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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 13.09.2023

% LPA 632/2023 and C.M. Nos. 47303/2023, 47304/2023, 47305/2023
& 47306/2023

SMT SHAKUNTALA DEVI & ANR.

..... Appellants

Through: Mr. Sanjeev Kumar, Advocate.

versus

CENTRAL BANK OF INDIA

..... Respondent

Through:

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, C.J. (ORAL)**

1. The present Letters Patent Appeal (the "LPA") is filed challenging order dated 25.04.2023, passed by the learned Single Judge in W.P.(C.) No. 4163/2023 ("**Impugned Order**"), titled *Central Bank of India v. Smt. Shakuntala Devi & Anr.*

2. The undisputed facts of the case reveal that the Appellant No.2 i.e., Mr. Devender Kumar Sharma, is an employee working with the Central Bank of India/Respondent ("**Bank**") and he started his service career by joining the bank in the clerical grade at the Bank's Branch at Sukhdev Vihar, Delhi on 16.01.1995. He was, thereafter, transferred on 22.10.2001

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by the Respondent Bank within the Delhi Zone. On 22.05.2007, he was again transferred within the Delhi Zone. On 06.10.2008, the Appellant No. 2 was promoted as Assistant Manager and upon promotion he was transferred to Jaipur, Rajasthan. On 07.12.2012, the Appellant No.2 was again transferred back to Delhi and since then, the Appellant No.2 has uninterruptedly been performing his services at Delhi. Meaning thereby, that the Appellant No. 2, except for a span of 4 years where he was transferred to Jaipur, has remained in Delhi since 1995.

3. The transfers of employees of the Bank is governed by the Bank's Transfer Policy and keeping in view the same, as the Appellant No.2 was due for rotational transfer, he was transferred to Gorakhpur, Uttar Pradesh on 21.04.2022.

4. The Appellant No. 1, who is the mother of Appellant No. 2 submitted an application before the Chief Commissioner for Persons with Disabilities (the "**Chief Commissioner**") being aggrieved by the transfer of the Appellant No. 2 on the ground that she is suffering from 47% locomotive disability, and a request was made for the cancellation of his transfer. The said application was preferred under the Right of Persons with Disabilities Act, 2016 ("**RPWD Act**"). The Appellant No. 1 also placed reliance upon an Office Memorandum dated 08.10.2018 issued by the Department of Personnel and Training ("**DOPT**") and pleaded before the Chief Commissioner that the Appellant No.2 cannot be transferred as Appellant No. 1 has 47% locomotive disability and is dependent on Appellant No. 2.

5. In those circumstances, the Chief Commissioner has passed an order



recommending the employer to cancel the transfer of Appellant No. 2 and to report compliance. The order of the Chief Commissioner for Persons with Disabilities while recommending cancellation of transfer has also held that, in case, the recommendation is not implemented, the matter shall be reported to the Parliament. The Bank in those circumstances came up before this Court being aggrieved by the recommendations/ order passed by the Chief Commissioner and the learned Single Judge, while passing the Impugned Order, in paragraphs 13 to 17 has held as under:

“13. In the opinion of the Court if an employee is allowed to scuttle his transfer by relying upon the physical condition of his mother, that too in a complaint filed by the mother, it would be impossible for organisations to run their activities and manage personnel. The settled legal position is that Courts are reluctant to interfere in transfers, especially when the nature of the job is transferable in nature. A Division Bench of this Court in Amarjeet Singh Dagar v. Union of India 2022:DHC:847-DB has held as under:

“23. At the outset, it must be emphasised that an employee in a transferable job has no vested right to remain posted at one place. The Courts should not readily interfere with the transfer order which is made in the public interest and for administrative reasons, unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order, instead, the affected party should approach the higher authorities in the concerned department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and/or its subordinate Authorities, there will be complete



chaos in the administration which would not be conducive to the public interest. Interference under Article 226 of the Constitution of India is permitted only where the Court finds either the transfer order is mala fide or that the service rules prohibit such transfer or that the Authorities issuing the order were not competent to pass the same. It must be remembered that transfer ordinarily is an incidence of service and must be left to the discretion of the Authorities concerned, which are in the best position to assess the necessities of the administrative requirements of the situation. The Courts must maintain judicial restraint in such matters. {Refer: Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors., 1991 Supp. (2) SCC 659; Mohd. Masood Ahmad vs. State of Uttar Pradesh & Ors., (2007) 8 SCC 150; State of Haryana vs. Kashmir Singh & Anr., (2010) 13 SCC 306; and Major Amod Kumar vs. Union of India, (2018) 18 SCC 478}.”

14. In the present matter, it is not the case of the Respondents that the transfer order is mala fide in nature.

15. Further, this Court is of prima facie of the opinion that in the facts of this case, the order recommending the cancellation of transfer would have a cascading effect on other employees and the overall administration of the Bank. The mother of the Respondent No. 2 is claimed to be suffering from 47% locomotor disability – meaning thereby that she may be having difficulty in walking. Being a senior citizen, the mother may be required to travel to Gorakhpur with her son. That by itself cannot be a reason to stop the transfer itself. In the facts of the present case, the impugned order shall remain stayed till the next date of hearing.

16. The Bank shall however provide for any facility or expenses, in order to enable the travel of the Respondent No. 2 with his mother from Delhi to Gorakhpur.



17. Let rejoinder be filed within six weeks.”

6. The learned Single Judge has observed that the transfer order of the Appellant No. 2 is not vitiated with *mala fide* and it has been passed keeping in view the administrative exigencies. The learned Single Judge has held that as the Appellant No. 1 is suffering from locomotive disability, the Bank shall provide any facilities or expenses in order to enable the travel of the Appellant No. 1 from Delhi to Gorakhpur. The Appellant being aggrieved by the Impugned Order has approached this Court by way of a LPA.

7. Learned counsel for the Appellants has vehemently argued before this Court that the transfer order is violative of the Office Memorandum dated 08.10.2018 which provides immunity to a Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability from transfer. He has further argued that by no stretch of imagination can the Appellant No. 2 be forced to join on transfer keeping in view the policy issued by the Government of India and, therefore, the order passed by the learned Single Judge deserves to be set aside.

8. Learned counsel for the Appellants has further argued that the RPWD Act was enacted keeping in view the concept of care-givers for Persons with Disabilities and therefore care-givers enjoy special privileges under the RPWD Act. Therefore, as Appellant No. 2 is a caregiver to Appellant No.1, he cannot be transferred out of Delhi in view of the provisions of RPWD Act.

9. Learned counsel for the Appellants has vehemently argued that Public Sector Banks are under an obligation to abide by the Office Memorandum



dated 08.10.2018 issued by the DOPT and, therefore, the Appellant No. 2 cannot be forced to proceed to transfer to Gorakhpur and the order passed by the learned Single Judge deserves to be set aside.

10. He further submits that the Appellant No. 2 enjoys immunity from rotational transfer being a caregiver as her mother is suffering from 47% Locomotive Disability i.e., above the Benchmark Disability as defined under Section 2(r) of the Persons with Disability Act, 2016. Therefore, the interlocutory order passed by the learned Single Judge deserves to be set aside and the recommendations of the Chief Commissioner deserves to be implemented.

11. He further argues that the transfer of the Appellant No. 2 is in violation of Article 21 of the Constitution of India. The Appellant No. 1 has been guaranteed a Constitutional right to enjoy her life with dignity which would not be possible for her without her care-taker i.e., Appellant No. 2, if they are separated on account of transfer of Appellant No. 2 to Gorakhpur.

12. It has also been argued by learned counsel for the Appellants that the writ petition itself was not at all maintainable against the order passed by the Chief Commissioner and the order passed by the learned Single Judge deserves to be set aside.

13. *Per Contra*, learned counsel for the Respondent, has stated before this Court that the Appellant, right from the year 1995, is continuously working at Delhi except for a period of few years when he was transferred to Jaipur on account of promotion. However, the fact remains that he has put in almost his entire service career while working in Delhi and it has been stated



that the Transfer Policy provides for rotational transfer and therefore, Appellant No. 2 has been transferred keeping in view administrative exigencies.

14. The Respondents have also stated that the Office Memorandum dated 08.10.2018 certainly exempts Government employees who are caregivers of dependents with specified disability from rotational transfer, however, such immunity is always subjected to administrative exigencies.

15. The Respondents further stated that the Chief Commissioner has no jurisdiction to interfere in transfer matters and heavy reliance has been placed upon a judgment delivered in the case of *State Bank of India v. National Commission for Scheduled Castes*, 2016 SCC Online Del 5218 in this regard.

16. Heard learned counsel for the parties at length and perused the record. In the present case, the undisputed facts of the case reveal that the Appellant No. 2 has been continuing his services with the Bank in Delhi since the year 1995. He was transferred out of Delhi to Jaipur only for a period of 4 years in the year 2008, after which he was again transferred back to Delhi and is continuing in Delhi till date.

17. It is an undisputed fact that the Appellant No. 1, who is the mother of Appellant No. 2, and is having 47% locomotive disability, submitted an application before the Chief Commissioner against the transfer order dated 21.04.2022 of Appellant No.2 which was a rotational transfer keeping in view the administrative exigencies. Paragraphs 40, 41, 42 and 43 of the Chief Commissioner's order reads as follows:



““40. This Court cannot accept the 'after thought' argument of the Respondent. Even if the disability certificate was issued after the employee was transferred, it does not prove the fact that the Complainant was not Divyangjan before the disability certificate was issued. Case of the Complainant squarely falls within the scope of DoPT O.M. No. 42011/3/2014, dated 06.06.2014 and O.M. No. 42011/3/2014, dated 08.10.2018, explained in detail in preceding paragraphs. The intention of these guidelines is to provide a conducive environment to the government employee who is serving as main caregiver of divyang dependant. Even if the disability certificate is issued after transfer of the employee, it proves that the employee's mother is Divyangjan and requires care and attention.

41. Respondent also submitted in its written argument that the employee lives along with his wife hence he is not the sole care giver and his wife can take care of divyang mother. Attention of the Respondent is attracted to DoPT OM No. 42011/3/2014. This OM talks about the employee who is serving as 'main care giver', it does not talk about 'sole care giver'. Furthermore, this argument also needs to be rejected because if accepted it will amount to a forceful division of a family.

42. This Court recommends that the Respondent shall cancel the transfer of the employee namely Sri Devender Kumar from Delhi to Gorakhpur. However, the Respondent is at liberty to transfer the employee to any branch situated in Delhi/NCR so that relevant CVC guidelines can be implemented and the employee does not need to change his station and can take care of his mother.

43. Respondent shall also file the Compliance Report of this Recommendation Order within 3 months from the date of this Recommendation failing which, this Court shall presume that the Respondent has not implemented this Recommendation and the matter shall be reported to the Parliament.”

18. The aforesaid order reveals that the Commissioner has recommended cancellation of the transfer of the employee, failing which the Commissioner



has observed that the matter be reported to the Parliament.

19. This Court has carefully gone through the Office Memorandum dated 08.10.2018, and the relevant portion of the Office Memorandum dated 08.10.2018 reads as under:

“3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OMs of even number dated June 6, 2014, November 17, 2014 and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

(i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to (a) Neurological conditions such as Multiple



sclerosis and Parkinson's disease (b) Blood disorder- Haemophilia, Thalassemia and Sickle cell disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/ rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above."

20. The Office Memorandum certainly provides for exemption from routine exercise of transfer/rotational transfer, however, the exemption is subject to administrative constraints. In the considered opinion of this Court, the learned Single Judge was justified in holding that the Office Memorandum is directory in nature and an employer does have a right to issue a transfer order keeping in view administrative constraints faced by it. Therefore, the Impugned Order does not warrant any interference. The learned Single Judge has also arrived at a conclusion that the transfer of an employee is an incident of service and the Courts must maintain judicial restraint in such transfers. Refer: *Shilpi Bose (Mrs.) & Ors. vs. State of Bihar & Ors.*, 1991 Supp. (2) SCC 659; *Mohd. Masood Ahmad vs. State of Uttar Pradesh & Ors.*, (2007) 8 SCC 150; *State of Haryana vs. Kashmir Singh & Anr.*, (2010) 13 SCC 306; and *Major Amod Kumar vs. Union of India*, (2018) 18 SCC 478).

21. This Court has also gone through the judgment delivered in the case



of *Amarjeet Singh Dagar v. Union of India* 2022: DHC:847-Division Bench, 2022 SCC Online Del 694 and in light of the aforesaid judgment, this Court is of the considered opinion that the transfer is certainly an incident of service and the Courts should refrain from interfering in day-to-day transfers issued by the Government or by the competent authority.

22. In the present case, the son of Appellant No. 1 is serving the Bank, holding a transferrable post. He has been accommodated by the Bank, right from 1995 till date at Delhi. It is not the case that Appellant No. 1 is a bed-ridden person; on the contrary, Appellant No.1 is having locomotive disability and can very well travel to Gorakhpur with her son. The learned Single Judge has gone to the extent of providing all the facilities and expenses enabling the Appellant No. 1 to go to Gorakhpur with her son, i.e., Appellant No. 2. It is pertinent to note that the Impugned Order is an interlocutory order and, this Court, keeping in view the totality of the circumstances, does not find any reason to interfere with the same. The Impugned Order does not suffer from any illegality or perversity and, therefore, no case for interference is made out. The LPA is, accordingly, dismissed.

SATISH CHANDRA SHARMA, CJ

SANJEEV NARULA, J.

SEPTEMBER 13, 2023

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