

BIHAR HUMAN RIGHTS COMMISSION
9, Bailey Road, Patna – 15

File No **BHRC/COMP.** 838/11

Case of **UMA KANT MISHRA**

Applicant Uma Kant Mishra has approached the Commission seeking its intervention in the matter of transfer of his son, Sushil Kr. Mishra, from Boring Road, Patna Branch of the Central Bank of India to Karnauti (District Vaishali) Branch of the Bank.

At the very outset the Commission would like to make it clear that transfer is an incident of service with which courts etc are normally loathe to interfere. The Commission, however, entertained the application and issued notice considering the alleged hardships of the applicant – in his eighties – arising out of transfer of his son. On 15.7.2011 the applicant filed another application stating that his son Sushil Kr. Mishra has been transferred to Muradpur Branch, Patna in the meantime but a conspiracy was being hatched to suspend/dismiss him from service. Copy of memo dated 7.7.2011 was enclosed with the notice. According to the applicant, this was being done because the applicant had moved this Commission. On 20.7.2011 the Commission fixed the matter for hearing. After adjournment the matter was finally heard in presence of the Advocates for either side – Shri Sushil Kr. Sharma appearing from the applicant and Shri Ajay Kr. Sinha appearing for the Bank, on 26.8.2011.

Shri Ajay Kr. Sinha stated that Sushil Kr. Mishra had challenged his transfer by way of writ petition (CWJC No.413/2011) in the Patna High Court which he unconditionally withdrew on 17.5.2011. In the meantime, as he had failed to obey the transfer order, a memo was issued about his unauthorized absence on 9.2.2011. On 6.4.2011 another memo was issued calling for explanation from him. It therefore cannot be contended that the proposed disciplinary action is actuated by sense of vengeance because the applicant had moved this Commission.

In fairness to the parties, it may be mentioned that the (main) application – which is dated 15.4.2011 – was presented before the Chairperson on 11.5.2011. Considering the urgency it was ordered to be put up immediately, and on 19.5.2011 report was called for. Formal notice, however, was dispatched by the office only on 17.6.2011. It is true that the memo of charges was issued to the applicant's son on 7.7.2011 i.e. after receipt of notice but the memo had its roots in the earlier memos dated 9.2.2011 and 6.4.2011, referred to above. It would therefore be too much to argue that the action is proposed to be taken by

way of retaliation as the applicant had moved the application. The Commission therefore does not find any substance in the contention put forward on account of the applicant.

Learned Advocate for the applicant submitted that the transfer order was antedated and in this connection he referred to entries in the Dispatch Register. Learned advocate for the Bank was not able to reconcile the sequence of the dispatches, and the contention placed on behalf of the applicant would appear to be well-founded. The Commission, however, on that ground, finds it difficult to intervene in the matter.

As mentioned at the outset, transfer is an incident of service. The Commission nevertheless entertained the application considering the 'human right' angle, but after the transfer order was modified and the applicant's son was posted at Muradpur Branch in Patna town, the applicant's grievance became infructuous. The plea of antedating was relevant to the validity of transfer. Transfer having been cancelled or modified, the point lost its significance. Importantly, applicant's son should have got the point thrashed out in the High Court but he unconditionally withdrew the writ petition.

In any view, the Commission did not close the file even after the transfer was cancelled in view of the allegation that the applicant's son is now sought to be subjected to disciplinary action simply because the applicant had moved this Commission, that is, in view of the plea of mala fide. It goes without saying that no action can be taken against any person simply because he or somebody on his behalf has taken recourse to a legal remedy. That would be mala fide in law. That is why the Commission proceeded in the matter notwithstanding that the transfer order had been cancelled/modified. But as seen above, explanation had been sought from the applicant on 6.4.2011 itself, much before the applicant had filed the application (which is dated 15.4.2011) on 11.5.2011. Disciplinary proceedings are incidents of service and this Commission cannot interfere with the same.

In the above premises, the Commission finds no ground to intervene in the matter.

File is closed.

Copy of this order may be sent to the applicant as well as the Zonal Manager, Central Bank of India, Patna for information.

Justice S.N. Jha
Chairperson