

*Before G.S. Sandhawalia, J.*

**KIRPAL SINGH**—*Petitioner*

*versus*

**INDIAN OVERSEAS BANK & OTHERS**—*Respondent*

**CWP No. 8468 of 2020**

October 28, 2020

***Writ Petition—Art. 14, 226—Transfer order—mala fides—violation of Transfer Policy—Transferred before three years without any reasons recorded—Challenge to—Held, petitioner unable to make out a case of mala fides—In transfer matters writ jurisdiction is not liable to be invoked except when the transfer was on the basis of malafides and it was a matter of public interest—Plea of violation of Transfer Policy is also not liable to be accepted—The Bank was taking administrative decision to cleanse the working atmosphere in the Branch—In such circumstances writ jurisdiction cannot be invoked on the ground of violation of Transfer Policy which is only a guideline and not binding upon the respondents—Petition dismissed.***

*Held*, that a perusal of the above averments and the arguments raised by counsels for both the parties, would go on to show that that the petitioner had not been able to make out a case of mala fides. It is settled principle that in transfer matters, writ jurisdiction is not liable to be invoked except where the employee has been able to show that the same was on the basis of mala fides and it was a matter of public interest, as such.

(Para 13)

*Further held*, that coming to the ground of violation of transfer policy which has now been appended along with the replication that the petitioner has been transferred within a period of one year, is also not liable to be accepted. It is the specific case of the respondents that the moment the petitioner had joined on 15.07.2019 at Chandigarh, complaints had been filed by him on 16.07.2019 onwards which had vitiated the atmosphere of respondent No.4-Branch. The petitioner himself has also attached Annexures P-1 to P-3 whereas a perusal of Annexure R-2 would go on to show that the petitioner was agitating against non-allotment of junior staff which he was demanding to work with him. A perusal of the said communication would go on to show that he was aggrieved on account of the fact that he had been asked to

do work which was clerical in nature and was wanting supervisory work. He had started agitating once his request was not acceded to and also roped in the Assistant General Manager, Shri Anjani Kumar while respondent No.3 has now been roped in.

(Para 19)

*Further held*, that the Bank was taking an administrative decision to cleanse the working atmosphere in the Branch and in such circumstances, the writ jurisdiction of this Court cannot be invoked on the ground of violation of the transfer policy which is only a guideline as such and not binding upon the respondents, as has been held out by the Apex Court in *National Hydroelectric Power Corporation Ltd. (supra)*.

(Para 20)

Pawan Kumar Mutneja, Advocate, *for the petitioner*.

Rakesh Gupta, Advocate, *for the respondents*.

(The proceedings are being conducted through video conferencing, as per instructions.)

### **G.S. SANDHAWALIA, J.**

(1) Challenge in the present writ petition, filed under Article 226 of the Constitution of India is to the transfer order dated 11.06.2020 (Annexure P-4) whereby the petitioner has been transferred as Chief Manager of Asset Recovery Management Branch (ARMB) to Regional Office, Berhampur, Orissa, by the respondent Bank. Resultantly, writ in the nature of mandamus is also sought to allow the petitioner to continue with respondent No.4-Branch.

(2) The challenge is sought, as argued by counsel for the petitioner, Mr. Mutneja, on the grounds of mala fides against respondent No.3-the then Regional Manager, Shri Jaganandan Ganesan and on the ground of violation of Clause 26 of the Transfer Policy for Officers, 2018 (Annexure P-10). As the transfer has been ordered before 3 years, without any reasons to be recorded by the appropriate transferring authority which is to be subject to scrutiny at next higher levels, since it is submitted that the petitioner is a Scale-IV officer. Reliance is also placed upon the judgment of the Apex Court passed in *Punjab & Sind Bank & others versus Mrs. Durgesh Kuwar 2020 Labour Law Reporter 355* in this context.

(3) On the contrary, Mr. Gupta, appearing on behalf of the

respondent-Bank has argued that the conduct and behaviour of the petitioner was of a problem creator right from the period he had joined with the respondent No.4-Branch on 15.07.2019 and had started complaining on the very next day against the then Assistant General Manager. The allegations of mala fides against respondent No.3 are rebutted on the ground that representations were being made to the said respondent against the Assistant General Manager, which would be clear from the communication dated 31.07.2019 (Annexure R-3) and the petitioner had, for the first time, met respondent No.3 on 30.07.2019. Reliance is also placed upon the other communications to submit that the petitioner has been representing against all officers of the Branch and Assistant General Managers and the transfer order was being passed on account of administrative reasons as the atmosphere of the Branch had become fouled and therefore, the transfer order was justified, in the facts and circumstances.

Pleadings:

(4) The pleadings would go on to show that the petitioner was appointed as a Probationary Officer with respondent No.4-Bank in the year 1990 and was promoted from Scale-I to Scale-II on 04.09.2001; from Scale-II to Scale-III on 01.06.2006 and from Scale-III to Scale-IV on 14.06.2011. He was working at Jamshedpur Branch on Scale-IV post for a period of 3 years and made a request to be transferred to Delhi as Ghaziabad was his hometown. He was, accordingly, transferred to New Rajendra Nagar Branch, New Delhi as Chief Manager on 17.10.2014. It is his own case that he was transferred to the Regional Office, Ludhiana on 08.08.2015 wherein he had joined on 10.08.2015 and during his stay at Delhi, an employee namely Hare Krishna Mishra had been accused of misappropriating money and the petitioner had been held responsible. He had been charge-sheeted for non-control of misappropriation wrongly and there was stoppage of 4 increments for a period of 15 months, which the petitioner would be challenging by separate petition, if so advised.

(5) Thereafter, the petitioner had joined the respondent No.4-Branch on 15.07.2019 as Chief Manager at position No.3 in the hierarchy of officers, which was headed by one Santosh Kumar Pandey, Assistant General Manager. One Bhagwan Lal Raigar was also working as Chief Manager and was senior to the petitioner. There was lot of indiscipline as the Assistant Managers were forming a group and therefore, both of them, the petitioner and his colleague had complained to Santosh Kumar Pandey but to no effect. Thereafter, they

had complained to respondent No.3 who was working as Chief Regional Manager. Reference was made to the complaint made by the petitioner and the said officer, Shri Raigar and that they were asked to route the same through the Branch Head. It has been averred that Mr. Raigar was threatened by respondent No.3 that his case would not be recommended for transfer to Jaipur and he would be transferred to some other region inspite of the fact that he was to superannuate. Thereafter, matters were amicably resolved, as per the meeting held on 11.05.2020 (Annexure P-3).

(6) Respondent No.3 had been requesting for a transfer to Chennai and he left the Regional Office on 11.06.2020 and had carried out his threats from there. The petitioner and Shri Raigar were transferred to far-off places, namely, the petitioner to Behrampur, Orissa and Shri Raigar to Regional Office, Kolkata. Thus, they had been singled out by respondent No.3 who had been transferred to the Central Office at Chennai his home town. Petitioner had submitted a representation for withdrawal of the transfer order on 15.06.2020 (Annexure P-6) and to retain him at Chandigarh for the next 3 years. Resultantly, the transfer order was protested against on the ground that the petitioner was being sent 2000 kms away and also that COVID-2019 had affected the country and the petitioner had various ailments and the transfer would, thus, prejudice him.

(7) In the written statement filed by respondents No.1, 2, 4 & 5, it has been pleaded that the petitioner was working as Chief Manager which is a senior managerial cadre. He had been transferred to various parts of the country in the last 30 years and being an officer, he was duty bound to serve wherever his services were required by the management as transfer was an exigency of service. The track record of the petitioner was not good as he was in a habit of creating problems wherever he was posted. He had been placed under suspension from 05.10.2015 to 27.01.2016 when he was working as Chief Manager in Ludhiana Region. A departmental enquiry had been initiated and punishment of reduction of basic-pay by one step for a period of one year was awarded. He was transferred on 05.07.2019 (Annexure R-1).

(8) On joining at respondent No.4-Branch on 15.07.2019, he submitted a complaint against the Assistant General Manager, Shri Anjani Kumar on 16.07.2019. On 31.07.2019, he gave another complaint to the Regional Office which was followed up on 08.08.2019 (Annexure R-4). On transfer fo Shri Anjani Kumar, Shri Santosh Kumar Pandey had joined and a complaint was given against him on

03.04.2020 (Annexure R-5). It was averred that the petitioner was working in a Recovery Branch which was an important job keeping in view the financial condition of the financial institutes and performance of the Branch was getting affected. Resultantly, he was transferred due to administrative reasons and thus, the same was justified. The said Branch at Behrampur had jurisdiction of over 11 districts of Orissa and got 52 Branches under its supervision and the said Branch was headed by Deputy General Manager.

(9) The allegations of mala fides against respondent No.3 were denied being false as the petitioner had no direct dealing with the said respondent. In all the complaints placed on record, there were not even a word against the said respondent. An impression was given by the petitioner that the said respondent had got transferred the petitioner after joining at Chennai whereas the transfer of the petitioner and respondent No.3 was on the same day, i.e. 11.06.2020. It was a case of general transfers and the said exercise was carried out by the Bank throughout India. The allegations against the employee-Hare Krishan Mishra of Delhi were denied on account of the fact that the said person had not been impleaded. The petitioner could not adjust at Ludhiana and that he had been placed under suspension from 05.10.2015 to 27.01.2016. It was pleaded that the petitioner was in a habit of creating trouble from day one of his posting in the respondent No.4-Branch and thus, keeping in view the changed circumstances, he had been transferred to utilize his services. The transfer during the pendency of the COVID-2019 did not prohibit the Bank from transferring its employees. It was submitted that the averments related to Shri Raigar could at best be termed as hear-say and the petitioner had no locus to raise the issue of transfer.

(10) Respondent No.3-Shri N. Jagannadan, Deputy General Manager, in his affidavit, filed separately, also took the stand that he had no direct dealing with the petitioner who had started giving complaints against his immediate superiors right from day one of his joining at ARMB. In spite of the transfer of the then Assistant General Manager, Shri Anjani Kumar, his complaints had continued. The transfer order was passed by the Human Resource Development Department, Chennai and the said respondent was not even posted at Chennai and had got no role to play in the said transfer.

(11) Another reply was also filed by respondent No.3, in his official capacity, wherein he had stated that he was a Scale-VI employee and he could not make any request for transfer from one

place to another on any ground. He had been transferred to Chennai on account of administrative exigency, without any request from his side. He had nothing to do with the functioning of the petitioner as he was working as Chief Manager in the ARMB which was a posting in Sector 7 at Chandigarh and was under a different module which was headed by Assistant General Manager. There was no direct dealing with the petitioner and respondent No.3 had been dragged by leveling unsubstantiated and false allegations. The transfer order had been passed by the Human Resource Development Department, Chennai on account of the administrative exigency. The petitioner had not even met the said respondent who had seen him only during Video-Conferencing on 30.07.2019. It was denied that the said respondent had made any threatening call to Shri Raigar and it was controverted that the petitioner had no locus standi to make allegations against the answering respondent on behalf of a third person.

(12) Replication was filed by the petitioner regarding the complaint that he had been made to do work which was to be performed by his junior and there were large number of positive cases of COVID- 2019 in Orissa. The orders had been passed by the District Collector under the Disaster Management Act and the Epidemic Act and there was a lockdown in force. The mala fides were again stressed. Similarly, replication was filed to the written statement filed by respondent No.3 that he had requested to be posted at his home town Jaipur as per the email dated 15.06.2020 and the fact that the petitioner had joined on 16.07.2019 and he had not even completed one year in the Branch. Respondent No.3 was stated to be the Reviewing Authority of the petitioner who was under his direct administrative control and online transfer request of the petitioner was appended as Annexure P-18. It was submitted that the matter was settled on 11.05.2020 and there were other senior most Chief Managers who had not been transferred out of Chandigarh and none had been touched. Therefore, the petitioner had been threatened and thereafter posted out as was done in the case of Shri Raigar.

(13) A perusal of the above averments and the arguments raised by counsels for both the parties, would go on to show that that the petitioner had not been able to make out a case of mala fides. It is settled principle that in transfer matters, writ jurisdiction is not liable to be invoked except where the employee has been able to show that the same was on the basis of mala fides and it was a matter of public interest, as such.

(14) In the present case, as noticed, allegations have been raised against respondent No.3 who himself was a subject matter of transfer on 11.06.2020 from Chandigarh to Chennai. The said respondent had specifically denied the mala fides and stated that he was not associated with the petitioner in any manner and was only working as the then Regional Manager at Chandigarh. The petitioner was working with ARMB cell which was a different module while the said respondent was working in the Regional Office at Sector 7 Chandigarh and had no direct dealing with the petitioner. The transfer order was passed by the Human Resource Development Department, Chennai and the said respondent was not even posted at Chennai at that point of time. Neither any communication has also been placed on record that there was any interaction of the petitioner with the said respondent. Rather it is apparent that it was only on one occasion there was some interaction on 30.07.2019 (Annexure R-3) and therefore, the allegations of mala fides against the said respondent is not made out.

(15) In the absence of mala fides, scope of judicial review in the matters of transfer is limited and the same cannot be interfered with under Article 226 of the Constitution of India, as laid down by the Apex Court in *Kendriya Vidyalaya Sangathan versus Damodar Prasad Pandey & others*<sup>1</sup> wherein reliance has been placed upon *Union of India versus Janardan Debanath*<sup>2</sup>. Relevant part of the judgment reads as under:

"No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the

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<sup>1</sup> 2004 (12) SCC 299

<sup>2</sup> 2004 (4) SCC 245

interest of administrative exigencies of the service concerned. This position was highlighted by this Court in *National Hydroelectric Power Corpn. Ltd. vs. Shri Bhagwan* (2001) 8 SCC 574".

5. In the present case, the Tribunal categorically came to hold that malafides were not involved and the High Court did not disturb that finding. That being so, the High Court's further direction that the respondent No.1 shall be posted somewhere in M.P. is clearly not sustainable. No reason has been indicated to justify the direction. That part of the order of the High Court is vacated. Appeal is allowed to the aforesaid extent. No costs.

Appeal allowed."

(16) In *Bank of India & others versus T. Jogram*<sup>3</sup>, it has been specifically held that mala fides cannot be based on surmises and conjectures and has to be on the basis of factual matrix. Relevant portion of the judgment reads as under:

"15. By now it is well-settled principle of law that judicial review is not against the decision. It is against the decision making process. In the instant case, there are no allegations of procedural irregularities/illegality and also there is no allegation of violation of principles of natural justice. Counsel for the respondent tried to sustain the allegation of malafide. He tried to assert that the respondent filed a case against the Chief Manager of Secunderabad Branch in 1996 and the enquiry initiated against the respondent is the fall out of malafide. We are unable to accept the bald allegations. The allegation of malafide was not substantiated. It is well settled law that the allegation of malafide cannot be based on surmises and conjectures. It should be based on factual matrix. Counsel also tried to assert the violation of principles of natural justice on the ground that the documents required by the respondent were not supplied to him. From the averment it is seen that the documents, which were sought to be required by the respondent, were all those bills submitted by the respondent himself before the authority. In these circumstances, no prejudice whatsoever was caused to the respondent."

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<sup>3</sup> 2007 (7) SCC 236



(17) In *Rajneesh Khajuria versus M/s Wockhardt Ltd. & another*<sup>4</sup>, the issue of transfer was subject matter before the High Court which had set aside the order passed by the Industrial Court which had interfered in the order of transfer. Resultantly, it was held that it was easier to levy allegations of mala fides but difficult to prove the same. The appeal of the workman against the order of the Mumbai High Court, was dismissed by holding that there was a power of transfer with the employer. Relevant portion of the judgment reads as under:

“19. The allegation in the complaint is that the transfer was actuated for the reason that the employee had raised voice against removal of Shri Khare from the venue of a Conference. The officers present in the said Conference were the Regional Manager or Sales Manager, whereas order of transfer was passed by Mr. Suresh Srinivasan, General Manager-HR. It is an admitted fact that there is power of transfer with the employer. The allegations are against the persons present in the Conference but there is no allegation against the person who has passed the order of transfer. None of the named persons including the person present in Conference have been impleaded as parties to rebut such allegations. Since the order of transfer is in terms of the letter of appointment, therefore, the mere fact that the employee was transferred will per se not make it mala fide. The allegations of mala fide are easier to levy than to prove.”

(18) If the said principles are to be kept in mind, counsel for the petitioner has failed to make out a case of mala fides against respondent No.3 and thus, there is no scope for interference.

(19) Coming to the ground of violation of transfer policy which has now been appended along with the replication that the petitioner has been transferred within a period of one year, is also not liable to be accepted. It is the specific case of the respondents that the moment the petitioner had joined on 15.07.2019 at Chandigarh, complaints had been filed by him on 16.07.2019 onwards which had vitiated the atmosphere of respondent No.4-Branch. The petitioner himself has also attached Annexures P-1 to P-3 whereas a perusal of Annexure R-2 would go on to show that the petitioner was agitating against non-allotment of junior staff which he was demanding to work with him. A

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<sup>4</sup> 2020 (3) SCC 86

perusal of the said communication would go on to show that he was aggrieved on account of the fact that he had been asked to do work which was clerical in nature and was wanting supervisory work. He had started agitating once his request was not acceded to and also roped in the Assistant General Manager, Shri Anjani Kumar while respondent No.3 has now been roped in.

(20) It is also the case of the Bank that after the transfer of Anjani Kumar, complaints had also been given against the subsequent incumbent namely Shri Santosh Kumar Pandey which would be clear from the communication dated 03.04.2020 (Annexure R-5) and also dated 08.04.2020 (Annexure P-1). It is the petitioner's own case that on 11.05.2020 (Annexure P-3) a meeting was held wherein all issues had been settled and resolved accordingly. Respondent No.4-Bank in its wisdom has, thus, transferred not only the petitioner but also the colleague Shri Bhagwan Lal Raigar by similar order on 11.06.2020 (Annexure R-5). Similarly, it is a matter of record that respondent No.3 was also transferred to Chennai on the same date i.e. on 11.06.2020. Thus, the Bank was taking an administrative decision to cleanse the working atmosphere in the Branch and in such circumstances, the writ jurisdiction of this Court cannot be invoked on the ground of violation of the transfer policy which is only a guideline as such and not binding upon the respondents, as has been held out by the Apex Court in *National Hydroelectric Power Corporation Ltd.* (*supra*).

(21) Reliance can be placed upon the judgment of the Apex Court in *Union of India versus S.L. Abbas*<sup>5</sup> wherein it was held that representation made with respect to the transfer should be considered by the appropriate authority and the guidelines issued by the Government do not confer upon the employee a legally enforceable right since the order of transfer is an incident of Government service. Resultantly, the order passed by the High Court, transferring the petitioner from Shillong to Pauri, Uttar Pradesh, was restored while setting aside the order of the Central Administrative Tribunal.

(22) In *N.K. Singh versus Union of India & others*<sup>6</sup>, wherein an IPS Officer working as Joint Director in the CBI and Incharge of a Special Investigation Group, had been transferred to the Border Security Force and had challenged his transfer. The challenge had been rejected by the Central Administrative Tribunal and the Apex Court had

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<sup>5</sup> 1993 (4) SCC 357

<sup>6</sup> 1994 (6) SCC 98

held that there must be some strong and unimpeachable evidence to prove definite substantial prejudice to public interest which in such cases are rare and thus, vitiating element must be accepted with great caution and circumspection. Resultantly, the appeal against the order of the Tribunal had been dismissed.

(23) Similarly, in *Abani Kanta Ray versus State of Orissa*<sup>7</sup> it was held by the Apex Court that transfer orders are incidents of service and not liable to be interfered by the Courts until it is clearly arbitrary and vitiated by mala fides or infraction of any professed norm or principle governing the transfer.

(24) Resultantly, this Court is of the opinion that no fault can be found in the order of transfer of the petitioner. Reference to the judgment in *M/s Durgesh Kuwar (supra)* would be of no help since in the said case the appeal filed by the Bank was dismissed as a finding had been recorded by the Madhya Pradesh High Court that the employee was a victim of sexual harassment by the Zonal Manager. Similarly, it was noticed that the transfer was vitiated on account of the employee being a Scale-IV officer but was posted in a Branch where only Scale-I officers can be posted. The allegations of mala fides against one of the respondents had also not been controverted by filing any reply and in such circumstances, it was held that the dignity of a woman was affected as there was unfair treatment at the work place. Therefore, the employee was given relief since the transfer was held to be an act of unfair treatment and vitiated by mala fides. The facts and circumstances in the present case are not similar, in any manner, to the said judgment and therefore, counsel for the petitioner can have no help from the same.

(25) Resultantly, in view of the above discussion, the present writ petition is dismissed.

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*Tribhuvan Dahiya*

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<sup>7</sup> 1995 (Suppl.) SCC 169