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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 22nd August, 2024

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W.P.(C) 459/2024 and CM APPL. Nos. 2100/2024 and 30317/2024

BERWAL TAKDIR SINGH

.....Petitioner

Through: Mr. Sanjay Beniwal and Ms.
Manisha, Advocates.

versus

INDIAN BANK

.....Respondent

Through: Mr. Chetan Sharma, ASG with
Mr. Rajesh Kumar Gautam, Mr. Anant Gautam,
Mr. Amit Gupta, Mr. Saurabh Tripathi,
Mr. Vikramaditya Singh, Mr. Dinesh Sharma,
Mr. Likivi Jakhalu, Mr. Kavito G. Yepto and
Mr. Kushagra Nilesh Sahay, Advocates.**CORAM:****HON'BLE MS. JUSTICE JYOTI SINGH****JUDGMENT****JYOTI SINGH, J. (ORAL)**

1. This writ petition has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India assailing order dated 11.12.2023 as well as order dated 03.01.2024, whereby Petitioner was transferred to Karnal and ZO-Hubballi, respectively. During the course of hearing, Petitioner presses his challenge only with respect to transfer od 03.01.2024.

2. When the writ petition came up for admission on 12.01.2024, learned counsel for the Petitioner, on instructions, submitted that in the past 13 ½ years, Petitioner was transferred at least 13 times. By the last transfer order dated 11.12.2023, Petitioner was transferred to Sadhaura, Karnal Zone,

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Haryana and Petitioner represented against it on the ground that the Petitioner being a Scale IV officer was being transferred to a Branch which was headed by a Scale III officer. The representation was not decided and Petitioner joined at the said Branch. Challenging the order dated 03.01.2024, Petitioner relied on Clauses (g), (h) and (i) of the 'Standing Operating Procedure for Transfer and Placement of Officers' (SOP) of the Respondent to contend that ordinarily the tenure of a Branch Manager should be 3 years in a Branch and it was advisable not to transfer the officer to a lower scale. On these submissions, Court directed that the transfer order dated 03.01.2024 shall not be given effect to and recorded the undertaking of the Petitioner that he would not claim for transfer/posting at Delhi Branch. The interim order continues till date.

3. Petitioner is stated to have been serving with the Respondent/Bank as Scale-IV officer as Chief Manager of Sadhaura Branch in Karnal Zone. He joined the erstwhile Allahabad Bank as Scale-I Probationary Officer on 19.07.2010. Petitioner was promoted to Scale-II Manager in the Allahabad Bank on 29.06.2013 and thereafter to Scale-III on 01.06.2016 and Scale-IV on 01.04.2020. The prime grievance in the present petition relates to the transfer order dated 03.01.2024 posting the Petitioner to Hubballi, Bengaluru and the grievance is largely predicated on the ground that between 2010 to 2023, Petitioner has been transferred 13 times.

4. Learned counsel for the Petitioner broadly raises three-fold contentions to impugn the transfer order dated 03.01.2024: (a) Petitioner was transferred to Sadhaura Branch, Karnal Zone on 11.12.2023 and on 03.01.2024, within a period of less than 1 month he has been transferred to Hubballi and these frequent transfers are violative of Clause (g) of SOP



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which provides that normally Branch Managers shall have a tenure of 3 years in a Branch and midyear transfers shall be avoided as far as possible; (b) in the past 13½ years Petitioner has been transferred at least 13 times reflecting *mala fides* of the higher authorities including the Executive Director, who visited ZO-Karnal and insulted the Petitioner on account of some wrong data provided by the Zonal Office; and (c) Petitioner will be appointed against a post which would amount to reduction of his position to a Scale III officer.

5. Short affidavit has been filed on behalf of the Respondent, wherein it is stated that Petitioner is a Chief Manager in SMG Scale-IV with the Respondent and his services are governed by the Indian Bank (Officers) Service Regulations, 1979 ('1979 Regulations') which are statutory in nature, having been framed by the Board of Directors of the Respondent in consultation with Reserve Bank of India and with the previous sanction of the Central Government in exercise of powers under Section 19 read with Section 12(2) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970. Regulation 47 of the said Regulations provides that "*Every officer is liable to be transferred to any office or Branch of the Bank or to any place in India*" and thus Petitioner cannot object to his transfer to any Branch of the Bank being under an all India transfer liability. It is further stated that transfer is an incident of service and no employee can claim posting as a matter of right to a particular place or station. It is stated that reliance of the Petitioner on the SOP dated 20.05.2023 is misplaced for the reason that Transfer Policy/Transfer Guidelines cannot supersede statutory Regulations and do not confer a vested or legal right to continue in one tenure for 03 years, if administrative exigencies require the Bank to



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transfer the officer. Reliance is placed on the judgment of the Supreme Court in *Bank of India v. Jagjit Singh Mehta, (1992) 1 SCC 306*, for this proposition.

6. Mr. Chetan Sharma, learned Additional Solicitor General appearing on behalf of the Respondent argues that none of the grounds pleaded and urged by the Petitioner make out a case for quashing of the transfer order. It is submitted that Petitioner has been promoted from Scale-I to Scale-II on 29.06.2013 and from Scale-II to Scale-III on 01.06.2016 and thereafter, from MMG Scale-III to Senior Management Grade Scale-IV on 01.04.2020 and has been working at Branch Offices located in Karnal/Amritsar/Chandigarh from 2013 till the passing of the impugned Transfer Order *albeit* as per Regulation 47 he is liable to be posted anywhere in India. Drawing the attention of the Court to a tabular representation of Petitioner's posting profile, learned ASG submits that the stand of the Petitioner that he has been posted 13 times in the last 13½ years on account of *mala fides* is belied from record. It is urged that on 08.11.2010, Petitioner was sent for 'on the job training' to ZO-Ludhiana and on 15.03.2011 he was again deputed to ZO-Chandigarh for 'on the job training'. He was transferred on promotion three times, i.e. on 11.08.2013, 04.07.2016 and 24.07.2020. On 16.06.2015, Petitioner was transferred to Ratia, ZO-Karnal on his request. Thereafter, his transfers have been on administrative grounds between Karnal, Amritsar and Chandigarh, which reflects that Petitioner's postings have been mostly confined only to Punjab and Haryana.

7. It is argued that transfer is an incident of service and deciding the place of posting is the domain and prerogative of the employer depending on the administrative exigencies and as per settled law scope of interference by



a Writ Court is extremely narrow and is illustratively limited to cases where the employee is able to establish *mala fide* or violation of Transfer Policy and/or denial on proved compassionate grounds. In any event, administrative exigency will be the overriding factor and no employee can assert a right to be posted at a particular place in the face of an administrative exigency. However, to address the apprehension of the Petitioner that on posting to Hubballi he will be appointed on a post carrying a lower pay scale or that his position will be reduced to a Scale III officer, learned ASG, on instructions from Mr. Harjit Singh, Zonal Manager (Karnal), assures the Court that Petitioner will be appointed to a post tenable by a Scale-IV Officer and will not be reduced to Scale-III.

8. Heard learned counsel for the Petitioner and learned ASG for the Respondent.

9. There is force in the contention of the learned ASG that scope and ambit of interference in matters of transfers and postings of employees by the Courts exercising jurisdiction under Article 226 of the Constitution of India is extremely narrow and limited. Transfer is an incident of service and it is purely in the domain of the employer to plan out the transfers, depending on administrative requirements looking to the work profiles, qualifications, experience, etc. of the employees, so that they can be best utilised. Courts have repeatedly held that no employee has a legal or vested right to be posted at any particular place, save and except, in exceptional cases such as where an employee sets up and establishes a compassionate ground or proves *mala fides*. In ***Shilpi Bose (Mrs) and Others v. State of Bihar and Others, 1991 Supp (2) SCC 659***, the Supreme Court held that the Courts should not interfere in a transfer order made in public interest and for



administrative reasons unless the order is made in violation of mandatory statutory Rule or on ground of *mala fide*. Relevant paragraph reads as under:

“4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of *mala fide*. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders.”

10. To the same effect is the decision in ***State of Uttar Pradesh and Others, (2009) 15 SCC 178***. Relevant would it be to refer at this stage to the observations of the Supreme Court in ***Mohd. Masood Ahmad v. State of U.P. and Others, (2007) 8 SCC 150***, wherein the Supreme Court held that an order of transfer is a part of service conditions of an employee and should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. Relevant paragraph reads as under:

“7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in *Rajendra Rao v. Union of India* AIR 1993 SC 1236, *National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan* AIR 2001 SC 3309, *State Bank of India v. Anjan Sanyal* AIR 2001 SC 1748. Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in *Vijay Pal Singh v. State of U.P.* (1997) 3 ESC 1668 : 1998) AII LJ 70 and *Onkarnath Tiwari v. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow* (1997) 3 ESC 1866 : 1998 AII LJ 245, has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction



under Article 226 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 orders, were no competent to pass the orders.”

11. In **N.K. Singh v. Union of India and Others, (1994) 6 SCC 98**, Supreme Court observed as follows:

“23.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 scrutinized judicially, there are no judicially manageable standards for scrutinizing 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.”

12. The Supreme Court further elucidated Court's jurisdiction while exercising power of judicial review under Article 226 in matters pertaining to transfers in the case of **State Bank of India v. Anjan Sanyal & Ors., (2001) 5 SCC 508** and held:

“4. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of Jaw 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. The Central Board of State Bank of India in exercise of powers conferred under sub-section (1) of Section 43 of the State Bank of India Act, 1955, has framed a set of Rules called the State Bank of India Officers' Service Rules. Rule 47 thereof, unequivocally provides that every officer is liable for transfer to any office or branch of the Bank or to any place or deputation to any other organisation in India. Rule 49 of the said Rules, stipulates the joining time, which an employee is entitled to when he is transferred to a new place from his old post. Rule 50 casts an obligation on the employee to comply with and obey all lawful



and reasonable orders and directions, which may from time to time be given to him.....”

13. This Court in *Anil Dhall v. Union of India and others, 1999 SCC OnLine Del 650*, summarizing the law of transfers and relying on the judgements in *Union of India and Others v. S.L. Abbas, (1993) 4 SCC 357* and *Bank of India v. Jagjit Singh Mehta, (1992) 1 SCC 306*, concluded as follows:

“7. Before dealing with the aforesaid contention it may be stated that law relating to transfers is now well settled by catena of judgments pronounced by Supreme Court. Transfer is an administrative function. An employer is the best judge about the requirement and posting of its employees. Courts are not to interfere with the discretion of the employer in such matters. Scope of judicial review is very limited and the transfer can be challenged only under two circumstances namely:

(a) when their transfer is an act of mala fides on the part of the respondents;

(b) when it is made in violation of statutory provision.

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13. *In view of this position arguments of the petitioner that he has right to stay at Delhi for 3-5 years, based on these guidelines, has no merit. In the case of Union of India vs. S.L. Abbas (supra) it was held that such guidelines/instructions do not confer any right on the employee to challenge the transfer order on the ground of violation thereof, merely because the guidelines are violated is not sufficient to quash the order as being mala fide. Order of transfer on an administrative grounds can still be passed even if it is in violation of such guidelines which have no statutory force and administrative exigencies have to give way to these guide-lines. In the case of Bank of India vs. Jagjit Singh Mehta; reported in (1992) 1 SCC 306 dealing with the case of posting of husband and wife at one station as per government guidelines, it was held by Supreme Court, that such guidelines would not confer any right on the employee to remain at same place. The only requirement is that departmental authority should consider this aspect along-with exigencies of administration. In the present case it is mentioned in guidelines itself that they would not confer any right on the officers to represent against posting quoting these orders. Therefore, petitioner cannot, as of right, state that he should be allowed to remain in Delhi for a period of 3-5 years as per these guidelines. As no such right can be claimed by the petitioner, it is not open to the petitioner*



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to allege the violation of these guidelines and make the same as basis to challenge transfer.”

14. Tested on the anvil of the aforementioned judgments, challenge laid by the Petitioner to the impugned Transfer Order cannot be sustained in law. Petitioner's services are governed by the 1979 Regulations, referred to above and Regulation 47 provides that every officer is liable for transfer to any Office or Branch of the Bank or to any place in India. The Regulations are statutory in nature and binding on all the employees of the Bank including the Petitioner. Therefore, if administrative exigencies require the Petitioner to be posted at a particular Branch or place in India, there can be no resistance. The Supreme Court has held and restated in several cases that a Government servant holding a transferable post has no vested right to remain posted at one place or the other and is liable to be transferred from one place to the other. Transfer orders issued by the Competent Authority do not violate any legal right. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.

15. Coming to the three-fold contentions of the Petitioner, in my view, none of them have merit. It is true that Respondent has formulated an SOP dated 20.05.2023, which governs and regulates transfer and placement of officers and Clause (g) stipulates that normally Branch Managers will have a tenure of 3 years in a Branch. However, the expression used is “normally”, which means and connotes “ordinarily” and in the normal course the Branch



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Manager must enjoy a tenure of 3 years in a given Branch, but the expression “*normally*” cannot be interpreted to mean “*mandatorily*”. The reason is not far to seek. Transfer being an incident of service, it has to be left to the Bank to decide the place of posting depending on several factors such as administrative exigency/utility, profile of the officer, experience to handle a job, etc. It is not for this Court to substitute its view and determine what would be the most suited place for posting the Petitioner. The SOP which is an executive instruction cannot override Regulation 47 and Petitioner cannot contend that despite the requirement of the employer to post him at Hubballi, Bengaluru, he must continue at Karnal, once his service conditions impose an all India liability.

16. The plea that Petitioner has been transferred 13 times in a span of 13½ years due to *mala fides* is belied by the posting profile of the Petitioner brought forth by the Respondent in a tabular form in paragraph 3.2 of the affidavit and it is clearly seen that the earlier two postings in 2010 and 2011 were for ‘on the job training’. Three postings were on promotion. One posting was on the request of the Petitioner and the others have been on administrative grounds but indisputably only to Karnal, Amritsar and Chandigarh. Learned ASG is therefore correct in his submission that despite being under a liability of All India Transfer, Petitioner has been posted within Punjab and Haryana since 2013. Paragraph 3.2 of the affidavit is not controverted or refuted in the rejoinder. As far as the apprehension of the Petitioner that his posting will entail working at Scale-III is concerned, the same has been put to rest by the assurance given by learned ASG, who in his usual fairness self, on instructions, submits that Petitioner will join on a post tenable by a Scale-IV officer in Hubballi Branch of the Bank at Bengaluru.



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17. As a last ground, counsel for the Petitioner contends that the transfer order does not disclose any reason to transfer the Petitioner from Karnal to Bengaluru in a short span of one month. To support the proposition that the transfer order must be a reasoned and speaking order, learned counsel hands over a judgment of the Madhya Pradesh High Court in *Sanjay Upadhyay v. State of M.P. & Ors.* in *Writ Petition No.21175/2019*, decided on 03.12.2019. Having gone through the judgment, I am unable to read any such observation of the High Court that a transfer order is required to a reasoned and speaking order. In fact, the judgment fortifies the stand of the Respondent that transfer is an incident of service and interference in a writ petition in normal course is not permissible but this does not mean that the High Court cannot examine the validity of the transfer order in a case where the employee is frequently transferred. It is further observed that the scope of interference in transfer matters is very limited as transfer is considered to be an administrative exercise and if administrative exigency arises, employer has every right to transfer the employee so long as the transfer is not *mala fide* or where the employee is arbitrarily transferred frequently. In the present case, Respondent has been able to establish that Petitioner was never transferred without a reason and looking at the posting profile, I am unable to come to a conclusion that the impugned transfer order is tainted with *mala fide* as alleged by the Petitioner. *Albeit* it is urged that the transfer is *mala fide* but neither any individual has been impleaded nor any personal allegations are made to establish the malice. Petitioner has also failed to prove malice in law.

18. For all the aforesaid reasons, this Court concludes that the transfer of the Petitioner is purely on administrative grounds, a position Petitioner has



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been unable to controvert. No ground is made out warranting interference by the Court and the writ petition is accordingly dismissed. Interim order dated 12.01.2024 stands vacated.

19. Pending applications also stand disposed of.

JYOTI SINGH, J

AUGUST 22, 2024/jg/kks

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