

Neutral Citation No. - 2023:AHC:209638

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Reserved on : October 13, 2023

Delivered on : November 2, 2023

In Chamber

Case :- WRIT - C No. - 35587 of 2023

Petitioner :- United Forum of We Bankers and another

Respondent :- Central Government Industrial Tribunal and others

Counsel for Petitioner :- Ashutosh Sharma, Sr. Advocate

Counsel for Respondent :- Sunil Kumar Misra

Hon'ble Prashant Kumar,J.

1. This writ petition has been filed by an employee of a bank challenging his transfer order from Kanpur to Hardoi.
2. The brief facts of the case are that petitioner no.1 is an Employees' Union and petitioner no.2 is an employee of the bank and also an office bearer of the petitioner-Union. Petitioner no.2 had joined the bank on 18.7.2013 in the clerical cadre and was first posted at Hardoi. After completing two years, on 30.7.2015 he was transferred to Kaushalपुरi Branch in District-Kanpur. While being posted at Kanpur, he became the General Secretary of the petitioner-Union.
3. On 28.1.2021, petitioner no.2 was transferred from Kaushalपुरi Branch to G.T.B. Marg Branch in the same district i.e. Kanpur. Immediately on his transfer, a notice for strike, under Section 20 of 'The Industrial Disputes Act, 1947' (for the sake of brevity, hereinafter referred to as 'the Act'), was given by the petitioner-Union, which culminated into conciliation proceeding by the Conciliation Officer. The Management of the Bank appeared in the conciliation proceeding wherein they agreed to consider the demand of the Union raised before the competent authority under the Industrial Disputes Act relating to transfer of petitioner no.2 and modified the transfer order and posted him

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at the Main Branch of the bank at Kanpur.

4. On 21.3.2022, the bank transferred petitioner no.2 from Kanpur to Mallawan Branch in District-Hardoi. Immediately, on the same day, again a strike notice (under Section 20 of the Act) was again given by the petitioner-Union. The notice was issued by Assistant Labour Commissioner (Central), Kanpur to the bank for reconciliation.

5. In addition to this proceeding, petitioner no.2 against his transfer, had filed a complaint with respondent no.1 i.e. Central Government Industrial Tribunal (Labour Court), Kanpur (for the sake of brevity, hereinafter referred as 'the Tribunal') invoking the provisions of Section 33A of the Act. This complaint was made on the ground that mandatory provisions of paragraph 535 of Sastry Award (dated 16.6.1971) was not followed and sought protection under Section 33 (3) of the Act. He further alleged that his transfer was done with malafide intention and bad motive. He also mentioned that the proceedings are pending before the Assistant Labour Commissioner (Central) and the date for conciliation was fixed on 25.3.2022. He further alleged that transfer was made on the behest of the rival Union and the transfer amounts to "unfair labour practice" as defined under Section 2(ra) of the Act. The transfer has not been done in business interest or administrative exigencies of the bank, but the same has been made with colourable exercise of power to vindicate the General Secretary of the petitioner-Union, who has been espousing the cause of fellow employees. The transfer was punitive and was to victimize the petitioner for trade union activities. Along with this complaint, there was an application for interim relief, which was decided by respondent no.1 on 25.4.2022 cancelling transfer order dated 21.3.2022 giving liberty to the Management of the Bank to give posting to petitioner no.2 at a branch nearer to G.T.B. Marg Branch in District-Kanpur.

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6. Aggrieved by the aforesaid order passed by respondent no.1 the bank on 25.4.2022, preferred Writ-C No.15734 of 2022 before this Court. The Hon'ble High Court was pleased to stay the effect and operation of the order dated 25.4.2022 by means of order dated 31.5.2022, which is being quoted below for ready reference :-

“1. Learned counsel for the petitioners submits that undisputedly the post on which the respondent-workman was engaged from before was transferable. Without answering the reference, the Labour Court has erred in providing for an order staying the effect of the transfer order.

2. Matter requires consideration.

3. Request has been made on behalf of learned Senior Counsel appearing for the respondents for accommodation. It is the last session of the Court before vacation. Therefore, the prayer made is declined.

4. Respondents may file counter affidavit within a period of four weeks. Petitioners shall have two weeks' time thereafter to file rejoinder affidavit.

5. List on 26 July, 2022.

6. Till the next date of listing, operation and effect of the impugned order dated 25.04.2022, shall remain stayed, so however, that the respondent-workman is permitted to join at the transferred posting, within a period of two weeks from today.”

7. This order dated 31.5.2022 passed by this Court was assailed by petitioner no.2, Ashish Mishra through intra court appeal No.485 of 2022 (Ashish Mishra vs. Bank of India and others), just to avoid the compliance of interim order dated 31.5.2022. The Special Appeal has been dismissed vide order dated 1.9.2022. This order is being quoted below for ready reference:-

“1. Interim order dated May 31, 2022 has been challenged by filing the present intra-court appeal. In the writ petition filed by the Management, challenge was to an order passed by the Labour Court cancelling the order of transfer of appellant No.1 herein.

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2. The impugned order records that adjournment was being sought by the learned counsel for the respondents/appellants herein before the Writ Court, though the same was declined. The operation of the order impugned before the Writ Court dated April 25, 2022 was stayed vide order dated May 31, 2022 till the next date of hearing and the writ petition was directed to be listed on July 26, 2022. Appellant No.1 was permitted to join at the transferred place within two weeks from that date.

3. The present appeal was filed in this Court in June, 2022 and is being adjourned primarily on the request of learned counsel for the appellants. Even today same prayer has been made.

4. We do not find any reason to adjourn the present appeal as otherwise also challenge is to an interim order passed by the learned Single Judge.

5. The appeal is, accordingly, dismissed.”

8. Even after the dismissal of the Special Appeal, the petitioner (appellant therein) did not join at the transferred place.

9. After dismissal of the Special Appeal, the petitioner Ashish Mishra instead of joining at the transferred place, kept on sending number of notices threatening the employer-bank and deliberately abstained himself from complying with the transfer order. The writ petition filed by the bank being Writ Petition No.15734 of 2022 also was finally disposed of by means of order dated 9.1.2023, which is being quoted below for ready reference:-

“Rejoinder affidavit is taken on record.

Heard Shri. Anuj Srivastava, learned counsel for petitioner and Shri. Rakesh Pandey, learned Senior Counsel for the respondents.

The impugned order supposedly be passed under the provisions of Section 33-(2) and (3) of Industrial Disputes, Act, 1947. However, learned counsel for parties fairly submitted that Industrial Tribunal has not dealt with the issue in terms of provisions of Section 33-(2) and (3) of Industrial Disputes, Act, 1947, therefore, they requested that impugned order be set-aside and the matter be remanded back

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for reconsideration.

Learned counsel for petitioner submits that respondent no.4 has not joined at the transferred post as well as reference dated 10.7.2019 is still pending before Industrial Tribunal.

Considering the above submission and taking note of facts of the present case and as by the impugned order dated 25.4.2022, the application has not been decided in terms of Section 33-(2) and (3) of the Act, 1947, therefore the impugned order dated 25.4.2022 is set-aside and matter is remanded back for fresh consideration with further direction that Tribunal shall decide the above referred reference expeditiously, preferably within a period of three months from today.

As the impugned order has been set-aside, therefore, respondent no.4 is required to join on the transferred post and place in default, legal consequence may follow.

With the aforesaid direction and observation, writ petition stands disposed of.”

10. This writ petition was decided, whereby the matter was remanded back to respondent no.1 for fresh consideration. After remand a fresh application for interim relief was filed, which was also rejected on 20.1.2023. Thereafter, petitioner no.2 joined at Hardoi, where he was transferred, under protest on 1.2.2023, and thereafter he went on medical leave.

11. It is submitted that a notice dated 24.6.2022 was received by the respondent-Bank from Assistant Labour Commissioner, Kanpur on 29.6.2022 enclosing three complaints of United Forum of We Bankers(petitioner-Union herein). The reply of all the three complaints were filed by the Management.

12. Thereafter another show cause notice dated 30.8.2022 was sent from the Office of Assistant Labour Commissioner, Kanpur to the respondent, which was also duly replied.

13. In addition to the above proceedings, a Criminal Case No.87948 of

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2023 was filed by the Labour Enforcement Officer before the Chief Metropolitan Magistrate, Kanpur who had summoned the Zonal Authorities namely, Shri Neeraj Tiwari (Zonal Manager), Shri Manoj Kumar Singh (the then Deputy Zonal Manager) and the then HR Head Shri Het Ram Verma.

14. Aggrieved by the same, the said authorities filed an application under Section 482 of Cr.P.C.(No.28718 of 2023) before this Hon'ble Court and this Hon'ble Court was pleased to pass the order dated 11.8.2023, which is being quoted below for ready reference:-

“1. Heard learned counsel for the applicants and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned cognizance/summoning order dated 01.05.2023 as well as entire proceedings of Criminal Case No.87948 of 2023 (State vs. Neeraj Tiwari & others), under Sections 29/31 Industrial Disputes Act, 1947, District Sambhal, pending in the court of CMM, Kanpur Nagar.

3. Learned counsel for the applicants submits that allegation made in the F.I.R. does not show any criminality. Matter relates to Industrial Dispute Act and allegation in the complaint is that applicant did not reply of the show-cause notice as that would not amount to criminality done by the applicant.

4. Matter requires consideration.

5. Notice on behalf of opposite party no.1 has been accepted by learned A.G.A.

6. Issue notice to opposite party no.2 returnable at an early date.

7. Opposite parties may file their counter affidavits within six weeks. Rejoinder affidavit may be filed within two weeks thereafter.

8. List thereafter.

9. Till the next date of listing, no coercive action shall be taken against the applicants in Criminal Case No.87948 of 2023 (State vs.

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Neeraj Tiwari & others), under Sections 29/31 Industrial Disputes Act, 1947, District Sambhal, pending in the court of CMM, Kanpur Nagar.”

15. In the interregnum, pursuant to notice of strike dated 21.3.2022, Government of India had issued a reference order dated 10.3.2023 for adjudication of the dispute by respondent no.1/Tribunal. The Presiding Officer of the Tribunal decided this reference as well as complaint of petitioner no.2 filed under Section 33A of the Act vide its common Award dated 29.7.2023.

16. The petitioner assailed this Award, by preferring the instant writ petition before this Hon'ble Court with the following prayers:-

“(a) Issue a writ, order or direction in the nature of certiorari calling for the records and quash the impugned composite award publication dated 29.7.2023 (Annexure No.1) passed by respondent no.1 i.e. Central Government Industrial Tribunal, Kanpur Nagar in Industrial Dispute No.13 of 2023 {Shri Kamlesh Chaturvedi (National Convenor) United Forum of We Bankers Versus Zonal Manager, Bank of India} and in Complaint under Section 33A of the Industrial Disputes Act, 1947 dated 29.9.2022 filed by petitioner no.2;

(b) Issue a writ, order or direction in the nature of certiorari calling for the records and quash the impugned transfer order dated 21.3.2022 issued by respondent no.4 i.e. Zonal Manager, Bank of India;

(c) Issue a writ, order or direction in the nature of mandamus directing and commanding the respondents to restore the position of the petitioner no.2 which was prevailing prior to issuance of transfer order, so far as posting of the petitioner no.2 is concerned;

(d) any other writ, order or direction which the Hon'ble Court may deems fit in the facts and circumstances of the present case; and

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(e) Award cost of the writ petition in favour of the petitioners.”

17. Sri Rakesh Pande, learned Senior Counsel assisted by Sri Ashutosh Sharma, learned counsel for the petitioners argued as follows:-

(a) Petitioner no.2 and the respondent-Bank fall under the definition of ‘workman’ and ‘industry’ as per the distinction clause contained in the Act and for this he relied on leading judgments on the definition of ‘workman’ which are-

(i) Arkal Govind Rajrao v. Ciba Geigy of India Ltd.¹

(ii) Bangalore Water Supply and Sewerage Board v. A Rajappa²

(b) The impugned award dated 29.7.2023 is self contradictory as it holds that the transfer of petitioner no.2 is contrary to the bipartite settlement and the Sastry Award and in the same breath has proceeded to record that the transfer order cannot be said to be illegal. Once it is held to be contrary to the settlement, it vitiates the transfer order. The Tribunal instead of answering the reference itself left the dispute open into the hands of the respondent bank, which has caused serious prejudice to petitioner no.2.

(c) The Tribunal had gone beyond the terms of reference and has failed to give any finding regarding violation of the provisions of the Act. In support of his submission, he has placed reliance on a judgment of Hon’ble Supreme Court passed in the matter of **M/s Tata Iron and Steel Company Limited vs. State of Jharkhand and others**³, wherein the Court has held that jurisdiction of Industrial Tribunal is limited to the points reference whereof is made, and the Tribunal should not go beyond the

1 1985 AIR 985 : 1985 SCR Supl. (1) 282

2 AIR 1978 548 : 1978 SCR (3) 207

3 (2014) 1 SCC 536

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terms of the reference.

(d) The learned Tribunal has completely failed to appreciate, the fact of violation of paragraph 535 of the Sastry Award, and deemed status of petitioner no.2 of “Protected Workman”.

(e) The findings of the Tribunal, wherein it has been held that transfer is a condition of service, is patently illegal.

(f) The impugned award was passed contrary to the directions of this Court as contained in order dated 9.1.2023 whereby order dated 25.4.2022 was set aside and the matter was remanded back for fresh consideration.

(g) The Tribunal in the impugned award has failed to consider that there was violation of bank’s own guidelines and policy regarding transfer of its employees.

(h) Transfer order of petitioner no.2 suffers from malafide on part of the Bank Management.

18. Learned counsel for the petitioners has relied on a judgment passed by Hon’ble Supreme Court in **Arkal Govind Rajrao’s case (supra)** which lays down the test as to which employee falls under the managerial or supervisory category. He has further relied on **Tata Iron and Steel Co. Ltd.’s case (supra)** wherein the Hon’ble Supreme Court has remanded the matter back to the Central Government to decide the reference afresh as the earlier reference was defective.

19. Learned counsel for the petitioners has further relied on a judgment passed by Single Judge of this Court in the case of **Punjab National Bank vs. Union of India and others**⁴ wherein it has been held that Section 33 of the Act

⁴ Writ C No.33823 of 2021 decided on 26.7.2022

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gives protective umbrella to the workman.

20. Reliance has also been placed on a judgment passed by Patna High Court in the matter of **Prafulla Kumar vs. Bank of India and others**⁵ wherein it has been held that Secretary of the Association of Clerks is required to be given some protection against any vindictive order of transfer. Transfer of an office bearer of an association is prone to be looked with suspicion unless the guidelines are followed to the letter and spirit. The transfer should not be in complete derogation of the guidelines.

21. Paragraph 535 of the Sastry Award is being reproduced hereinbelow for ready reference:-

535. Policy regarding transfers is a constant source of friction between the banks and the workmen now organized into unions. The cry of victimization of office bearers and "activists" of trade unions is raised wherever such transfers are mooted. We have found that such allegations are easily made but not so easily substantiated. Transfers are rendered necessary by the exigencies of administration. The proper view to take is that transfers are normal incidents of the working of a bank and they must be left to the discretion of those who guide the policy of the bank and manage its affairs. It is possible that the discretion may be abused and transfers effected on considerations other than, the needs of administration. The percentage of transfers as shown by the figures furnished by some of the banks in the course of arguments leads us to the conclusion that the question of transfer, even as it affects only a very small number of persons. This is conceded by the workmen also. Still wherever an activist of the trade union movement, as yet in its formative stage and liable to be crippled easily, is transferred a suspicion naturally arises that it is inspired by ulterior motives and the consequence thereof may be an industrial dispute. In order that such suspicions may be avoided as far as possible we adopting the Sen Award in this respect, give the following directions:-

(1) Every registered bank employees' union, from time to time,

5 Civil Writ Jurisdiction Case No.12958 of 2019 decided on July 31, 2019

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shall furnish the bank with the names of the President, Vice-President and the Secretaries of the union;

(2) Except in very special cases, whenever the transfer of any of the above-mentioned office bearers is contemplated, at least five clear working days' notice should be put up on the notice boards of the bank of such contemplated action;

(3) Any representations, written or oral, made by the union shall be considered by the bank;

(4) If any order of transfer is ultimately made, a record shall be made by the bank of such representations and the bank's reasons for regarding them as inadequate; and

(5) The decision shall be communicated to the union as well as to the employee concerned.

22. On the contrary, Sri Sunil Kumar Misra, learned counsel appearing on behalf of respondent nos.2 to 4 submitted that transfer of Ashish Mishra (petitioner no.2) does not amount to violation of any service condition of the employee, who had accepted transferable job right from beginning. The transfer of petitioner no.2 was done in exigencies of banking operations.

23. He further submitted that petitioner no.2 does not fall in the ambit of "Protected Workman" and is not entitled to claim the benefit accruing to a "Protected Workman". It is submitted that the bank does not recognize the petitioner no.2 as an office bearer of any registered trade union as despite making several requests to the Union to submit the names of its officer bearers, time and again, but there was no response, and no names of petitioner no.1 office bearers were ever furnished to the bank, which is a violation of para 535(2a) of the Sastry Award, which reads as under :

"Every registered bank employees' union from time to time shall furnish the Bank with the names of the President, Vice-President and the Secretaries of the Union."

24. The Bank had displayed the notice dated 9.3.2022 on the Notice Board

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in compliance of Para 535 of the Sastry Award, which clearly mentions that “the notice should be put up on the notice boards of the bank”. The notice mentioned the proposed transfer of number of clerks including Shri Ashish Mishra on Bank’s notice board. Hence, there is no violation of Para 535 of the Sastry Award in respect of transfer of petitioner no.2.

25. Learned counsel for the respondents submitted that petitioner no.2 has not submitted any proof to establish that petitioner no.1, United Forum of We Bankers (Federation) is a registered trade union. His further contention is that the word “Registered Bank Employees Union” shall mean and refer to a Union registered under the Trade Union Act, 1926 and not to Branch/Region/Zonal level units thereof. The complainant union being a regional level unit operating in the limited area with the State of U.P. do not fall under the purview of para 535 of the Sastry Award. Petitioner no.1-Union as on the date of issuance of the transfer order, had not submitted the names of the office bearers in spite of Bank’s written notice to them and subsequent reminder thereof. Since there is no record of Ashish Mishra(petitioner no.2) being an office bearer of the union, the transfer order was issued to him in ordinary course and he was relieved accordingly to report on duty at the place of his transfer. Transfer of any employee of a bank lies within managerial prerogative. Petitioner no.2 was not a “Protected Workman” on the date of transfer but he was declared as “Protected Workman” by the Assistant Labour Commissioner(Central) on 12.8.2022. Hence, any benefit of “Protected Workman” will only accrue from 12.8.2022 and not prior to that. He further submitted that law is well settled that the date of dismissal of a workman is relegated to the date of such order passed by the Management, likewise, date for confirmation of status of “Protected Workman” is to be logically reckoned from the date on which his claim for such status crossed upon the first occasion before the Management. In this scenario, petitioner no.2 can only be

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reckoned with as “Protected Workman” under Section 33(3) of the Act with effect from 12.8.2022.

26. The concept of harmonious relationship between employer and employee is stated in paragraph 535 of the Sastry Award. Clause 2 to paragraph 535 of the Sastry Award makes it clear that whenever transfer of office bearers is contemplated, five days’ notice should be put up on the notice board of the bank. Every step as stated in paragraph 535 of the Sastry Award has been complied with by the bank in pith and substance.

27. It is further contended that the transfer of petitioner no.2 was made purely on administrative ground, since 64 clerk staffs in the zone were promoted as Zonal Banking Officers, hence, transfer of petitioner no.2 with seven other staff clerks was owing to administrative exigency. Apart from petitioner no.2, another office bearer of a recognized union of the bank was also transferred. Hence, there is no malafide intention in transfer of petitioner no.2. The transfer of petitioner no.2 was totally in sync with the Sastry Award. He further submitted that there is no provision in any of the Settlements/Awards/Guidelines which give immunity to the office bearer as “Protected Workman” by virtue of holding any post in the Trade Union. There is certain procedure which is clearly stated in the Industrial Disputes Act, 1947. Accordingly, the contention of petitioners’ alleged union is vehemently denied.

28. Learned counsel for the respondents has further submitted that petitioner no.2 has been misusing his post and has initiated various proceedings in all possible Forums, Tribunals and Courts, which is a pure abuse of process of law. Following are the proceedings initiated by petitioner no.2 before different forums against his transfer order:-

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(i) A notice for strike when he was transferred on 21.8.2021 which registered in cancellation of transfer order.

(ii) A notice for strike when he was transferred on 21.3.2022.

(iii) Complaint before Industrial Tribunal invoking Section 33A of the Act.

(iv) Special Appeal filed against the judgment passed in writ petition preferred by respondent nos.2 to 4.

(v) A criminal case bearing No.87948 of 2023 was filed before Chief Metropolitan Magistrate, Kanpur in which all top brass officers were arrayed as accused and have been summoned in the Court. Against this summoning Application under Section 482 Cr.P.C. No.28718 of 2023 has been filed, which is pending consideration before this Court.

29. Learned counsel for the respondents has placed reliance on a judgment passed by Hon'ble Supreme Court in **Air-India Corporation, Bombay vs. V.A. Rebellow and another**⁶, wherein it was held as under:-

“10.The employer is accordingly left free to deal with the employees when the action concerned is not punitive or malafide or does not amount to victimisation or unfair labour practice.”

30. He has further relied upon a judgment passed by Andhra Pradesh High Court in the matter of **G.V. Triveni Prasad vs. Syndicate Bank and others**⁷, wherein the Court has held as under:-

“Transfer is not a condition of service, but is merely an incidence of service. An employee, who joins service of an employer having establishments or offices all over India, can be posted in any part of the country and he cannot be heard to complain against transfer from one place to the other. If he fails to comply with or disobeys the order of transfer/posting, he does so at his own peril. Ordinarily, the Court will not interfere with the employer's prerogative to transfer and post an employee from one place or station to the other unless it is established that the action of the employer is contrary to

⁶ (1972) 1 Supreme Court Cases 814

⁷ 2006 SCC OnLine AP 992

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the statutory provisions or is vitiated due to patent arbitrariness or mala fides. This proposition must be treated as settled by the judgments of the Supreme Court in B. Varadha Rao v. State of Karnataka , Abani Kanta Ray v. State of Orissa 1995 Supp. (4) SCC 169, Union of India v. S.L. Abbas , Public Services Tribunal Bar Association v. State of UP. , Union of India v. Janardhan Debanath and Kendriya Vidyala Sangathan v. Damodar Prasad Pandey .”

31. Further reliance has been placed on a judgment passed by Hon’ble Supreme Court in the matter of **Namrata Verma vs. State of U.P. and others**⁸, wherein Hon’ble Court has held as follows:

“It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement.”

32. He has also relied upon the case of **Lalit Kumar Prasad vs. State Bank of India and others**⁹ passed by Division Bench of Patna High Court, wherein the Court has observed as follows:-

“Transfer and postings are normal incidence of service and no employee has a vested right to demand posting at a particular place or continuance at a location. The employer is the best judge for utility, suitability and need of a employee at a particular location. Casual interference with orders of transfer by a Court on every small infraction shall create more administrative turmoil that the court may attempt to solve by its orders.....If the power to transfer be there, an employee shall always have a grievance on one ground or the other, especially if he is transferred to a place not of his liking. To demonstrate malic in law, there has to be a level of wanton conduct, on grounds not germane and irrelevant, preceded by a course of events which indisputably only points to victimisation as a justification. Issues of deficit or surplus staff are for the bank to decide and not for the Court to usurp the role and substitute its views for that of the Bank.”

33. Heard learned counsel for the parties and perused the record.

⁸ Special Leave to Appeal (C) No(s).36717/2017 decided on 6.9.2021

⁹ Letters Patent Appeal nos.111 and 174 of 2013 (In Civil Writ Jurisdiction Case No.22441 of 2012) decided on 14.2.2013

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34. A plain reading of the Sastry Award lays down that whenever transfer of any office bearers are made, a cry for victimization is also made by the Union. These allegations are easily made but are not sustainable. Transfers are necessary for exigencies of the administration. Transfers are normal incidents of working of the bank and they must be left to the discretion of those who are guided with policy of bank and manage its affairs. Whenever office bearer of a Trade Union is transferred, a suspicion naturally arises and consequences thereof would be industrial dispute and to avoid such disputes certain steps were laid down in the Sastry Award.

35. In this case, respondent claims to have followed each and every steps of the Sastry Award and hence, the petitioner cannot take benefit of paragraph 535 of the Sastry Award.

36. Section 33 of the Act defines “Protected Workman”, but in this case, petitioner no.2 was declared as “Protected Workman” by Assistant Labour Commissioner (Central) vide order dated 12.8.2022. However, the transfer order was on 21.3.2022, i.e. much prior to the date on which the petitioner was declared as “Protected Workman”, and hence, he is not entitled to get benefit of the “Protected Workman” as claimed by him.

37. Learned counsel for the petitioner has alleged malafide and stated that the transfer was nothing but was vindictive action against the trade union activities done by the petitioner. It is alleged that transfer order dated 21.3.2022 has been passed with ulterior motive of keeping the concerned workman, who is an activist of the trade union movement holding principal position in Unions of workman of the Banks, at bay away from Kanpur. In response to this, petitioner could not place any document on record to show that the order of transfer was outcome of malafide act or was vindictive in nature. There is not an iota of evidence to show that the transfer was made

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with any kind of malafide intention.

38. On the contrary, it was petitioner no.2, who soon after getting his transfer order, called for a strike and tried to cripple the banking function of respondent nos.2 to 4. No Trade Union Activist can use his position for his personal gain. Petitioner could not place any document to show that the strike, which was called on 21.3.2022, was with any reason or in the interest of bank employee who are represented by petitioner No.1-Union. The entire process was nothing but to pressurize respondent nos.2 to 4 to cancel the transfer order of petitioner no.2, who had been using his post of General Secretary of the Union to address his personal agendas.

39. So far as the applicability of judgment passed in **Arkal Govind Rajrao's case (supra)** relied upon by learned counsel for the petitioners is concerned, the same has no bearing in the case in hand as it only lays down the distinction between the managerial and the supervisory post.

40. Judgment passed in **Tata Iron and Steel Co. Ltd.'s case (supra)** cited by learned counsel for the petitioners also does not have bearing in the instant case as in that case the reference made in the Industrial Tribunal was clearly defective, hence, the Hon'ble Supreme Court has remanded the matter back to the Tribunal for reconsideration.

41. In another judgment passed by this Court in **Punjab National Bank's case (supra)** and cited by learned counsel for the petitioners, it has been held that an employee would get protective umbrella of Section 33A of the I.D. Act as soon as conciliation proceeding arises, but in this case the order of transfer was passed on 21.3.2022, immediately, notice for strike was called and it was thereafter that the matter was referred for conciliation proceeding. In view of this judgment, protective umbrella under Section 33A of the I.D. Act would

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only come as soon as conciliation proceeding arises and in this case, the conciliation proceeding commenced after the transfer order was passed, hence, the protective umbrella under Section 33A of the I.D. Act would not be extended to petitioner no.2, taking into accounts the facts of this case.

42. Reliance has also been placed on the judgment passed in **Prafulla Kumar's case (supra)** wherein the Court has held that transfer should not be in complete derogation of guidelines but there was no bar in making the transfer of an employee.

43. Hon'ble Supreme Court in the matter of **Management of Syndicate Bank Ltd. vs. Workmen**¹⁰ has dealt with Sastry Award and has held as under:-

“Having analysed the evidence in this case, we are of opinion that the finding of the Tribunal that the transfer of Veeranna is mala fide is not supported by any evidence and it is, therefore, perverse and defective in law. There is no doubt 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. There is also no doubt that the management of the Bank is in the best position to judge how to distribute its employees between the different branches. We are, therefore, of opinion that Industrial Tribunals should be very careful before they interfere with the orders made by the Banks in discharge of their managerial functions. It is true that if an order of transfer is made mala fide or for some ulterior purpose, like punishing an employee for his trade union activities, the Industrial Tribunals should interfere and set aside such an order of transfer, because the mala fide exercise of power is not considered to be the legal exercise of the power given by law. But the finding of mala fide should be reached by Industrial Tribunals only if there is sufficient and proper evidence in support of the finding. Such a finding should not be reached capriciously or on flimsy grounds as the Industrial Tribunal has done in the present case. This view is borne out by the decision of this Court in

10 AIR 1966 SC 1283

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*Bareilly Electricity Supply Co. Ltd. v. Sirajuddin.*¹¹”

44. In the case of **B. Vardha Rao v. State of Karnataka**¹², the Hon’ble Supreme Court while considering the case of transfer of a Government employee has held that, transfer is an incident of service. Order of transfer not resulting in alteration of any condition of service to his disadvantage need not be interfered.

45. In **Shilpi Bose v. State of Bihar**¹³, the Hon’ble Supreme Court has observed that where competent authority issues transfer orders with a view to accommodate public servant to avoid hardship, the same cannot and should not be interfered with by the Court merely because the transfer orders were passed on the request of the employees concerned. The Court should not interfere with the transfer orders which are made in public interest and for administrative reason unless and until the order of transfer are made in violation of any mandatory statutory rules or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other.

46. The Hon’ble Supreme Court in the case of **Union of India v. S.L. Abbas**¹⁴ has held as under:-

“Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafide or is made in violation of any statutory provisions, the Court cannot interfere with it.....”

47. Hon’ble Supreme Court in the case of **N.K. Singh v. Union of India**¹⁵ has held as follows:

“.....Transfer of a government servant in a transferable service is

¹¹ 1960) 1 Lab LJ 556 (SC)

¹² (1986) 4 SCC 131

¹³ AIR 1991 Supreme Court 532

¹⁴ (1993) 4 SCC 357

¹⁵ (1994) 6 SCC 98 : AIR 1995 SC 423

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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 B. Vardha Rao v. State of Karnataka 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.”

48. The law regarding transfer and postings, the limits for judicial interference, have been laid down by Hon’ble Supreme Court in the matter of **Chief General Manager, (Telecom) N.E. Telecom Circle v. Rajendra Ch. Bhattacharjee**¹⁶. In the aforesaid judgment, the Hon’ble Court has held as under :-

“7. It is needless to emphasise that a government employee or any servant of a Public Undertaking has no legal right to insist for being posted at any particular place. It cannot be disputed that the respondent holds a transferable post and unless specifically provided in his service conditions, he has no choice in the matter of posting. Since the respondent has no legal or statutory right to claim his posting at Agartala, therefore, there was no justification for the Tribunal to set aside the respondent’s transfer to Dimapur.”

49. In the case of **State of M.P. v. S.S. Kourav**¹⁷, the Hon’ble Supreme Court has held as below:-

“....The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribu- nals are not expected to interdict the working of the

¹⁶ (1995) 2 SCC 532

¹⁷ (1995) 3 SCC 270 : AIR 1995 SC 1056

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administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place.”

50. It has further provided by the Hon’ble Supreme Court in the case of **S.C. Saxena v. Union of India**¹⁸ that a Government Servant cannot disobey a transfer by not reporting at the place of posting and then go to Court to ventilate his grievance and that it is his duty first to report for work where he is transferred and make a representation if he has got any personal problems.

51. This Hon’ble Court in the matter of **Vijay Kumar Saxena vs. Dy. Director of Education and others**¹⁹ has held as under:-

*“Even if it is presumed that the petitioner is office-bearer of some association and there is Government policy decision laying down that no office bearer of an Association should be transferred, this Court cannot interfere in view of a decision of Supreme Court in the case of **Shilpi Bose v. State of Bihar (supra)** wherein it was held that if the transfer order has been passed in violation of Government policy decision and Guide lines the High Court should not interfere with such an order and persons aggrieved can make representation before the authority concerned. This Court also in the case of **Govind Pratap Singh v. Managing Director, U.P. State Road Transport Corporation, Lucknow**²⁰ following the above decision of Supreme Court, has laid down that this Court cannot interfere with the order of transfer merely on the ground that the petitioner is office-bearer of some Association Union and the only remedy before the employee aggrieved is to make representation before appropriate authority.”*

52. In the case of **Natthi Lal v. Director, Rajya Krishi Utpadan Mandi**

18 (2006) 9 SCC 583

19 (1993) 3 AWC 1736

20 W.P. No.2771 of 1992, decided on 13-7-1992

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Parishad²¹, this Court while considering the various judgments of the Hon'ble Supreme Court has held that, normally it is not permissible for the High Court to interfere in the order of transfer.

53. This Hon'ble Court in the case of **Keshav Deo Sharma vs. Assistant Regional Manager, UPSRTC**²² and others it has been held as under:-

“5.But from the record it appears that the petitioner is involved in various Union activities and is not permitting the other employees of the Corporation to run the Corporation smoothly. It is not the case of the petitioner that the petitioner cannot be transferred from one place to another. The petitioner is not able to show any document or Government Orders to this effect that the services of the petitioner is not transferable. The petitioner has also failed to assail before this Court that the order of transfer is in any way malafide and has been passed by an authority who is not competent to pass an order. Unless and until it is shown from the record that the order of transfer is a malafide or is made in violation of any statutory provision, the Court should not interfere in such orders of transfer. There is no doubt that while passing the order of transfer, the authorities must keep in mind regarding the guidelines issued from time to time . But it has got no statutory force.

X X X X

10.the transfer is an incident of service and is not to be interfered by the courts in exercise of powers under Article 226 of the Constitution of India. It can be interfered only if it is found against any statutory mandatory rules or with a malafide intention or made in colourable exercise of powers only to harass the employee concerned otherwise it is a sole discretion of the appropriate authority to transfer an employee to a particular post where it is necessary to do so. But this power has to be exercised in fair and reasonable manner and not arbitrary.”

54. This Hon'ble Court in the matter of **Rajendra Prasad vs. State of U.P.**

21 1994(2) UPLBEC 1030

22 2008 SCC OnLine All 1410

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and others²³ has declined to interfere with the transfer order of a person who was office bearer (President of registered Union).

55. This Hon'ble Court in the matter of **Ritesh Singh vs. State of U.P. and others**²⁴ has held that transfer policy issued vide govt. order dated 11.05.2016 stipulates a provision that if an office bearer of a recognized association is transferred within a period of two years from his election to the said office, approval of an authority one rank higher while passing the transfer order is required.

56. This Hon'ble Court in the case of **Sanjay Kumar Sharma vs. State of U.P. and others**²⁵ has held as under:-

“11.Here the transfer order has been shown to have been issued on account of administrative reasons. Thus, the objection raised by the petitioner on that count cannot be sustained.

13.Thus, the respondents being aware of the requirement to transfer the petitioner appear to have followed the procedure and thereafter issued the transfer order, which has been shown to have made on account of administrative exigencies shown to have been established, at least on prima facie basis.”

57. A plain reading of all the aforesaid judgments clearly lays down that when the transfer orders are made on account of administrative exigencies, no objection of any employee can be entertained. When the employee had joined the service, he knew it well that he has joined a transferable job. No employee can claim lien of a particular place. Even the office bearers of the Union are subjected to transfer, if the same is made in administrative exigency and not being made to vindicate their activism or the transfer is made in malafide manner.

23 2014 SCC OnLine All 12140

24 2016 SCC OnLine All 2182

25 2017 SCC OnLine All 4281

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58. In this case, the petitioner could not place any document or evidence to show that the transfer was made in malafide manner just to vindicate activism of petitioner no.2. On the contrary, it was petitioner no.2 misusing his post as General Secretary of the Union in order to push his personal agenda, had filed a number of cases/complaints before different forums which is just to put pressure on the respondents to ensure that his transfer is set aside. As General Secretary of Trade Union, he is supposed to be the voice of the employees and should not use his post for his personal gain.

59. On perusal of documents filed along with the present writ petition, it transpires that to stop one transfer of petitioner no.2, the entire Trade Union as well as petitioner no.2 himself has filed 4-5 different proceedings. Such act of petitioner no.2 is nothing but pure abuse of process of law, for his personal reasons. In fact, to stop transfer of an employee, a notice for strike was called by the petitioner-Union, which could cripple the banking system of respondent-Bank. The petitioners had gone ahead and filed a complaint against the bank before the Industrial Tribunal under Section 33A of the Act. Further, on their behest a criminal case has been instituted against the officers of the bank before the Chief Metropolitan Magistrate, Kanpur Nagar. The act of the petitioners was in no way justified and ended up in multiplicity of litigations in various forums. No trade union activist can use his position to push his personal agenda. The entire action of the petitioners was nothing but pure abuse of process of law.

60. The transfer of petitioner no.2 was not a sole transfer but was done along with other employees of the bank. It is a trite law that the Court should not interfere with the transfer orders, which are made in administrative reasons, and no Court should interfere unless the transfer is malafide or is made in violation of any statutory provisions. Petitioner no.2 has no legal or

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statutory right to claim his posting at a particular place. The wheels of administration should be allowed to run smoothly and the Courts or Tribunals are not expected to interdict the working of the administrative system. In this case, the transfer was made purely on the administrative ground and hence, the same cannot be interfered with.

61. The impugned award passed by respondent no.1 i.e. Tribunal is perfectly justified and the transfer of petitioner no.2, which has been made on administrative exigency, cannot be interfered with and, accordingly, the writ petition is dismissed.

Order Date :- 2.11.2023
Manish Himwan