

(2024) 10 SHI CK 0030
High Court Of Himachal Pradesh
Case No: CWP No.9321 Of 2024

Anit Kumar Sharma

APPELLANT

Vs

Himachal Pradesh Gramin Bank
& Others

RESPONDENT

Date of Decision: Oct. 17, 2024

Hon'ble Judges: Ajay Mohan Goel, J

Bench: Single Bench

Advocate: Yuyutsu Singh Thakur, Shardul Thakur, Kul Bhushan Khajuria

Final Decision: Disposed Of

Judgement

Ajay Mohan Goel, J

CMP No.19099 of 2024

1. In view of the averments made in the application, the same is allowed and disposed of.

CWP No.9321 of 2024

2. With the consent of the parties, the matter is taken up for final consideration today itself.

3. By way of this petition, the petitioner has challenged his transfer vide Annexure P-1, from Himachal Pradesh Gramin Bank, Milwan Branch, Tehsil

Indora, District Kangra, H.P. to Himachal Pradesh Gramin Bank, Basadhar Branch, District Shimla, H.P.

4. Learned counsel for the petitioner has submitted that the petitioner was posted at Milwan in the month of August, 2023. Before that he was serving

at Mandi, which station is at a distance of more than 250 kilometers from Milwan. The petitioner is to superannuate within two years. By referring to

the Transfer Policy of the Bank, he submitted that in terms of the transfer norms the normal tenure of an incumbent envisaged at a station is of three years and further there is a provision in the Transfer Policy that during the period of three years preceding retirement, an incumbent may be posted in the office of his choice or nearer to his home town if possible to enable him to make arrangement for his retired life. Learned counsel further submitted that the place to which the petitioner has been transferred is more than 350 kilometers from Milwan. The petitioner has not been allowed to complete his normal tenure of three years at Milwan. As the petitioner is to superannuate within a period of three years the impugned order also violates Clause-19 of the Transfer Policy of the respondent-Bank, because the station to which the petitioner has been transferred is neither a station of his choice nor it is a place which is nearer to his home. Accordingly, he prays that as the impugned transfer order is prima facie bad in law the present petition be allowed, impugned transfer order be quashed and the respondents be directed to allow the petitioner to serve at Milwan till his superannuation.

5. Learned counsel for the respondent-Bank has opposed the petition and has submitted that the transfer of the petitioner is on account of administrative exigency and conduct of the petitioner and as far as the norms prescribed in the Transfer Policy are concerned the same are only recommendatory in nature and are not mandatory or binding and accordingly, he submitted that as there is no merit in the petition, the same be dismissed. However, on a pointed query put to learned counsel for the respondent-Bank, as to whether the petitioner has been transferred on the basis of any complaint etc., he submitted that as per his instructions, it is not so.

6. Having heard learned counsel for the parties and having perused the transfer order as well as the Transfer Policy in vogue, which is the document appended by the respondent-Bank with its reply as Annexure R-3, this Court is of the considered view that the impugned order is not sustainable in law.

7. It is not in dispute that the petitioner was posted at Milwan only in the month of August, 2023 and in terms of the impugned transfer order he has

been transferred from Milwan to a station of more than 350 kilometers away without permitting the petitioner to complete the normal tenure of three years at Milwan. It is also not in dispute that the petitioner is to superannuate within two years and in terms of the Transfer Policy in vogue there is a provision that such like incumbent has to be adjusted either at a station of his choice or at a place nearer to his home town.

8. Even if, the contention of learned counsel for the respondent-Bank raised at this stage that the transfer of the petitioner was on account of non-performance is to be accepted, then also the same cannot be used as a tool to punish the petitioner by transferring him to a station of more than 350 kilometers away. This is more so that in light of the fact that as the petitioner was entitled for the benefit of Clause-19 of the Transfer Policy, the respondent-Bank should have been more considerate in the matter as the petitioner is otherwise also on the verge of superannuation.

9. This Court does not concurs with the submissions of learned counsel for the respondents-Bank that the terms of the Transfer Policy are not mandatory, for the reason that the Transfer Policy has not been framed by the employees, but it has been framed by the Bank. Therefore, the author of the Policy cannot be allowed to go behind the Policy and use and abuse the Policy as per its own whims and fancies.

10. Therefore, as the impugned transfer order dated 02.09.2024 (Annexure P-1), in terms whereof, the petitioner has been transferred from Milwan to Basadhar without allowing him to complete his normal tenure of three years is bad in law and is both arbitrary and discriminatory as it is in derogation of the provisions of Transfer Policy of the respondent-Bank, the impugned transfer order is hereby quashed. Further, taking into consideration the fact that the petitioner is to superannuate within the period of two years, the respondents are directed to allow him to continue to serve at Milwan till his superannuation.

11. The petition stands disposed of. Pending miscellaneous applications, if any, stand disposed of.