist officers like the petitioner, who would continue to be governed by the first part of Rule 47, *ibid*.

The main plank of the argument of the counsel for the petitioner is Clause 9.5 of HR Handbook Volume I, Annexure P-1. The same may be noticed

“9.5 TRANSFER POLICY FOR SPECIALIST OFFICERS

Keeping in view the requirements of the Bank in respect of the specialized expertise provided by Specialist Officers and to facilitate their career development, the following guidelines have been formulated for transfer of officials in the Specialist Cadre.

- i. Tenure: The maximum period of stay of specialist officers at any one centre/office will be fixed at 7 years.*
- ii. Scope of transfer:*
 - a) Transfer of all specialist officials in SMG Scales will be effected on all India basis.*
 - b) While transfer of officials in JMG/MMG Scales will be effected within the parent Circle, should the exigencies of service so warrant, such officials will be subjected to transfer outside the Circle, in case no other positions*

are available within the same Circle or in case of transfers to Corporate Centre.

iii. Authority Structure for transfers:

a) Transfer of officials in SMG Scales will be effected by Corporate Centre.

b) Transfer of officials in JMG/MMG Scales posted at Corporate Centre Departments/ establishments and inter-circle transfer will be effected by the Corporate Centre.

iv. Transfer of officials in JMG and MMG Scales will ordinarily be effected by the Circle Authorities on the basis of the laid down norms.

v. To mitigate hardship to the officials, transfers will be effected to coincide with the academic year to the extent possible.

vi. Officers who have crossed 55 years of age shall ordinarily be exempted from the purview of the policy.

Notwithstanding the provisions as above, the Bank would not be precluded from effecting transfers of officials any time earlier to any place at its discretion, keeping in view the exigencies of service.”

This clause contains the transfer policy for specialist officers and ends with a non-obstante clause to the effect that notwithstanding the

abovementioned provision, the Bank would not be precluded from effecting transfers of officials at any time, earlier to any place at its discretion, keeping in view the exigencies of service. The logical conclusion of the over-riding non-obstante clause is that there are no fetters on the power of the respondents to effect the transfer of the Specialised Officers at any time prior to the period mentioned in the provision to any place outside the parent Circle.

Coming to the next argument of the counsel for the petitioner that there is no administrative exigency, nor is the same apparent from a perusal of the impugned transfer order. Administrative exigency is not a magic word. Mere mention of the same in the transfer order will not make the transfer order valid. In any case, the administrative exigency is not required to be spelled out in the transfer order. Transfer in itself is a part and parcel of the conditions of service and incidence of service. An employer is not required to explain the administrative exigency or to mention or elaborate the reasons for transfer of an employee in the transfer order. If explanation for every transfer is required to be given, transfer itself would become well-nigh impossible.

Though an employer is not required to justify and give reasons for transfer of an employee but a perusal of the response filed by the respondents shows that the transfer of the petitioner had been carried out because after the merger of five associate banks, viz; State Bank of Bikaner and Jaipur, State Bank of Mysore, State of Hyderabad, State Bank of Patiala and State Bank of Travancore into the State Bank of

India w.e.f. 01.04.2017, against 17 sanctioned posts of the Security Officers in Chandigarh Circle, the number of officers working was 19. Therefore, two security officers were surplus in the Circle, whereas on the other hand, the strength of Security Officers in the Hyderabad Circle was 9 against the sanctioned posts of 11 Security Officers. Accordingly, the respondents took a decision to transfer the petitioner to the Hyderabad Circle besides carrying out transfer of 31 other Security Officers throughout the country, during the current financial year against the total cadre strength of Security Officers is 207 as on 30.06.2020. As far as transfer of Shiv Raj Singh Brar and Major Poonam Sharma to Chandigarh Circle is concerned, both these officials had remained posted at Bhubaneswar Circle and Hyderabad Circle for three and five years, respectively, before being transferred to Chandigarh Circle by the respondents. The transfer policy of Specialist Officers itself stipulates that a transfer outside the Circle can be carried out in case, the exigency of service so warrants and no other position is available within the same Circle. The Court is satisfied with the explanation given by the respondents and finds no reason to interfere with the impugned transfer order.

Insofar as the reliance of the counsel for the petitioner upon the order passed by this Court in *Sant Singh's* case (supra) is concerned, it deserves to be noticed that the factual situation before the Court in the said case was entirely different. Sant Singh was a MMG Scale-II Specialist Officer with the State Bank of Patiala, which merged with the

State Bank of India. Despite his having exercised his option of modules on 20.04.2017, the respondents on the same day allotted him the Bhubaneswar Circle and by a latter communication relieved him from duty. In these circumstances that this Court by order dated 25.05.2017, Annexure P-5, directed the respondent not to compel the petitioner to proceed to Bhubaneswar as an interim measure. By order dated 20.05.2019, Annexure P-6, this court allowed the writ petition and quashed the transfer order with liberty to the respondents to pass a fresh transfer order within the Chandigarh Circle in terms of the transfer policy. The respondents in their reply, have specifically pointed out that the present petitioner in his writ petition, has not pointed out that by a subsequent order passed on 29.05.2019, this court had clarified that the order dated 20.05.2019, Annexure P-6, is without prejudice to the rights of the respondents as envisaged in the Transfer Policy. The factual situation in the present case is entirely different, as has been noticed above. The present petitioner was appointed by the respondents in 1992 and his appointment letter contained a specific clause that he could be transferred anywhere in the country.

The Division Bench judgment relied upon by the petitioner in ***Dev Parkash Chug's*** case (supra) is also based on a different situation. This Court was interpreting Clause 2(b) of the Transfer Policy notified by the Government of Punjab on 20.04.2005 which provided that employees, who are due to retire within the next two years may be

allowed to continue in the same district or at the same station of posting till retirement, as far as possible. The transfer policy which was under adjudication before the Division Bench did not contain any non-obstante clause, as is the position in the present case.

In ***Prabhavathi's*** case (supra), while upholding the transfer orders of male employees, the High Court of Andhra Pradesh held that female employees were exempt from transfer under the norms laid down on the basis of understanding reached at in joint meeting held between the representative of the management and the employees union of the Syndicate Bank. As such, transfer of a class of employees was prohibited. This judgment does not help the petitioner.

Still further in ***N.K. Singh's*** case (supra) relied upon by the counsel for the petitioner, the Hon'ble Supreme Court had held that interference by judicial review is justified only in cases of mala fides or infraction of any profest norms or principles. This judgment does not advance the case of the petitioner rather, it supports the contentions of the respondents.

Rule 47 of the Service Rules came up for interpretation before the Hon'ble Supreme Court in ***State Bank of India Vs. Anjan Sanyal***, (2001) 5 SCC 508. Upon noticing the Service Rules, the Apex Court held that order of transfer of an employee is a part of the service conditions and such order of transfer is not to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer

or that the authorities, who issued the order, had not the competence to pass the order. An employee cannot insist that once appointed or posted at a particular place, he should continue in such place as long as he desires. Reliance in this regard can further be placed upon the judgments of the Hon'ble Supreme Court in *Kendriya Vidyalaya Sangathan Vs. Damodar Prasad Pandey and others*, (2004) 12 SCC 299, *State of U.P. and others Vs. Gobardhan Lal*, AIR 2004 SC 2165, *State of U.P. and others Vs. Siya Ram and another* , AIR 2004 SC 4121, *Mohd. Masood Ahmed Vs. State of U.P. and others* (2007)8 SCC 150, *Somesh Tewari Vs. Union of India and others* (2009)2 SCC 592 and *Rajendra Singh and others Vs. State of U.P. and others* (2009)15 SCC 178.

In the instant case, no infraction of the Service Rules could be pointed out by the counsel for the petitioner nor does the impugned transfer order, in any way change the conditions of service of the petitioner .

It deserves to be noticed that Rule 49 of the Service Rules provides that an officer shall be given a maximum of seven days, excluding the number of days spent on travel, to enable him to join a new post. This rule does not make any distinction between intra-circle and inter-Circle transfer. However, this Court is of the view that an officer who is transferred to another circle has to be treated differently and definitely deserves to be given more time to join at his new place of posting. Without commenting any further, as this Rule is not in question in the present petition, this Court feels that the petitioner deserves to be

given twenty one days time to join at Hyderabad Circle.

Keeping in view the above discussion and for the reasons given above, this Court is of the view that no ground is made out for interfering in the impugned orders. However, it will be apposite to grant the petitioner twenty one days' time from the date of this order to join the new place of posting.

With these observations, both the writ petitions stand disposed of.

Since the main petitions have been disposed of, no further orders are required to be passed in the miscellaneous applications.

03.09.2020

pooja saini

**(SUVIR SEHGAL)
JUDGE**

Whether Speaking/Reasoned : Yes/No

Whether Reportable : Yes/No