

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

CWP-13410-2022

Date of Decision: 9.6.2022

Mohit Kumar

..... Petitioner

Versus

Bank of Broda and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Gaurav Rana, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The present writ petition has been filed impugning the order dated 2.6.2022 (Annexure P-9) issued by the Regional Head (DGM), Regional Office, Chandigarh, whereby the petitioner in view of the transfer policy dated 31.12.2020 (Annexure P-3) has been ordered to be transferred from Fatehagarh Sahib Branch (Chandigarh Region) to Gandhi Nagar, Gift City, Gujarat, in view of the Inter Zonal Transfer Exercise for the year 2022-23 under "Longest Stay Criteria".

Learned counsel for the petitioner has submitted that the petitioner has joined as Officer-JMGS Scale-I at Mumbai Branch on 4.11.2010 and later on he was transferred to New Delhi on 31.8.2013. He submits that as father of the petitioner left for heavenly abode on 21.12.2013, hence, in view of the compassionate ground, he was transferred from New Delhi to Chandigarh on 22.4.2014. He has submitted that the petitioner got married on 29.4.2017. He submits that in April, 2019, Vijaya Bank and Dena Bank were merged into Bank of Baroda. Thereafter, a new transfer policy dated 31.12.2020 was approved by the Board of Directors on 24.1.2020, which was published on 31.12.2020. He further submits that the

petitioner was transferred from Chandigarh Branch to Fatehgarh Sahib Branch on 16.1.2021. Learned counsel for the petitioner has submitted that Deputy General Manager (Regional Head), Regional Office Chandigarh vide its email dated 26.4.2022 invited willingness for Inter Zonal Transfer exercise for the year 2022-23 in terms of the policy dated 31.12.2020 and in pursuance to the same the petitioner submitted his willingness for Inter Zonal Transfer to New Delhi Zone from Chandigarh Zone. The same was declined by the respondent-authorities holding the petitioner not eligible for Inter Zonal Transfer and he was conveyed vide letter dated 6.5.2022. The petitioner filed representation dated 7.5.2022 against the same, which was rejected vide email dated 9.5.2022 by the Assistant General Manager (Deputy Regional Head), Regional Office, Chandigarh. He has further submitted that the petitioner again submitted his objections dated 9.5.2022 and no decision was taken on the same and thereafter, the respondent-Bank issued impugned order dated 2.6.2022 transferring the petitioner as Inter Zonal Transfer under the 'Longest Stay Criteria' from Fatehgarh Sahib Branch (Chandigarh Region) to Gandhi Nagar, Gift City, Gujarat. Aggrieved by the same, the petitioner immediately filed a representation dated 4.6.2022, which is pending consideration. He contends that the petitioner is governed by the transfer policy dated 31.12.2020. He submits that the relevant provision pertaining to the Inter Zonal Transfer is Clause 3 of Transfer Policy. In view of the same he submits that the relevant Clause is 4.1 and 4.2(a) of the Transfer Policy. He has submitted that as evidently the petitioner was appointed on 4.11.2010 and thereafter, he was transferred to New Delhi on 31.8.2013 and subsequently, he joined at Chandigarh on 22.4.2014. As he completed 6 years of service in Chandigarh Zone, hence,

he was eligible for giving willingness for Inter Zonal Transfer. He has also relied upon Clause 4.2(a) of the Transfer Policy, wherein, the DROs may opt for transfer/give willingness for transfer to a Zone of their choice after a period of 6 years since the date of their appointment. He submits that the petitioner duly represented after the respondent-authorities invited the willingness on 26.4.2022. However, the same was illegally declined holding the petitioner not eligible. He submits that the view taken by the respondent-authorities in holding the petitioner not eligible is simply on the ground that he did not apply under the prior policy and thus, he is not eligible. He also submits that as per the letter dated 26.4.2022, the petitioner was fully eligible under the “Longest Stay Criteria” as he completed 6 years of service in the Chandigarh Zone. He submits that he duly filed a representation objecting the view taken by the respondent-authorities in not considering the petitioner eligible, however, the same was illegally declined in violation of the policy. He has also submitted that the representations dated 7.5.2022 and 4.6.2022 were never decided by the respondent-authorities. He submits that the wife of the petitioner is in a family way and in view of the policy the impugned transfer is totally illegal and same deserves to be set aside.

Heard.

Evidently, the petitioner joined the respondent-Bank as JMGS Scale-I at Mumbai Branch on 4.11.2020. Thereafter, admittedly he was transferred to New Delhi on 31.8.2013. Unfortunately, the father of the petitioner passed away on 21.12.2013 and thus, on the compassionate ground he was transferred from New Delhi to Chandigarh on 22.4.2014. The new transfer policy came into effect on 31.12.2020. The precise grievance of the petitioner is that under the “Longest Stay Criteria” he is

eligible for giving his willingness which he has opted to be transferred to New Delhi Zone. However, the respondent-authorities after considering his request has found that Clause 4.1 of the Transfer Policy pertains to re-transfer of the officers to the Zone from where he was last transferred. Admittedly, the petitioner was transferred from New Delhi Zone to Chandigarh on the compassionate ground i.e. on his own request. As the present policy has come into effect in supersession of the earlier policy under which the petitioner did not apply and hence, his request on the willingness ground was not accepted. A perusal of the Transfer Policy categorically lays down that the request made would be considered by the Bank as per the administrative feasibility. Admittedly, the grievances of the petitioner have been considered by the respondent-Bank on the earlier occasions as well subject to the administrative feasibilities and that in any case do not give any legal right to the petitioner for enforcing the respondent in accepting his request against his transfer. Email dated 26.4.2022 by which the willingness of officers was invited clearly stipulates that DRO and promotee officers, who are identified for Inter Zonal Transfer from one Zone to another under Longest Stay Criteria/administrative ground during first 6 years of their service will be eligible for transfer to zone of their choice, if they have completed/will be completing 6 years in such zones as on 31.8.2022. Admittedly, the petitioner joined on 4.11.2010 and hence, he is beyond first 6 years of his service. Considering the facts and circumstances of the case and law settled, the interference by the Court in the transfer of the employee is in limited circumstances. Hon'ble the Apex Court in plethora of judicial precedents has laid down that the transfer is an incident of service and same cannot be interfered in casual manner. Hon'ble

the Apex Court in S.K. Nausad Rahaman and others vs. Union of India and others, 2022 Live Law (SC) 266 has laid down in para Nos.23, 24, 25, 26 as under:-

23. While analyzing the rival submissions, certain basic precepts of service jurisprudence must be borne in mind.

24. First and foremost, transfer in an All India Service is an incident of service. Whether, and if so where, an employee should be posted are matters which are governed by the exigencies of service. An employee has no fundamental right or, for that matter, a vested right to claim a transfer or posting of their choice.

25. Second, executive instructions and administrative directions concerning transfers and postings do not confer an indefeasible right to claim a transfer or posting. Individual convenience of persons who are employed in the service is subject to the overarching needs of the administration.

26. Third, policies which stipulate that the posting of spouses should be preferably, and to the extent practicable, at the same station are subject to the requirement of the administration. In this context, Justice JS Verma (as the learned Chief Justice then was) speaking for a three-judge Bench of this Court in *Bank of India v. Jagjit Singh Mehta*, (1992) 1 SCC 306 held :

“5. There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of all-India services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when

they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an all-India service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of all India service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. [...] No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees.”

Learned counsel for the petitioner has submitted that the petitioner is to be relieved by tomorrow i.e. 10.6.2022 and in view of the attending circumstances his transfer be deferred for about 5 months. Keeping in view the service jurisprudence pertaining to the transfer and the law settled by Hon'ble Apex Court, this Court is not inclined to interfere in

the impugned order passed. The transfer being incident of service cannot be interfered by this Court. Learned counsel for the petitioner has candidly acknowledged that he has no grievance against the policy even otherwise. The petitioner failed to produce anything on record in proving the impugned order to be arbitrary. In view of the law settled, the executive instructions/policy also do not confer any fundamental right on the employee for granting him the place of posting of his choice. The writ petition being devoid of any merits is hereby dismissed.

9.6.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No