

20.06.2024
Court No.13
Item No.129

pk

WPA 10195 of 2023

Anirban Pal
Vs.
Punjab National Bank and others

Mr. Srijib Chakraborty
Ms. Rupsa Sreemani
... for the petitioner

Ms. Parna Roy Chowdhury
Ms. Payel Ghosh
... for the Respondent-Bank.

1. The petitioner seeks mandamus from this Court canceling the order dated 30th May, 2020 by which the respondent Bank refused to restore the petitioner's promotion from Scale-III to Scale-IV.

FACTS OF THE CASE

2. The brief facts relevant in the instant case are that the writ petitioner suffered a motor accident sometime in the year 2015 and sustained serious injuries. He has a disability of 70% as per certificate issued by the appropriate authorities. At the relevant point of time the writ petitioner was Scale-III Officer posted at United Bank of India, Calcutta now known as Punjab National Bank.

3. In the year 2016 there was a promotion process in the bank in which the petitioner did not participate for the likelihood of transfer. He however found two of his colleagues, Anubhav Verma and Ajit

Srivastav, with physical disabilities were promoted to Scale-IV but not transferred out of Kolkata.

4. The petitioner sometime in February 2018 participated in the promotion process to Scale-IV grade in the Bank being confident that like the said two colleagues, he would not be transferred from Kolkata. The petitioner was successful, result of the process whereof was declared in October, 2018.

5. The writ petitioner continued to suffer from 70% disability needed special help to discharge his functions. Upon promotion he was issued transfer orders to the Bank's Zonal Office at Patna from Calcutta. The petitioner immediately on 8th October, 2018, represented to the Bank for reconsideration of his transfer, on the ground that he has no other caregiver if he leaves the City of Calcutta. It was also stated that his parents and father-in-law were unwell and he was the sole overseer of their wellbeing.

6. By a communication dated 15th October, 2018, the Bank declined the request of the petitioner for retaining him in Calcutta and insisted on his going to Patna. No special or pressing administrative exigencies have been cited by the Bank in the refusal. The petitioner joined at Patna on 12th November, 2018 and proceeded on leave because of extreme discomfort and pain. He applied for sick leave from 15th November, 2018 to 21st December, 2018.

7. By an e-mail dated 17th November, 2018 the bank threatened the petitioner with coercive action if he did not report back to his duties at Patna. The said letter was followed up by another letter dated 6th December, 2018 in which the petitioner reiterated the request for repatriation to Calcutta in the promoted post or alternatively to revert him to the original post in Scale-III for being accommodated in Calcutta. The request for reversion was essentially based on the fact that the petitioner was in acute distress to stay away from Calcutta in view of his physical condition.

8. The petitioner on 24th November, 2018 reiterated his request for being repatriated back to Calcutta inter alia, for difficulties he was facing while staying in hotel at Patna. In the alternative the petitioner once again sought reversion to Scale III foregoing his promotions.

9. Prior thereto on 26th October, 2018, the petitioner filed a complaint with the Chief Commissioner of Persons with Disabilities under the Rights of Persons with Disabilities Act of 2016, against the refusal of the Bank to accommodate him in Calcutta, after promotion.

10. At all material times since 2012 the Bank had a policy for accommodating and/or exempting persons with disabilities from transfer, subject to the administrative exigencies. Exemptions and Special

Rules for Transfer of Persons like the petitioner are contained in Clauses 16 and 17 of the Bank's Transfer Policy. Sub-Clause (ii) of Clause 16 describes as follows :-

16. TRANSFER OF PHYSICALLY HANDICAPPED OFFICERS:

i. In terms of the Government guidelines, subject to administrative exigencies, a Physically Handicapped Employee in the Bank, in all cadres, whose relevant disability is to the extent of minimum 40% and who has been given disability Certificate by the competent authority, shall normally be exempt from routine periodic outstation transfers. Competent Authority to issue disability certificate, as per Government guidelines is a Medical Board duly constituted by the central or State Government. The Central/State Government may constitute Medical Board(s) consisting of at least 3 members, out of which at least one shall be a specialist in the particular field for assessing locomotor/cerebral/visual/hearing disability, as the case may be. Such medical certificate should specifically contain the nature of disability i.e. permanent. Where the Medical Board has indicated the period of validity of the certificate, in cases where there are chances of variation in the degree of disability, it must be ensured that the certificate held on record is within this validity period.

ii. Such Officers shall not normally be transferred even on promotion if a vacancy exists in the same Branch/Office/Town/City. If the transfer of a physically handicapped employee becomes inevitable on promotion to a place other than his original place of appointment due to non-availability of vacancy, it shall be ensured that such employee is kept close to his original place of posting and in no case is transferred to far off/remote places.

iii. This concession would not be available to such of the handicapped employees who are transferred on grounds of disciplinary action or are involved in fraudulent transactions.

iv. The Managing Director and Chief Executive Officer of the Bank may grant exemption in individual cases of Physically Handicapped Officers if the handicap is of such a nature that it is not possible for the officer to serve in a rural/semi-urban branch. In case of such officers the complete case shall be sent to Personnel Administration Division, HO through Circle Head/Field General Manager stating therewith details of handicap and their recommendations.

17. TRANSFER OF OFFICERS WHO HAVE DIFFERENTLY ABLED DEPENDENTS:

The Government of India, Ministry of Finance, has issued OM No.42011/3/2014-Esst.(Res.) dated 06.06.2014 in the matter of posting of

Officers/employees who is a care giver of disabled child. The word 'disabled' includes:-

- (i) blindness or low vision*
- (ii) hearing impairment*
- (iii) locomotor disability or cerebral palsy*
- (iv) leprocy cured*
- (v) mental retardation*
- (vi) mental illness and*
- (vii) multiple disabilities.*

Such Officers will be exempted from the routine exercise of transfer/rotational transfers.

The following guidelines shall be kept in view while affecting the transfers of those officers who have such differently abled children.

- i. As far as possible Bank may consider on merit of each case, posting of the parent at a place which will facilitate special medical care, education and rehabilitation of his /her child;*
- ii. Such posting may not be claimed as a matter of right. Banks may decide each case after being satisfied from an examination of medical records/reports from competent medical authority that the child would need special medical and educational support beyond the scope of normal/ordinary medical and educational systems. No special consideration would be necessary if the disability is mild and the normal educational system will settle with extra coaching;*
- iii. The posting of the employee parent to a place having facilities for treatment and training of such differently abled children would be subject to availability of vacancy/ post at the place of choice, corresponding to his/her cadre, grade and specialization. The rules regarding rural/ semi-urban service, however, would be relaxed in such cases; and*
- iv. If the posting/transfer is necessitated on account of promotion/re-categorization of post, effort may be made to post the officer to a place closest to the centre where appropriate medical and educational facility would be available to the child.*

11. On the day by a letter dated 6th December, 2018, the Chief Commissioner of Persons with Disabilities directed the Bank to exempt him from transfer by referring to a DOPT Guidelines dated 31st March, 2014 and Section 20(3) of the Rights of Persons with Disabilities Act, 2016. Reference is also made to

Section 75(1) of the said Act of 2016. An action taken report was sought from the Bank.

12. It is not clear before this Court as to when the said request from the petitioner and orders of the Chief Commissioner both dated 6th December, 2018 were actually received by the Bank.

13. The Bank before responding to the letter of the Chief Commissioner of Persons with Disabilities chose to respond to the electronic mail request of the petitioner, inter alia, for reversion to Scale-III on 29th December, 2018 and posted him back to Calcutta. The Bank consequently on the same day also replied to the Chief Commissioner of Persons with Disabilities indicating that the petitioner's request for reversion has been accepted.

14. The petitioner joined the Bank in Calcutta on 1st January, 2019. After the writ petitioner made a representation to the Bank on 19th March, 2020 for restoration of his promotion to Scale-IV, the same was declined by the Bank on 30th May, 2020. The writ petition was filed on 9th April, 2023.

PETITIONER'S ARGUMENTS

15. Mr. Chakraborty, learned Counsel for the petitioner has argued that the petitioner was prevented from coming to Court against the order of the Bank refusing to restore his promotion to Scale-IV due to COVID, Pandemic, his health condition and

bereavement on account of the death of his father, mother and father-in-law.

16. On the question of delay Mr. Chakraborty has argued that given inhuman conduct of the bank, the delay on the part of the petitioner of about three years in approaching Court should not stand in the way of granting equitable relief.

17. On facts and the rules of the bank Mr. Chakraborty has annexed to pleadings, documents showing several vacancies were available in the bank at Calcutta in between October and December 2018 where the petitioner could have been accommodated in Scale IV grade.

18. The transfer policy of the Bank and the exemption from transfer of disabled persons is also placed in detail.

19. On the question of delay Mr. Chakraborty relies upon the decision of ***Bhag Singh & Ors. vs. Union Territory of Chandigarh*** reported in ***(1985) 3 SCC 737*** particularly Para 3 thereof. It is argued that technical pleas should not be taken by the State to deny bonafide relief or to cover up their improprieties. On the same proposition, reliance is also placed on the decision of the Supreme Court in the case of ***Tukaram Kana Joshi & Ors. vs. Maharashtra Industrial Development Corporation & Ors.*** reported in ***(2013) 1 SCC 353*** particularly Para 12 thereof.

20. It is submitted by Mr. Chakraborty that the cause of action of the petitioner for restoration of his promotion and the relief against the illegal action of the bank is a continuing one.

21. Reliance is also placed on a Single Bench decision of Gujrat High Court in the case of ***Dipika Kantilal Shukla vs. State of Gujarat & Ors.*** reported in ***(2006) SCC OnLine Guj 447*** particularly Para 3, 5, 7 to 10 thereof. It is submitted that the bank should be compelled to follow its guidelines and rules. In essence Mr. Chakraborty argues that exemption from transfer for disabled persons contained in the Transfer Policy of the bank has been completely ignored and the bank must be compelled to follow the same.

22. On the same proposition is a decision of the Delhi High Court in the case of ***V. K. Bhasin vs. State Bank of Patiala & Ors.*** being ***LPA 74 of 2005*** and decided on 03.08.2005. On the principles to be followed in respect of service benefits to persons with disability, reliance is placed on Para 21 to 31 of the decision of the Supreme Court in the case of ***Net Ram Yadav vs. State of Rajasthan & Ors.*** reported in ***(2022) 15 SCC 81.***

23. Insofar as the pleadings of the bank that there was no vacancy in the last part of 2018 in Scale IV, reliance is placed on the decision of the Supreme

Court in the case of ***Bharat Singh & Ors. vs. State of Haryana & Ors.*** reported in **(1988) 4 SCC 534**. It is argued by reference to Para 13 that pleadings of the bank bereft of supporting documents cannot be given credence, inter alia, in proceedings where there is no trial in evidence.

ARGUMENTS OF THE BANK

24. Mr. Roychowdhury, Learned counsel for the bank, however, opposes the submissions of Mr. Chakraborty.

25. The petitioner's request for reversion was already available with the bank before the orders of the Commissioner of Persons with Disability dated 6th December, 2018 was received. When a person himself seeks reversion and forgoes the benefit of promotion he cannot turn around and blame the authorities for being deprived. He must be deemed to have consciously waived any benefits he may have derived from his promotion or under the Service Rules. Reliance is placed on the decision of the Supreme Court in the case of ***Union of India & Ors. vs. Manju Arora & Anr.*** Reported in **(2022) 2 SCC 151** particularly paragraph 17 and 18 thereof.

ANALYSIS OF THIS COURT

26. This Court has carefully heard the rival contentions urged by the parties. This Court has also carefully considered the entire pleadings on record and

each of the decisions cited by the parties. The decisions cited by Mr. Chakraborty clearly apply to the facts of the case. This Court finds that as many as four, if not more officers in the Scale IV category, upon promotion in October 2018, have been transferred to Calcutta by the bank from different parts of the country and the State. Therefore, the bank's pleading that there was no vacancy in Calcutta to accommodate the petitioner on promotion in Scale-IV apart from being specious, is false and dishonest.

27. The petitioner could easily have been accommodated in Calcutta by invoking and applying, Clause 16(ii) of its transfer policy which has already been set out hereinabove.

28. It is quite possible that the petitioner must have been suffering substantial difficulties living alone even for a brief period in Patna. He must have been compelled to seek reversion to come back to Calcutta for better care and comfort. The bank has admittedly violated its own transfer policy in particular and the provisions of the Act of 2016 in generally more fully described and set out by the Commissioner of Persons with Disabilities. The conduct of the bank was totally inhuman, in violation of its own Transfer Policy and defeated the object and purpose of the Act of 2016.

29. Reference in this regard may be made to Para 23 and 24 of the **V.K. Bhasin decision (supra)**.

“23. In the written synopsis filed by the appellant, an endeavor has been made to once again raise the issue of the medical certificate like an appellate authority which is not permissible. A perusal of the certificate even otherwise does not show any a parent mistake. In fact, the plea raised is that the Bank should be permitted to take the nature of disability into account, while observing the guidelines. It has to be appreciated that once a person is certified with permanent disability of more than 40% and is, thus, covered under the provisions of the said Act, this aspect is not germane. There is no doubt that the appellant is only to be considered for transfer to a proximate place to his native place, but the guidelines of 1988 make it clear that such request is to be accepted unless in case of administrative exigency otherwise.

24. The written synopsis also goes on to raise the issue of scope of judicial review. In matters of transfer, this Court does not sit as a court of appeal. However, where the very basis is erroneous, this Court is entitled to intervene. Totally irrelevant factors have been taken into account as stated above and the provisions of statutory enactment like the said Act, the said Rules and the Office Memorandum issued in furtherance thereof are sought to be defeated. One cannot lose sight of the fact that the legislation is in furtherance of international commitments and to give an equal treatment to persons with disability. All this has been given a go-bye while rejecting the request of the appellant and the Bank insists on implementing the erroneous decision. In such a case, this Court cannot be powerless to remedy the situation.”

30. The difficulties faced by disabled persons and the consequence of denial of special rules to them has been dealt with by the Supreme Court in Para 28 and 29 of the **Net Ram Yadav decision (supra)**.

“28. Even otherwise, human rights are rights inherent in civilised society, from the very inception of civilisation, even though such rights may have been identified and enumerated in international instruments such as the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10-12-1948, or other international conventions and instruments including UNCRPD. Furthermore, the disabled are entitled to the fundamental right of equality enshrined in Articles 14 to 16 of the Constitution of India, the fundamental freedoms guaranteed under Article 19 including the right to carry out any occupation, profession, the right to life under Article 21, which has now been interpreted to mean the

right to live with dignity, which has to be interpreted liberally in relation to the disabled.

29. *One of the hindrances/disadvantages faced by the physically disabled persons is the inability to move freely and easily. In consideration of the obstacles encountered by persons with disabilities, the State has issued the said Notification/Circular dated 20-7-2000 for posting disabled persons to places of their choice, to the extent feasible. The object of this benefit to the physically disabled is to, inter alia, enable the physically disabled to be posted at a place where assistance may readily be available. The distance from the residence may be a relevant consideration to avoid commuting long distances. The benefit which has been given to the disabled through the Circular/Government Order cannot be taken away by subjecting the exercise of the right to avail of the benefit on such terms and conditions, as would render the benefit otiose.”*

31. In so far as the timing of receipt of the order of the Commissioner of Persons with Disabilities dated 06.12.2018 and the petitioner's second request for reversion for reconsideration of his post at Patna and/or reversion.

32. There are serious doubts in the mind of this Court as regards the bona fides of the Bank's conduct in accepting and allowing the petitioner's prayer for reversion first.

33. The Bank did not need any order of the Chief Commissioner of Persons with Disabilities, since it had its own guidelines against transfer of persons with disabilities even on promotion.

34. This Court's mind is also not therefore, fully free from doubt that the petitioner's continuous request for reposting at Calcutta may have ruffled misplaced egoistic feathers of his superiors. This is an unfortunate malaise that festers in hierarchies of

Public Sector Bank and other bodies which has and continues to severely impact the man resources and impede the growth and wellbeing of an organization and its employees. Any special request from an employee out of the ordinary, even if supported by the Bank's rules is look at with contempt and discomfort.

35. The petitioner made a representation for restoration of his promotion only on 19.03.2020. His prayer was rejected on 30.05.2020. The writ petitioner continued to accept and act upon such refusal by the Bank. In addition thereto, this Court notes that there was at least two promotional processes from 2020 till the date of filing of the writ petition and another process thereafter as on date. He did not participate in the same. The delay of three years in approaching court has extinguished the petitioner's challenge to the refusal by the Bank to restore his promotion to Scale IV.

36. In view of the above, this Court is not inclined to interfere the impugned order refusing to restore the petitioner's promotion to Scale IV after a gap of nearly six years as on date.

37. However, given the reprehensible conduct on the part of the Bank as discussed hereinabove this Court is inclined to impose exemplary and penal costs on the Punjab National Bank formerly known as United Bank of India of a sum of Rs.3,00,000/- which

shall be paid by the Bank to the writ petitioner within a period of three weeks from date.

38. By reason of seeking reversion the petitioner in terms of rules of the bank has forfeited any increments for a period from the date of his actual reversion.

39. In the facts and circumstances of the case, this Court is inclined to restore to the petitioner all increments with effect from December, 2018 till date. Let all arrears be paid to the petitioner and his salary and pay will be suitably revised by the Bank within three weeks from date, as if none of his increments were curtailed or withheld by reason of the reversal sought by him.

40. Let a copy of this order be sent by the petitioner and the Registrar General of this Court to the Chairman of the Punjab National Bank, Chief Commissioner of Persons Disabilities, under the Act of 2016, the Secretary, Ministry of Finance, Banking Division, Secretary, Ministry of HRD and the Chief Vigilance Commissioner, Central Government, for fixing accountability, taking appropriate Disciplinary Action, against the persons responsible for the omissions indicated hereinabove. Let appropriate measures be taken to sensitise the Officials of all the Public Sector Banks in respect of the "Persons with Disabilities Act of 2016" and the Special Rules of the bank in that regard.

41. The writ petition is disposed of.

42. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)