

Bank Of India vs Jagjit Singh Mehta on 22 November, 1991

Equivalent citations: 1992 AIR 519, 1991 SCR SUPL. (2) 492, AIR 1992 SUPREME COURT 519, 1992 (1) SCC 306, 1992 AIR SCW 170, 1992 LAB. I. C. 306, 1992 () LAB LR 9, (1991) 4 JT 460 (SC), 1992 (1) UPLBEC 484, 1992 SCC (L&S) 268, (1992) 80 FJR 104, (1993) 66 FACLR 959, (1992) 1 LABLJ 329, (1992) 1 LAB LN 1, (1992) 2 MAHLR 949, (1992) 1 SERVLR 426, (1992) 1 UPLBEC 484, (1992) 1 BANKCAS 191, (1992) 1 BLJ 74, (1993) BANKJ 710, (1992) 1 CURLR 8, (1992) 1 BANKCLR 399

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, L.M. Sharma, S.C. Agrawal

PETITIONER:

BANK OF INDIA

Vs.

RESPONDENT:

JAGJIT SINGH MEHTA

DATE OF JUDGMENT 22/11/1991

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

SHARMA, L.M. (J)

AGRAWAL, S.C. (J)

CITATION:

1992 AIR 519

1991 SCR Supl. (2) 492

1992 SCC (1) 306

JT 1991 (4) 460

1991 SCALE (2) 1108

ACT:

Service Law:

Bank of India (Officers') Service Regulations, 1979:

Regulation 47, Notice dated 28.3.1988--Transfer--Bank Officer--Whether can claim transfer to a particular place on the ground of spouse's employment.

Government of India Memorandum dated 3.2.1986, Para 4(vi): Banking Companies (Acquisition of Transfer of Undertakings) Act, 1970:

Bank of India (Officers') Service Regulations, 1979--All India Service--Posting of husband and wife at one

station--Guidelines--Nature
of

HEADNOTE:

Regulation 47 of the Bank of India (Officers') Service Regulations, 1979 provided that every officer was liable for transfer to any office or branch of the Bank of India or to any place in India.

The respondent was posted as a clerk in the appellant Bank at Chandigarh. At the time of his promotion to the Junior Management Grade Scale-1, he gave an undertaking for posting anywhere in India, and was consequently posted as Branch Officer in the State of Bihar. Thereafter, he filed a writ petition in the High Court claiming his transfer to Chandigarh Zone on the ground of his wife being employed at Chandigarh. The writ petition was allowed. The Bank filed appeal by special leave to this Court.

It was contended on behalf of the respondent that para 4 (vi) of Memorandum dated 3.4.1986 of the Government of India contained guidelines for posting of husband and wife at one station which were meant to be followed also by all the Public Sector Undertakings, and, according to the provisions of the Banking Compa-

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nies (Acquisition and Transfer of Undertakings) Act 1970 and the Bank of India (Officers') Service Regulations, 1979 made thereunder, the bank was bound to follow the guidelines and directions issued by the Central Government.

Allowing the appeal of the Bank, this Court,

HELD: 1. Although the guidelines require the two spouses to be posted at one place as far as practicable the desirability of such a course being obvious-yet that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible; nor does it mean that their place of posting should invariably be one of their choice even though their preference may be taken into account while making the decision in accordance with the administrative needs. The only thing required is that the departmental authorities should consider the feasibility of a suitable posting along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. [pp 495 E; 496 BC]

2. After accepting a promotion or any appointment in an All India Service, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of the service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. While choosing the career and a particular service

the couple have to bear in mind this factor and be prepared to face such a hardship particularly when they belong to different services. They have to make their choice at the threshold between career prospects and family life. [pp 495 F-H; 496 A]

3.1 In the instant case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion and thereafter sought to be relieved of that necessary incident of an All India Service on the ground that his wife had to remain at Chandigarh. [p. 496 AB]

3.2 In the face of Regulation 47 of the Bank of India (Officers') Service Regulations, 1979 according to which every officer is liable for transfer to any office or branch of the Bank of India or to any place in India and the clear provision for such transfer in the policy read with the notice dated March 28, 1988, the High Court's order cannot be sustained. [p. 495 BC]

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The High Court was in error in overlooking all the relevant aspect as well as the absence of any legal right in the respondent to claim the relief which it granted as a matter of course. [p. 496 CD]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4541 of 1991.

From the Judgment and Order dated 6.8.1991 of the Punjab and Haryana High Court in C.W.P. No. 2415 of 1991. Dr. Anand Prakash, Mrs. Veena Birbal and Raj Birbal for the Appellants.

D.R. Sehgal, S.K. Bagga and Mrs. S.K. Bagga for the Respondents.

The Judgment of the Court was delivered by VERMA, J. The respondent, Jagjit Singh Mehta, is employed at present in the Bank of India as an officer in Junior Management Grade Scale-1 and posted in a Branch Office of the Bank in District Giridih in the State of Bihar. The respondent was earlier employed in the clerical cadre of the Bank and was posted at Chandigarh. According to the policy contained in Annexure-B read with notice dated March 28, 1988 (Annexure-C), on promotion from the clerical cadre to the Officers' Grade, the respondent had to indicate his preparedness for posting anywhere in India according to the availability of vacancies. The respondent readily indicated his preparedness to be posted anywhere in India by Annexure-D dated April 19, 1988 when the respondent was posted as a Clerk at Chandigarh prior to his promotion as an Officer.

After getting the promotion as an officer and being posted in Bihar on the above basis, the petitioner filed Civil Writ Petition No. 2415 of 1991 in the High Court of Punjab and Haryana for a direction to the Bank to transfer him from the Bihar Zone to the Chandigarh Zone on the ground that his wife is employed as a Senior Accountant at Chandigarh. The writ petition has been allowed by a Division

Bench (M.R Agnihotri & D.S.Mehra, JJ,) of the High Court by a cryptic order dated 6.8.1991 which reads as under :-

"After hearing the learned counsel for the parties, we allow this petition and direct the respondents by issuing a writ of mandamus commanding the Bank of India to transfer the peti-

tioner and post him somewhere near Chandigarh as his wife is posted as a Clerk in the office of the Advocate General, Punjab, Chandigarh. This shall be done within a period of two months. No costs."

The petitioner-Bank of India is aggrieved by the above order of the High Court. Special leave is granted. In the face of Regulation 47 of the Bank of India (Officers') Service Regulations, 1979 according to which every officer is liable for transfer to any office or branch of the Bank of India or to any place in India and the clear provision for such a transfer in the policy (Annexure-B) read with notice dated March 28, 1988 (Annexure-C), it is difficult to sustain the High Court's order. However, learned counsel for the respondent placed reliance on para 4

(vi) of a Memorandum dated April 3, 1986 (AnnexureH) of the Government of India containing guidelines for posting of husband and wife at one station which are meant to be followed also by all the Public Sector Undertakings. Learned counsel urged that according to the statutory provisions contained in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Bank of India (Officers') Service Regulations, 1979 made thereunder, the Bank is bound to follow the guidelines and directions issued by the Central Government in this behalf.

There can be no doubt that ordinarily and as far as practicable the husband and wife who are both employed should be posted at the same station even if their employers be different. The desirability of such a course is obvious. However, this does not mean that their place of posting should invariably be one of their choice, even though their preference may be taken into account while making the decision in accordance with the administrative needs. In the case of All-India Services, the hardship resulting from the two being posted at different stations may be unavoidable at times particularly when they belong to different services and one of them cannot be transferred to the place of the other's posting. While choosing the career and a particular service, the couple have to bear in mind this factor and be prepared to face such a hardship if the administrative needs and transfer policy do not permit the posting of both at one place without sacrifice of the requirements of the administration and needs of other employees. In such a case the couple have to make their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such a promotion or any appointment in an All-India Service with the incident of transfer to any place in India, subordinating the need of the couple living together at one station, they cannot as of right claim to be relieved of the ordinary incidents of All-India Service and avoid transfer to a different place on the ground that the spouses thereby would be posted at different places. In addition, in the present case, the respondent voluntarily gave an undertaking that he was prepared to be posted at any place in India and on that basis got promotion from the clerical cadre to the Officers' grade and thereafter he seeks to be relieved of that necessary incident

of All-India Service on the ground that his wife has to remain at Chandigarh. No doubt the guidelines require the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as of right if the departmental authorities do not consider it feasible. The only thing required is that the departmental authorities should consider this aspect along with the exigencies of administration and enable the two spouses to live together at one station if it is possible without any detriment to the administrative needs and the claim of other employees. The High Court was in error in overlooking all the relevant aspects as well as the absence of any legal right in the respondent to claim the relief which the High Court has granted as a matter of course. The High Court's order must, therefore, be set aside.

Consequently, the appeal is allowed, the impugned order of the High Court is set aside and the respondent's writ petition is dismissed. No costs.

k.P.
allowed.

Appeal