

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

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CWP No.11621 of 2020 (O&M)
DATE OF DECISION : 8th APRIL, 2021

Lalita Arya

.... Petitioner

Versus

Life Insurance Corporation of India & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Aalok Jagga, Advocate for the petitioner.

Mr. Saurav Verma, Advocate for the respondents-LIC.

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RAJBIR SEHRAWAT, J. (Oral)

1. This is the petition filed by the petitioner under Articles 226/227 of the Constitution of India seeking quashing of the transfer order dated 19.06.2020 (Annexure P-3) whereby the petitioner has been transferred to Divisional Office, Ludhiana from Divisional Office, Chandigarh on promotion as Divisional Manager; and also quashing of the decision of the authorities dated 14.07.2020 (Annexure P-9) whereby the representation and notice dated 02.07.2020 (Annexure P-8) moved by the petitioner, was rejected by the respondents.

2. The brief fact giving rise to the present petition are that the petitioner was an employee with the respondent-Life Insurance Corporation of India. On 01.09.1996, the petitioner was promoted as Assistant Administrative Officer. Thereafter the petitioner was further promoted as Administrative Officer in the year 2003. As per the further line of promotion, the petitioner was later on promoted as Assistant

Divisional Manager and was transferred to Divisional Office, Bareilly, Uttar Pradesh, where she remained posted up to June 2013. In July, 2013 the petitioner was transferred to Divisional Office, Chandigarh, where she had been working continuously. As per the work, conduct and seniority of the petitioner the petitioner was further promoted to the post of Divisional Manager vide office order dated 19.06.2020. Consequent of this promotion, the petitioner was ordered to be posted to Divisional Office, Ludhiana vide another order dated 19.06.2020, whereby several hundred employees were ordered to be transferred by the respondents. Vide this posting order; many officers/employees were transferred by the respondent-Corporation. The name of the petitioner figured at serial No.227, posting her as Manager (MASH), Divisional Office, Ludhiana. The petitioner attained the age of 58 years on 04.10.2019. Therefore, relying upon the Transfer and Mobility policy of the respondent-Corporation, which provides for non-transfer of an employee after attaining the age of 58 years, the petitioner made a representation dated 20.06.2020. However, the said representation has also been rejected by the respondent-Corporation. Since the petitioner was required to join her new place of posting, failing which the promotion would have been withdrawn by the respondents, therefore, the petitioner joined the new place of posting on 06.07.2020. It is thereafter that the present petition has been filed by the petitioner in August, 2020.

3. While arguing, the learned counsel for the petitioner has relied upon Clause 6 of Transfer and Mobility (of Class-I Officers) Instructions, 2016; to contend that since the petitioner has attained the age of 58 years, therefore, the petitioner could not have been transferred

from her present place of posting. It is further submitted by the counsel that there are some other officers who have been retained at the same station even after their promotion to the next post. The petitioner has even cited two examples of the officers who have been promoted like the petitioner and have been retained at their present place of postings. Hence, it is submitted by the counsel that the petitioner has been discriminated against and that she should have been retained at Divisional Office, Chandigarh even after her promotion as Divisional Manager. Carrying forward the argument, the counsel for the petitioner has submitted that although the transfer policy of the corporation provides for transfer of its officers, however, Clause 6 of the said policy creates a special provision. The language of this provision also is mandatory in nature because it uses the words 'shall' not be transferred on promotion. The counsel has relied upon the judgment of Supreme Court in *Moti Lal Ghelabhai Versus Jagan Nagar, 1985 AIR SC 709; J. K. Cotton Spinning and Weaving Mills Co. Ltd. Versus State of U.P. and others, 1981 AIR SC 1170* and *Dilawar Singh Versus Parvinder Singh @ Iqbal Singh & another, 2005(12) SCC 709* and also on some other judgments to contend that when a law contains a general provision and special provision governing the same aspect, then the special provision shall have to be taken as excluding and overriding the general provision. In view of this, since Clause 6 contains a special provision, this shall supersede the earlier general provisions of the Transfer and Mobility Policy. Therefore, the respondents did not have any power or authority to transfer the petitioner from Chandigarh to Ludhiana.

4. On the other hand, the counsel for the respondents has submitted that the service of the employees and officers of the Corporation are governed by the Life Insurance Corporation of India (Staff), Regulations, 1960 which provide that an employee/officer is liable to serve at place where he/she is posted from time to time. The said regulations also providing that the competent authority may transfer an employee from one department to another in the same office or from one office of the Corporation to another office. Therefore, the petitioner cannot claim any right to remain posted at any place of her choice. The respondent-Corporation has full authority to transfer the petitioner, or for that matter; any other employee to any place according to its work, business and administrative requirements. It is further submitted that the Transfer and Mobility Policy contains only guiding principles for the internal working of the Corporation. It does not confer any right upon any employee/officer. Therefore, under the said policy, the petitioner cannot claim anything as a matter of right. Otherwise also even Clause 3(a) of the same policy provides that the officer working on the post of Assistant Divisional Manager and above, can remain posted at one place for maximum of six years. This duration of six years is to be counted by including the service at that place in all cadres. Still further the clause provides that an employee/officer may be continued at the same place even beyond six years, if there is no request for incoming transfer to that place. In case of the petitioner, she has remained posted at Chandigarh, admittedly, for seven years and there have been incoming requests from the other officers to get posted in Chandigarh, therefore, she has rightly been transferred from Chandigarh to Ludhiana office. The counsel has

further submitted that even Clause 6, upon which the petitioner has relied, does not contain an absolute provision for retention of an employee/officer at the same place after such an employee/officer attains the age of 58 years. The clause itself makes the said aspect subject to the availability of vacancy. Since there were incoming requests for being posted at Chandigarh from the other officers, made under the same policy, therefore, after acceding to their requests, no vacancy was left at Chandigarh office. Therefore, the petitioner was rightly transferred to Ludhiana office.

5. Qua the aspect of discrimination, the counsel for the respondents has submitted that the petitioner is not the only person who has been transferred from her present place of posting to some other office on promotion, despite having attained the age of 58 years. This aspect has been dependant upon the vacancy situation and the incoming requests at the particular places. Accordingly, at least 13 officers have been transferred like the petitioner despite having attained the age of 58 years. Only stray cases could be adjusted by the respondent-Corporation at the same places even after promotion. Those places also happen to be where the vacancies were existing. Hence it is submitted by the counsel for the respondents that the present petition be dismissed.

6. Before proceeding further, it would be apposite to have reference to the relevant provisions of Regulations of 1960 as well as to some relevant provisions of the Transfer and Mobility instructions of the respondent-Corporation:

Life Insurance Company of India (Staff), Regulations, 1960:

20. *Unless in any case it be otherwise distinctly provided, the whole time of an employee shall be at the disposal of the Corporation and he shall serve the Corporation in its business in such capacity and at such place as he may from, time to time be directed.*

80. *The competent authority may transfer an employee from one department to another in the same office or from one office of the corporation to another office.”*

LIC of India Transfer and Mobility (of Class-I Officers), Instructions, 2016

3. *Normal period of Posting/Maximum tenure:*

(a) Maximum stay duration at a station of 10 years shall apply only to Metro cities, In other cases it shall be 8 years in a station for AAO/AO and 6 years in a station for ADM and above Officers. The maximum tenure at a station shall be taken inclusive of tenure in all cadres.

In case there are no incoming transfer requests for a particular station, maximum tenure conditions shall not be applicable in these cases. However, in the office exigencies the Competent Authority will have the right to transfer any officer irrespective of tenure.

(b) The term “position” shall refer to the Assignment an officer is dealing with.

(c) In case of officers on deputation, period spent on deputation in the same station shall also be counted for computing NPP. With regard to reversion cases, period spent at the station of posting on promotion immediately preceding reversion shall also be treated as the period spent

in the earlier station, viz. place of work prior to acceptance of promotion.

(d) Posting of an officer on refusal of promotion/reversion shall be done in accordance with the NPP criteria.

(e) The maximum tenure of 3 years in a position is applicable for the sensitive positions (list enclosed). However, officers working in other than sensitive positions, maximum tenure in a position shall normally be 5 years. Chairman reserve the right to declare any department as sensitive department as and when required.

(f) Newly promoted AAOs shall be initially posted to the offices where there is shortage of manpower based on sanctioned strength. However, Officers selected as ITSG / Actuarial Core Group / Investment Specialist Group shall be exempted from posting in DO / BO / SO as the case may be.

(g) Direct Recruit AAOs shall be initially posted in Branches only for a minimum period of 3 years.

(h) Officers recruited as AAO (CAs) shall be posted initially for a minimum three years in Divisions only.

6. Posting on Promotions:

The concerned Office shall evaluate the Offices where there is shortage of manpower based on the sanctioned cadre strength. Accordingly, these posts shall be filled in by way of promotions on priority.

Officers aged 58 years (nearer birth day) and above as on 01st April of the relevant year shall not be

transferred on promotion subject to availability of vacancies in the elevated cadre.

7. In case of employee-employer relationship, it is for the employer to decide the place of posting of the employee, keeping in view the work requirement and in the interest of better administration of the organization. Therefore, an employee/officer does not have any absolute right to stay or get posted at any particular place of his/her choice. The posting of an employee is only an 'incidence of service' and not the 'condition of service'. The aspect of posting; being an incidence of service, no employee can force an employer to post him at any particular place, by any means. To the same effect; there is a provision contained in the regulations of the respondent-Corporation as well, as is contained in Regulation Nos.20 and 80 mentioned hereinabove.

8. It is well established by now that the transfer policy is only for the internal guidance of the department to streamline the posting of its employees for better and efficient functioning of the organization / department. The transfer policy is not a statutory document, upon which any employee/officer can base any right. Such transfer policy is always non-enforceable. Hence, the petitioner cannot base her claim on the provisions of the transfer policy to seek a writ of mandamus against the respondents; for a direction to them to post the petitioner at a particular place of her choice. Moreover, since regulations governing the staff of the Corporation already covered the field, therefore, in case of any instructions issued by the respondent-Corporation, such instruction shall always be subservient to the regulations issued on the said aspect. Needless to say, as mentioned above, the regulations left the matter of

posting of its employees to the exclusive discretion of the competent authority, not giving any kind of right to the employee on the issue of transfer.

9. Even if the said policy is taken to contain same kind of provision, which the court may look at, to assess the case of the respective parties, though not conferring any right upon the petitioner, still this Court finds that the provisions of Clause 6, relied upon by the counsel for the petitioner, does not confer any right upon the petitioner for not being transferred; only on the ground that she has attained the age of 58 years. Although, the counsel for the petitioner has relied upon the judgment of Supreme Court rendered in ***Moti Lal Ghelabhai (Supra)***, ***J. K. Cotton Spinning and Weaving Mills Co. Ltd. (Supra)*** and ***Dilawar Singh (Supra)***, to contend that this special provision of policy shall exclude other general provision contained in the same Policy, however, this court finds that those judgments are not even relevant to the case of the petitioner. All these judgments relates to the interpretation of the provision of the Act or the statutory Rules, and not the provisions of transfer policy. Otherwise also a cumulative reading of the provisions of the Transfer and Mobility Policy of the Corporation shows that it has provided a maximum period of posting for an officer at one place. For the post of ADM and above, the maximum period of posting that has been specified under the said policy is six years, which can be extended further only if there are no requests for incoming transfers at that place or there are no exigencies of the office which does not permit the retention of an officer at a particular place. Even Clause 6 of the said policy does not create unconditional provision for not transferring of an officer, who

has attained the age of 58 years. Even this provision makes this aspect subject to availability of vacancies in the elevated cadre. Hence, if there are no available vacancies in the promotional cadre at one particular place, then even if an officer has attained the age of 58 years, he/she shall have to be transferred. The availability of the vacancies in the promotional cadre has to be determined by harmoniously reading Clauses 3 and 6 together. The Clause 3 provides maximum period of posting of an officer at a place; which cannot be extended in case there are incoming requests for transfer to that place. Therefore, for assessing the availability of vacancies in promotional cadre at a particular place, the incoming requests for transfer to that place shall have to be accounted for in the first instance; in case the officer sought to be transferred has already completed 6 years at that place. It is only after adjusting the incoming requests, that the officer sought to be transferred can be retained at that place, if still there are some vacancies left at that place. In the present case, it is not even in dispute that the petitioner had already remained posted at Chandigarh for more than six years. The respondents have amply clarified that there had been incoming requests from other officers for being posted at Chandigarh. After accounting for their requests, there was no vacancy left at Chandigarh office. Hence, the petitioner has rightly been ordered to be transferred to the divisional office of the Corporation at Ludhiana. Therefore, this Court does not find any illegality or irregularity in order passed by the respondents, even if the Transfer and Mobility Instructions of the Corporation has to be assigned some legal value, although it would never be so warranted as per the law.

10. Another aspect which is clear from the facts on file is that the petitioner has not even alleged any *mala fide* against any authority. There is no allegation by the petitioner of extraneous considerations being taken into account by the authorities. In absence of any allegation of *mala fide* or interplay of any extraneous consideration, this court would not interfere in barely an administrative matter of posting of the officers by respondent-Corporation. Otherwise also, undisputedly, the petitioner had already joined the duty pursuant to the transfer order, way back on 06.07.2020. Hence, the transfer order stands already complied with about 8 months back. This court finds no justification for overturning the prevalent arrangement by setting aside the transfer of the petitioner.

11. In view of the above, finding no merit in the present petition, the same is dismissed.

12. All the pending applications are disposed of accordingly.

8th APRIL,2021
'raj'

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No