

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

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W.P.(C) 7257/2001

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Date of decision: 5th May, 2010

R.B. MALL

..... Petitioner

Through: Petitioner in person.

Versus

**GENERAL MANAGER, PUNJAB NATIONAL
BANK & ANR.**

..... Respondents

Through: Mr. Ravi Sikri & Mr. Vaibhav Kalra,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. Whether reporters of Local papers may be allowed to see the judgment? No.
2. To be referred to the reporter or not? No.
3. Whether the judgment should be reported in the Digest? No.

RAJIV SAHAI ENDLAW, J.

1. The petitioner workman by this writ petition impugns the award dated 18th May, 2001 of the Industrial Tribunal on the following reference:-

“Whether the action of the Management of New Bank of India, in transferring Shri R.B. Mall, Clerk-cum-Godown Keeper from its Asaf Ali Road Branch to its Regional office at Meerut during the pendency of departmental inquiry against him at Delhi is justified? If not to what relief the workman is entitled?”

New Bank of India merged with the respondent Punjab National Bank during the pendency of proceedings before the Industrial Tribunal. The award does not find the order of transfer of the petitioner workman to be unjustified.

2. The petitioner workman, on 10th August, 1988, while posted in Asaf Ali Road, New Delhi branch of the bank was suspended on the ground of

contemplation of departmental inquiry against him. The petitioner workman was chargesheeted on 27th September/27th October, 1988 with misconduct on 9th August, 1988 by manhandling and abusing the then Manager of the Asaf Ali Road branch; domestic inquiry was initiated against the petitioner workman. The continuation of suspension of the petitioner workman was reviewed by the Disciplinary Authority and vide order dated 20th September, 1989 the order of suspension of the petitioner workman was revoked and he was reinstated; he was also relieved from the Branch Office Asaf Ali Road and transferred to Regional Office, Meerut for his ultimate posting to be decided by the Regional Office, Meerut. The petitioner workman was as such advised to report at Regional Office, Meerut within seven days thereof and it was further mentioned that if he fails to report at Regional Office Meerut, his absence will be treated as unauthorized. It was further clarified that the revocation of suspension and reinstatement was without prejudice to the bank's right to continue the pending action against him.

3. The petitioner workman raised a dispute as to his transfer also and the reference aforesaid came to be made.

4. The Industrial Tribunal has in the award impugned in this petition found/held-

- a. Relying on *Syndicate Bank Ltd. Vs. Workmen* AIR 1966 SC 1283, that the Banks are entitled to decide on a consideration of the necessities of Banking Business, whether the transfer of an employee should be made to a particular branch; the management is in the best position to judge how to distribute its employees between different branches; the Industrial Tribunals should be very careful before they interfere with

the orders made by the Banks in the discharge of their managerial functions; only if an order of transfer is *malafide* or for some ulterior purpose like punishing an employee for his trade union activities, the same is to be interfered with; the finding of *malafide* should be reached only if there is sufficient and proper evidence in support thereof and not on flimsy and capricious grounds.

- b. Relying on *Canara Banking Corporation Ltd. Vs. U. Vittal* 1963 (II) LLJ 354 (SC), that the transfer policy of the bank is governed by the *Sastry* Award. The said award only prohibits transfer to a different language area;
- c. That no *malafides* in the order of transfer are found in the present case; the transfer was not intended to cause harassment or to victimize the petitioner workman. The transfer was rather found to be a routine transfer.
- d. That the transfer was also not in violation of the circulars dated 22nd April, 1981 and 7th May, 1987 of the bank.
- e. That by revocation of suspension the disciplinary proceedings pending against the petitioner workman had been dropped and it could not be said that the disciplinary proceedings against him were pending.
- f. There was no merit in the plea that the order of transfer had been made by an incompetent authority. It was found that the order of transfer had been made by the Dy. Chief Manager of the bank.
- g. That the petitioner workman had failed to establish any unfair labour practice in transferring him.

5. The petitioner workman while impugning the aforesaid award did not file any application for interim relief. Thus inspite of the award holding the order of transfer to be valid, the petitioner workman neither complied with the order of transfer by reporting to the place where he had been transferred nor sought any stay in that respect from this Court.

6. Notice of this petition was issued primarily on the ground that one of the reasons given in the impugned award is of the bank having dropped the disciplinary proceedings initiated against the petitioner workman prior to the order of transfer and which reason is contrary to the facts. In the circumstances, at the beginning of the hearing the fate of the said disciplinary proceedings was enquired. It is informed that the said disciplinary proceedings have ended in an order of termination of services of the petitioner workman and departmental appeal of the petitioner workman is pending. The counsel for the bank has also drawn attention to CM No.12922/2007 filed by the petitioner workman. By the said application, the petitioner workman sought stay of the chargesheet dated 26th May, 2007 issued to him for non-compliance with the order of transfer. However, the said application was withdrawn by the counsel for the petitioner workman after some arguments on 27th February, 2008.

7. The counsel for the respondent bank has at the outset contended that the present writ petition has become infructuous owing to the order of dismissal having been passed against the petitioner workman and owing to the petitioner workman having not sought any stay of operation of the award impugned in this petition. I am however unable to accept the said contention. The disciplinary proceedings culminating in the order of dismissal of the petitioner workman are

still pending at the stage of departmental appeal. The order of dismissal has not attained finality. It is thus not as if the present dispute qua transfer has become infructuous. In the event of departmental appeal of the petitioner workman succeeding or in the event of the petitioner workman taking the matter further and succeeding, the question of transfer will still have to be adjudicated. Similarly, merely because the petitioner workman did not seek or was not granted any interim relief in this petition, would also not make the writ petition infructuous. However, the factum of the petitioner workman, notwithstanding the award against him, not joining at the place of transfer and not found opting to seek a stay of the order of transfer and of the award definitely, would have a bearing on whether the discretionary jurisdiction under Article 226 has to be exercised in favour of the petitioner workman or not. The counsel for the respondent bank in this regard relies on *S.C. Saxena Vs. Union of India* (2006) 9 SCC 583 laying down that it is the duty of an employee to comply with the transfer order. The tendency of not reporting at the place of transfer and instead indulging in litigation to ventilate grievances was deprecated and need to curb such practice emphasized. The Supreme Court further held that such a conduct of an employee amounts to misconduct.

8. In my view, the failure of the petitioner workman to seek stay of the impugned award and/or of the order of his transfer and/or not even seeking to work for the respondent bank at any other place disentitles the petitioner workman to the discretionary remedy of Article 226.

9. The mainstay of the argument of the petitioner workman (who appearing in person has argued himself and has relied on the written arguments filed before

the Industrial Tribunal and the contents of the writ petition) is of course the wrong premise on which the Industrial Tribunal proceeded i.e. of the disciplinary proceedings (pending at the time of order of transfer) against the petitioner workman having been dropped. What has to be considered is whether this obvious mistake committed by the Tribunal requires setting aside of the award on that ground alone.

10. I do not find any plea or evidence whatsoever of the transfer being motivated to cause any prejudice to the petitioner workman in the disciplinary proceedings pending against him. Moreover, the transfer if at all prejudicial to the defence by the petitioner workman in the disciplinary proceedings against him, would impair those disciplinary proceedings and will not affect the order of transfer. It is undisputed that the job of the petitioner workman as per the terms & conditions of his appointment was transferable.

11. Thus, I find that notwithstanding the wrong factual conclusion by the Tribunal that the disciplinary proceedings against the petitioner workman stood dropped, the award remains unaffected. The said wrong conclusion of fact is not found to have otherwise affected the conclusion reached by the Tribunal of the petitioner workman having failed to establish that the order of transfer was *malafide* or motivated. As aforesaid, there is no pleading or evidence of the petitioner workman that the order of transfer was made for the said reason. It is also not shown that he was in any manner prejudiced in defending the disciplinary proceedings by the order of transfer. The fact remains that neither during pendency of dispute before Industrial Tribunal nor thereafter the petitioner went to the place of transfer. There is no general rule that during the pendency of

departmental proceedings the employee cannot be transferred. The only pleading and averment of the petitioner workman is that he had been transferred owing to his activities in the union. However, the Industrial Tribunal has not found any basis for the same. I have also perused the record of the Industrial Tribunal requisitioned to this Court and do not find the said factual finding to be such which is capable of being interfered with in the exercise of jurisdiction under Article 226.

12. The petitioner workman in his submissions before this Court has laid great stress on the illegalities committed in the disciplinary proceedings against him. However the same do not fall for consideration in the present writ petition. The present writ petition is not directed against the order of dismissal passed in the disciplinary proceedings. This petition is only concerned with the order of the Tribunal. In this respect, I may notice that in the writ petition also most of the grounds urged are in relation to the disciplinary proceedings and with which this writ petition is not concerned. The petitioner workman has also strongly urged that during the pendency of the disciplinary proceedings initiated prior to the order of transfer, the second chargesheet for the reason of his not joining at the place of transfer could not have been issued. Again that is not the subject matter of this petition. Moreover, as aforesaid the application filed by the petitioner workman seeking stay of the second chargesheet was withdrawn by the petitioner workman. The petitioner workman also contends that no order of his dismissal could have been passed during the pendency of the present petition. Again that is not a ground for challenge of the award qua transfer.

13. The petitioner workman has challenged the authority of the officer issuing the order of transfer. It is contended that the Regional Manager could not issue the order of transfer outside the region. However a perusal of the order of transfer shows that the same has not been issued by the Regional Manager but by the Dy. Chief Manager of the bank. The petitioner workman states that no authority of the said Dy. Chief Manager to issue the order of transfer has been shown. He orally argues that he had sought information in this regard under the Right to Information Act also but no authorization in favour of the Dy. Chief Manger was shown. In my view, the said contention is outside the scope of the disputes referred to the Industrial Tribunal. The Industrial Tribunal was called upon only to adjudicate whether the order of transfer during the pendency of departmental inquiry was justified or not and not whether the order of transfer was issued by the competent authority or not. The petitioner workman was thus not entitled to urge this aspect before the Industrial Tribunal and is not entitled to press the same before this Court also.

14. The petitioner workman has further contended that the circulars of the bank were binding and the Tribunal has erred in holding the same to be not binding. The said contention of the petitioner workman is found to be contrary to ground 'H' in the writ petition where the petitioner workman has admitted that the circulars are not mandatory and only urged that they cannot be ignored and can be ignored only when there is an exigency of service or in public interest. The petitioner workman is thus found to have admitted that the circulars are not binding. Moreover, the Tribunal has rightly held that the said circulars also do not prohibit transfer outside the same language area. Meerut, where the petitioner

workman was transferred was/is the same language area as Delhi. Moreover, the said circulars themselves provide that the same are subject to prerogative of the management to transfer. The circulars laying down the guidelines for transfer also carve out an exception for special cases warranted by administrative exigencies. In the present case the petitioner workman was chargesheeted with the serious misconduct of manhandling and abusing the branch Manager. The petitioner workman had already remained suspended for about one year when it was deemed expedient to revoke his suspension. While so revoking the suspension, no illegality can be found in transferring the petitioner workman. Retaining the petitioner workman in the same branch in which he was charged with a serious misconduct of manhandling and abusing the branch Manager could not be conducive to harmony and peace. Meerut is not such a distant place. In fact large number of persons travel to and fro the two places on a daily basis. No error is, therefore, found in the order of the Tribunal.

15. The Supreme Court in *Union of India Vs. Muralidhara Menon* (2009) 9 SCC 304 has held that transfer is an incident of service and an employee has no right to be posted at a particular place and cannot exercise his option to be posted in his home State unless there exists any statute or statutory rule governing the field. As aforesaid in the present case the terms of appointment of the petitioner workman make the job of the petitioner transferable. In fact in the letter of appointment there is no limitation to the place where the petitioner workman can be transferred, not even in the same language area, as is contained in the *Sastry Award*. The Supreme Court in *Pearlite Liners Pvt. Ltd. Vs. Manorama Sirsi* AIR 2004 SC 1373 has held that in the absence of a pleading that transfer is in

violation of any term of employment and in the absence of a term prohibiting transfer of the employee, *prima facie* the transfer order cannot be called in question. To the same effect are the judgments of this Court in *Shyam Sunder Aggarwal Vs. Globe Detective Agency (P) Ltd. and Ors.* MANU/DE/7973/2007 & *Anand Swarup Mittal Vs. Managing Committee of Ramjas Sr. Secondary School No. 4* MANU/DE/9134/2006.

16. The counsel for the respondent bank invites attention to *Somesh Tiwari Vs. Union of India* (2009) 2 SCC 592. In that case, while reiterating that the order of transfer cannot be interfered unless *malafides* are proved, it was held that *malafides* are of two kinds – first malice in fact and the second malice in law. The order of transfer in that case on the basis of an anonymous complaint against the employee was found to be attracting the principle of malice in law. The present is not a case of anonymous complaint but a case where the petitioner workman had been charged with the serious misconduct of assault on the branch Manager and the order of transferring the petitioner workman pending inquiry to Meerut is not found to be bad.

17. There is thus no error in the award impugned in the present petition.

The writ petition is dismissed.

No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

5th May, 2010

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