

Court No. - 2

Case :- WRIT - A No. - 3793 of 2022

Petitioner :- Neeraj Chaturvedi

Respondent :- Central Bank Of India, Human Resource Deptt.
Thru.General Manager And 2 Others

Counsel for Petitioner :- Shireesh Kumar

Counsel for Respondent :- Gopal Kumar Srivastava

Hon'ble Rajesh Singh Chauhan,J.

1. Heard Sri Shireesh Kumar, learned counsel for the petitioner and Sri Gopal Kumar Srivastava, learned counsel for the respondents-Bank.

2. By means of this writ petition, the petitioner has assailed the order dated 16.04.2022 passed by the opposite party No.1 transferring as many as 163 employees in different Zones serving at Central Bank of India from one place to another. The petitioner, whose name finds place at serial No.132, has been transferred from Lucknow to Cooch Behar, Kolkota. The petitioner has also assailed the order dated 20.04.2022 whereby he has been directed to be relieved from his present place of posting.

3. The petitioner is serving on the post of Officer (Scale-II) in Central Bank of India.

4. At the very outset, learned counsel for the petitioner, Sri Shireesh Kumar, has drawn attention of this Court towards Annexure No.3 of the writ petition, which is Unique Disability ID issued by the Competent Authority of the Government of India relating to wife of the petitioner, namely, Smt. Priya Chaturvedi, who is permanent disable person having 100% disability.

5. Further attention of this Court has been drawn by learned counsel for the petitioner towards the policy/norms framed on Transfer of Mainstream/ Specialized Officer in Scale-I, II & III of the Bank. Sri Shireesh Kumar has referred para-1.2 of the aforesaid policy, which reads as under:-

"1.2 In respect of transfers/ posting of physically challenged officers, with benchmark disability and Officer who is caregiver of dependent daughter/ son/ parents/ spouse/ brother/ sister with 'Specified Disability' as certified by the certifying

authority, as a Person with Benchmark Disability, as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016, in terms of DOPT guidelines O.M.No.42011/3/2014-Estt (Res) dated 8th October, 2018, bank shall follow the guidelines issued by Govt. of India from time to time, subject to administrative constraint."

6. Since one memorandum of DOPT dated 08.10.2018 has been referred in the aforesaid guideline of the Bank so Sri Kumar has demonstrated such office memorandum being issued by the DOPT dated 08.10.2018 which has been annexed as Annexure No.5 to the writ petition. He has drawn attention of this Court towards para-3 (i) & (iii) of the aforesaid office memorandum of DOPT dated 08.10.2018, which read as under:-

"(i) A Government employee who is a care-giver of dependent daughter/ son/ parents/ spouse/ brother/ sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2 (r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.

(iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfers/ rotational transfer by the Government employee, who is a care-giver of dependent daughter/ son/ parents/ spouse/ brother/ sister as stated in para-3 (i) above."

7. Sri Shireesh Kumar, learned counsel for the petitioner has submitted that so as to understand the meaning of 'care-giver', 'benchmark disability' and 'permanent disability', the relevant provision of Rights of Persons with Disabilities Act, 2016 (here-in-after referred to as the "Act, 2016") may be perused. Section 2 (d) of the Act, 2016 defines 'care-giver', Section 2 (r) defines 'benchmark disability' and Section 2 (s) defines 'person with disability', for convenience, Section 2 (d), (r) & (s) are being reproduced here-in-below:-

"2 (d) "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

(r) "person with benchmark disability" means a person with not less than forty per cent of a specified disability where specified disability has not been defined in measurable terms and includes a person with disability where specified disability has

been defined in measurable terms, as certified by the certifying authority;

(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others."

8. As per Sri Kumar, the present petitioner being care-giver of his wife who is permanent disabled, may be given the benefit of own policy of the Bank vide item No.1.2 (supra). As per the aforesaid protection, any transfer of employee be it routine transfer or rotational transfer may be exempted from such transfer.

9. Sri Kumar has further submitted that vide office order dated 20.04.2022 (Annexure No.8) the petitioner was directed to get himself relieved but he has not been relieved as he has not submitted any application for relieving, as recital to this effect has been given in para-31 of the writ petition. However in para-32 of the writ petition, it has been indicated that out of so many posts of Manager/ Officer in the rank of the petitioner are vacant in Lucknow Region and the petitioner may be accommodated against any post in such Region inasmuch as if he is compelled to submit his joining to Cooch Behar, Kolkata which is about 1500 KM from Lucknow, he would not be able to look-after his wife, who is requiring permanent care from her husband.

10. Therefore, Sri Kumar has submitted that the impugned transfer order, so far as it relates to the petitioner, may be stayed and the petitioner may be accommodated at anywhere at Lucknow Region if he may not be permitted to be posted at a place from where he has been transferred to Cooch Behar, Kolkata.

11. Per contra, Sri Gopal Kumar Srivastava, learned counsel for the opposite parties has submitted that the present petitioner is serving at Lucknow Region for the last about 28 years and as per the same Transfer Policy/ Guidelines, any officer who has completed 10 years at one place/zone shall be transferred to another place/zone. Therefore, pursuant to the aforesaid policy the present petitioner has been transferred from Lucknow Zone to another zone.

12. Sri Srivastava has further submitted that on earlier occasion the similar grievance of the petitioner has been considered sympathetically, therefore, he has been retained at Lucknow Zone for about 28 years.

13. Sri Srivastava has also submitted that wife of the petitioner is serving on the post of Telephone Attendant in Secretariat Telephone Exchange, Lucknow.

14. Sri Shireesh Kumar, learned counsel for the petitioner has not disputed the aforesaid submission of learned counsel for the opposite parties, however, he has submitted that she has been given such appointment under the handicapped quota.

15. Sri Srivastava has also apprised the Court that the petitioner has already been relieved on 09.05.2022 and in his place one incumbent has already joined, therefore, it may not be possible for the Bank to permit the petitioner to serve on the same post at the same place. He has also submitted on the basis of instructions that in the Lucknow Region almost all the vacancies are already filled up.

16. Learned counsel for the parties are agreeable that the matter may be disposed of finally at the admission stage as the submissions of learned counsel for the parties have been considered.

17. Having heard learned counsel for the parties and having perused the material available on record, I am of the considered opinion that if there is any beneficial or compassionate policy to accommodate any employee for the specific and certain reason, the same must be abide by in its letter and spirit.

18. Since wife of the petitioner is a permanent disable person having 100% disability and to look-after and take care of her is a sole responsibility of the petitioner, then his status shall come within the meaning of term 'care-giver' as defines under Section 2 (d) of the Act, 2016. On account of disability of wife of the petitioner, she is a person with the 'benchmark disability' and a 'person with disability' as per the meaning of Section 2 (r) & (s) of the Act, 2016. If the Competent Authority of the Bank has transferred the petitioner in compliance of the Transfer Policy/ Guidelines which provides that whosoever has completed 10 years of service at one place shall be transferred from one zone to another zone, then the same policy also clearly indicates vide para 1.2 that a transfer/ posting of a spouse etc. of a person with 'benchmark disability' or long term disability, shall be exempted from routine/ rotational transfer in terms of DOPT Guidelines dated 08.10.2018. The DOPT Guidelines (supra) clearly provides that such government employee may be exempted from routine transfer/ rotational transfer subject to the administrative constraints. A routine/ rotational transfer, which has been made in compliance of the guidelines, may not be considered as administrative constraint. Besides, if the same

policy is providing two separate guidelines, the guideline which is of beneficial nature shall prevail over the general guidelines inasmuch as the beneficial guideline is issued to serve a particular purpose and if such guideline is flouted it may cause an irreparable loss to a person which, generally, cannot be compensated in terms of money.

19. Therefore, I do not find any good reason to implement the policy vide para-3 i.e. 'Rotational Transfer' ignoring the para 1.2 of the same policy (supra). The rotational transfers are meant for a person who has not been protected by any compassionate or beneficial policy but if any employee has been protected from any beneficial or compassionate policy, the same may not be ignored unless there is any administrative reason to transfer such person from one zone to another zone.

20. In the present case, the wife of the petitioner is serving on the post of Telephone Attendant in Secretariat Telephone Exchange at Lucknow despite having 100% disability and while discharging her duties on such post she has confidence in the back of her mind that her husband is residing at Lucknow to look-after her in a critical situation, if need be, but if the petitioner is compelled to submit his joining at Cooch Behar which is about 1500 KM from Lucknow, the wife of the petitioner may likely to suffer irreparable loss.

21. Now, the question that there is no post available in Lucknow Region and the petitioner may not be permitted to serve anywhere at Lucknow Region, I am unable to comprehend that when the petitioner has earlier been retained at Lucknow considering his aforesaid grievance then as to why his grievance has not been considered now inasmuch as the grievance of the petitioner is of permanent nature.

22. Normally, the transfer is an exigency/ incidence of service and no courts are ordinarily interfered with the transfer orders but if such transfer may be avoided for any specific compelling reason and that reason is unavoidable, the Competent Authority being model employer should consider such condition sympathetically. At the same time the transfer may not be punitive in nature and in the present case if the petitioner is directed to submit his joining at Cooch Behar, Kolkata, it would cause irreparable mental pain to him that he would not be able to look-after and take care of his wife which would cause irreparable mental injury to her also.

23. Therefore, considering the peculiar facts and circumstances of the issue in question, I hereby *allow* the present petition at the admission stage. The impugned order dated 16.04.2022

(Annexure No.6), so far as it relates to the petitioner, to be more precise the transfer of the petitioner is concerned, is hereby quashed.

24. Since in place of petitioner someone has submitted his joining, as informed by Sri Gopal Kumar Srivastava as per instructions, therefore, the opposite parties are directed to accommodate the petitioner at any suitable place at Lucknow Region, be it in a rural areas or urban areas as per the convenience of the authorities and appropriate order to that effect shall be issued forthwith, preferably, within a period of fifteen days from the date of receipt of a certified copy of this order. The petitioner is also directed to submit his joining at a place where he is directed to submit his joining in compliance of this order forthwith.

25. However, no order as to cost.

Order Date :- 9.6.2022 [Rajesh Singh Chauhan,J.]
Suresh/