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

% *Date of Decision: 22nd February, 2023*

+ W.P.(C) 16517/2022, CM APPL. 51896/2022, 6079/2023

KRISHNA PRATAP SINGH Petitioner
Through: Mr. Arvind Sah and
Mr. Manish Kumar, Advocates.

versus

SMALL INDUSTRIAL DEVELOPMENT
BANK OF INDIA Respondent
Through: Mr. Rakesh K. Khanna, Senior
Advocate with Mr. Aditya P. Khanna and
Mr. Aditya Kumar, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed by the Petitioner seeking quashing and setting aside of the impugned order dated 22.11.2022, passed by the Respondent, whereby the Petitioner has been transferred from Green Climate Finance Vertical, New Delhi Office to Branch Office, Dehradun.

2. Petitioner, who is working as an Assistant Manager, is also the General Secretary of the SC/ST Employees Welfare Association of the Respondent Bank (hereinafter referred to as 'Association') and Vice Chairman of All India Federation of SC/ST Organizations.

3. The transfer order dated 22.11.2022 is assailed by the Petitioner on manifold grounds. It is contended by learned counsel for the Petitioner that as per clause 5.1 of the Transfer Policy, the normal tenure of stay of an officer at a centre is generally 3-5 years and by the

Signature Not Verified amended policy embodied in the Circular dated 08.03.2018, the

general tenure is 5 years. Petitioner was posted three years ago at the Delhi Office *albeit* the period of Covid-19 from April, 2020 to March, 2022 was decided to be expunged for the purpose of calculation of the tenure, by a Circular dated 17.05.2022 issued by the Respondent and, therefore, he cannot be transferred prior to completion of normal tenure. The impugned order is also contrary to para 18 of the Compendium dated 23.12.2014 on “Reservation for and Employment of Scheduled Castes and Scheduled Tribes in Financial Organisations under the Department of Financial Services, including Reserve Bank of India”, which deals with ‘Facilities to SC/ST Employees Welfare Associations’ and provides in sub-para (v) for retention of at least 2-3 office bearers of recognized Welfare Associations at or near the Headquarter to facilitate them to attend to welfare activities pertaining to SC/ST employees. The Compendium has been issued by the Ministry of Finance and is applicable to all Financial Institutions, including the Respondent and the intent is to emphasize on the fact that SC/ST Employees Welfare Associations stand on a different footing compared to other Associations and thus the Organizations are under a mandate to provide them special facilities. As the Petitioner is the General Secretary of the Association, Respondent was bound to follow the mandate of para 18(v) and retain the Petitioner at Delhi, where the Registered Office of the Association is located.

4. It is further contended that the impugned order is punitive and has been issued out of clear vendetta since the Petitioner has been raising issues against the Respondent with respect to the harassment and discrimination meted out to the SC/ST employees as well as reservations in contractual employment. Petitioner is the only principal office bearer posted at Headquarter in Delhi, while the others are posted in Mumbai, Lucknow etc., and the transfer of the Petitioner

outside Delhi would frustrate the functioning of the Association.

5. Mr. Sah further contends that Petitioner has been singled out for transfer *albeit* he has only completed less than 2 years, going by the benefit given on account of Pandemic Covid-19, while other employees holding the same designation i.e. Assistant Manager, have not been moved, despite being in Delhi for over 7-8 years and to illustrate this, examples of Sh. Niraj Kumar and Sh. Rishikesh Kumar have been cited by him.

6. Counter affidavit has been filed on behalf of the Respondent, however, on the last date of hearing certain additional grounds were urged by the Petitioner and hence Respondent has handed over an additional affidavit, responding to the said pleas, with copy to the Petitioner. With consent of the parties, the affidavit is taken on record and Court has proceeded to hear the arguments.

7. Mr. Rakesh K. Khanna, learned Senior Counsel appearing on behalf of the Respondent submits that the impugned transfer order has been issued purely in the exigencies of service and for administrative reasons and there is no element of *malafide* or vendetta attached to it, as alleged by the Petitioner. He further submits that para 18(v) of the Compendium, on which heavy reliance is placed by the Petitioner, itself provides that retention of the office bearers of the SC/ST Employees Welfare Association at or near Headquarter will be subject to exigencies of service. Further, the retention is required to be at or near the Headquarter and the Headquarter of the Respondent is at Lucknow and not at Delhi and therefore, the reliance on the said provision by the Petitioner is completely misplaced. In any event, no prejudice is caused to the members of the Association as two members have already been posted near the Headquarter in Lucknow.

8. It is further submitted that clause 5.1(d) of the Transfer Policy, no doubt, stipulates that the normal tenure of an officer at a centre

would be 3-5 years, however, it is contingent to CVC Guidelines,

administrative requirements and office exigencies, which is evident from the reading of the clause itself. It is also urged on behalf of the Respondent that Petitioner has not been singled out and the decision to transfer him is part of a larger exercise of restructuring, carried out for surrender of some posts etc. at various levels in different verticals and the document showing the detailed analysis and assessment undertaken on 01.03.2022, cluster wise etc. has been annexed as Annexure R-4 to the counter affidavit. Respondent has assessed the manpower requirement for Financial Year 2022-2023 not just with respect to the post of Assistant Manager, but for various other posts including Chief General Manager, General Manager etc. As an illustration, it is pointed out that for the post of Assistant General Manager, it has been decided that existing one post of 'CDV' will be retained while one existing in 'CSR' will be surrendered. It is also urged that transfers in Respondent Bank are carried out on the principle of 'Best Fit for the Job' which is stipulated in the HRV Circular No.57/2018-19, issued on 10.01.2019 in modification of the Transfer Policy. Case of the Petitioner has been considered by the Competent Authority, taking into account the emergent administrative requirement at the Dehradun Branch Office as also the fact that he was adjudged as 'surplus' in his vertical, as early as on 02.03.2022.

9. Responding to the argument of the Petitioner that discrimination has been meted out to the Petitioner qua others who have been posted at Delhi for the longest time, it is strenuously contended that there is no parity in the skillset, expertise or duties discharged by the two other employees, i.e. Mr. Niraj Kumar and Mr. Rishikesh Kumar. While it is true that both have the same designation as that of the Petitioner as Assistant Manager, however, they are working in different verticals. Mr. Niraj Kumar is posted in "Venture Capital Operations &

Government Programme Vertical" while Mr. Rishikesh Kumar is

posted in “Corporate Social Responsibility Fund” Vertical. Unlike the case of the Petitioner, no proposal has been received for their surrender from their respective verticals and no parity can be claimed. Last but not the least, it is submitted that even in the past there are several instances where, whenever exigencies of service have required, Respondent has effected pre-term transfers, before the completion of normal tenures of 3-5 years. Out of the 56 pre-term transfers carried out in Financial Year 2022-23, at least 13 transfers were before completion of the normal tenure and 3 out of them were from the New Delhi Branch Office itself.

10. Mr. Sah, in rejoinder, contests the position that two office bearers of the Association have been posted at Lucknow and submits that only one office bearer has been posted at Lucknow and the other office bearer who is deployed at Mumbai, will superannuate at the end of February, 2023. He further submits that in addition to other facilities which are specially meant to be provided to the office bearers of the SC/ST Employees Welfare Association, they are also required to be given the facility of an office and a telephone, subject to availability of accommodation, by virtue of clause 18 of the Compendium, to enable the members of the Association to approach the office bearers in case of need and in case the Petitioner was to move out of Delhi, there will be no person to take up their issues.

11. I have heard learned counsel for the Petitioner and learned Senior counsel appearing on behalf of the Respondent.

12. It is a settled law that scope of interference in transfer matters is extremely limited and ordinarily, the Courts should be slow in interfering unless *malafides* are established or there is violation of a Transfer Policy. It is equally well settled that no employee can assert a vested right to be posted at a particular place as the decision to post is

the prerogative of and in the domain of the employer, depending on

administrative requirements and service exigencies. The Supreme Court has, in the case of *N.K. Singh v. Union of India, (1994) 6 SCC 98*, held that personnel management of Government Departments must be left to them, as Courts lack the necessary expertise of management except to the limited extent of judicial review. Relevant paras of the judgment are as follows:-

“4. There are two aspects of transfer of a public servant holding a sensitive and important post. One aspect relates to the private rights of the public servant as an individual pertaining only to his service career. The other is concerned with prejudice to public interest irrespective of the individual interest. The element of prejudice to public interest can be involved only in transfers from sensitive and important public offices and not in all transfers. Mere suspicion or likelihood of some prejudice to public interest is not enough and there must be strong unimpeachable evidence to prove definite substantial prejudice to public interest to make it a vitiating factor in an appropriate case unless it is justified on the ground of larger public interest and exigencies of administration. Such cases would be rare and this factor as a vitiating element must be accepted with great caution and circumspection.

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23. However, acceptance of the appellant's claim would imply that no other officer in the CBI is competent and fit to conduct the sensitive investigation and his successor would stand automatically discredited without any such allegation being made or hearing given to him. That indeed is a tall order and impermissible in this proceeding where the other officers are not even participants. The tendency of anyone to consider himself indispensable is undemocratic and unhealthy. Assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

13. In **Somesh Tiwari v. Union of India and Others, (2009) 2 SCC 592**, the Supreme Court delineated the scope of Court's interference in the context of malice as follows:-

"16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal."

14. It will be useful to allude to the following passage from the judgment of the Supreme Court in **Union of India and Others v. S.L. Abbas, (1993) 4 SCC 357**, wherein the Supreme Court held that transfer is an incident of service:-

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

15. Recently, the Supreme Court in **S.K. Nausad Rahaman and Others v. Union of India and Others, 2022 SCC OnLine SC 297**, has reaffirmed and reiterated the position of law that transfer is an incident of service and unless vitiated by *malafides* or in violation of statutory provisions, should not be interfered with. The present case will have to be tested on the anvil of the principles elucidated by the Supreme

Court in the aforementioned judgments.

16. Insofar as reliance by the Petitioner is placed on clause 18(v) of the Compendium dated 23.12.2014 is concerned, before proceeding to examine the contention, it would be profitable to extract the relevant para hereunder for ready reference:-

“(v) Retention of at least 2-3 office bearers of the recognized Welfare Association at or near Headquarter to facilitate them to attend to welfare activities pertaining to SC/ST employees, further subject to exigencies of services.

(vi) Office and Telephone, subject to availability of accommodations.”

17. A bare reading of the para 18(v) shows that the obligation of the Respondent to retain 2-3 office bearers of the recognized Welfare Associations is ‘at or near Headquarter’ to facilitate them to attend to the welfare activities of SC/ST employees. While initially the Petitioner had contented that the Headquarter of the Respondent is at Delhi, however, after the arguments of the Respondent, it is conceded that the Headquarter is at Lucknow, *albeit* the registered office of the Association is at Delhi. Since the Headquarter is not located at Delhi, para 18(v) does not come to the aid of the Petitioner. Moreover, the posting of an office bearer even at or near the Headquarter, is clearly subject to service exigencies and cannot be claimed as a matter of right.

18. Respondent has taken pains to show that transfers have been carried out as part of an overall restructuring process of the Organisation based on an analysis/assessment carried out on 01.03.2022, involving even the senior managerial positions and Petitioner has not been singled out as sought to be contended by him. This Court has perused the document in this context, placed as Annexure R-4 to the counter affidavit and illustratively, the assessment in regard to the post of Assistant General Manager is as follows:-

Sr. no.	Designation	Strength as on Date	No. of Staff	Remarks	Rationale
4	Assistant General Manger	2	6	Existing one for cdv to be retained (even if offsite) and csr. We propose to surrender one existing in CSR. We are looking at only one regional placement in CSR/SSF for NER. Additional 3 for GCF (end to end expectations) and 1 for cdv	

19. Similar exercise has been carried out for the Assistant Manager posts and this Court is unable to reach a conclusion that there is any *malafide* in transferring the Petitioner. The decision is for administrative reasons and in service exigencies. This Court also finds force in the contention of the Respondent that the normal tenures of 3-5 years provided under the Transfer Policies are subject to administrative requirements and can be curtailed in the interest of the organization. It is specifically pleaded in the affidavit that out of 56 pre-term transfers carried out by the Respondent Bank in Financial Year 2022-23, at least 13 transfers were carried out before completion of normal stay of tenure and 3 out of the said transfers were effected from the New Delhi Branch Office itself. A list indicating the 56 transfers has been appended to the additional affidavit and is not disputed by the counsel for the Petitioner. The HRV Circular issued by the Respondent on 10.01.2019 in modification of the Transfer Policy stipulates that the transfers will be carried out keeping in mind the philosophy of 'Best Fit for the Job' and using concepts of Employee Priority List, Occupational Clusters, Role Criticality Index, Position Criticality Index and Employee Position Mapping, etc. and this Court finds no reason to interfere in the methodology adopted by the Respondent to effect transfers, which is the employer's prerogative, in the absence of finding any *malafide* or violation of provisions of the transfer policies.

20. Much was argued on behalf of the Petitioner that there is discrimination, as few other Assistant Managers have been retained at Delhi despite having a longer stay. Having carefully considered this argument, in my view, the same cannot be accepted. Respondent has stated in the affidavit that both the said officers, although having the same designation, have been posted in different verticals and have different job profiles, besides the fact that unlike the Petitioner, their respective verticals have not found them surplus. Respondent has placed on record, along with the affidavit, the respective job profiles and the verticals where these two officers, i.e. Mr. Niraj Kumar and Mr. Rishikesh Kumar are working and having perused the documents, this Court accepts the stand of the Respondent that no discrimination is meted out to the Petitioner by issuing the impugned transfer order.

21. For all the aforesaid reasons, this Court finds no illegality or arbitrariness in the action of the Respondent in transferring the Petitioner to Dehradun Branch Office and the writ petition cannot be allowed. However, be it noted that by the impugned order dated 22.11.2022, Petitioner was required to join the new place of posting on or before 05.12.2022, which he has not done as he had approached this Court. Therefore, an extended joining time of two weeks is granted to the Petitioner for joining at Dehradun Office.

22. At this stage, learned counsel for the Petitioner submits that one of the office bearers of the Association, who is posted at Mumbai is retiring at 28.02.2023 and Petitioner be permitted to make a representation to the Respondent for considering his case for posting at Mumbai.

23. Since the present writ petition does not deal with the posting at Mumbai, no such permission can be granted. It is, however, open to the Petitioner to take steps in accordance with the remedies available

to him in the course of his employment. Needless to state, if and when

any representation is made by the Petitioner, the Respondent will consider the same in accordance with law and the Transfer Policies holding the field.

24. Writ petition is dismissed along with pending applications.

JYOTI SINGH, J

FEBRUARY 22, 2023/shivam

