

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 1504/2002

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New Delhi this the 7th day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

H.D.Sharma:-

S/o Sh. R.S.Sharma

R/o 110/9B, Gautam Nagar

New Delhi - 110 049.

...Applicant

(By Advocate Sh. Shyam Babu)

-Versus-

1. Union of India : through
Secretary, Ministry of Labour
Govt. of India, Shram Shakti Bhawan
New Delhi.

2. Chairman
Central Board of Trustees
Employees' Provident Fund
Shram Shakti Bhawan, Rafi Marg
New Delhi.

3. Central Provident Fund Commissioner
14, Bhikaji Cama Place
New Delhi.

4. Additional Central Provident Fund Commissioner
14, Bhikaji Cama Place
New Delhi - 110 066.

...Respondents

(By Advocate Sh. N.S.Mehta)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant through this OA impugns respondents' order dated 30.5.2002, whereby applicant has been transferred from Headquarters office to Zonal Training Institute (North Zone), Faridabad. He has sought quashment of this order with all consequential benefits.

2. Applicant was earlier transferred on 22.7.2002 from his posting as Regional Provident Fund Commissioner (RPFC), Maharashtra & Goa at Mumbai to the post of RPFC (Headquarters) at New Delhi. Thereafter applicant was transferred on 28.2.2001 from Central Office to National Academy for Training & Research in Social

Security (NATRSS), Janakpuri, New Delhi. Applicant being aggrieved with his non-promotion as Additional CPFC despite availability of vacancies and promotions of immediate juniors S/Sh. M.L. Meena, and S.K. Khanna filed OA-1056/2002.

3. Applicant by virtue of seniority and promotion was entitled to be allotted Type-V quarter being top in the priority list which fell vacant on 2.3.2002. The aforesaid quarter was not allotted, giving rise to OA-1139/2002 where by way of an interim order passed by this Court on 1.5.2002 allotment of the said quarter was kept in abeyance. Applicant was in the 13th month of his posting was transferred to NATRSS, Janakpuri and having become eligible for promotion as Additional CPFC.

4. Learned counsel for applicant Shri Shyam Babu, impugns the transfer order on the ground of malafides and violation of policy laid down by the respondents. By referring to clause 2 of the transfer policy guidelines of all Group 'A' officers issued by Ministry of Labour, Government of India on 4.2.2000 it is contended that in case of transfer in administrative exigencies before the completion of tenure of three years the grounds should be reflected in the transfer order which facilitate an officer to prefer an effective representation. As the tenure of three years was not completed since applicant was posted in Delhi and the transfer order issued does not contain any reasons for transfer of applicant before completion of tenure as per the policy guidelines aforesaid transfer in violation of policy guidelines has prejudiced applicant in so far as his right to effectively represent is concerned.

5. On the other hand, respondents' counsel Sh. N.S. Mehta has not disputed the applicability of policy guidelines on transfer of Group 'A' officers upon applicant. However, he is not able to satisfy as to the recording of reasons as per the policy in the transfer order issued on 30.5.2002. Moreover, he has also failed to indicate any justification or reasons for transferring applicant in the guise of administrative exigencies and public interest.

6. I have carefully considered the rival contentions of the parties and perused the material on record. The Apex Court in State Bank of India v. Ranian Sanval, (2001) 5 SCC 508 held that "unless malafides or prohibited by service rules or passed by an incompetent authority transfer should not be lightly interfered by the court in exercise of discretionary jurisdiction."

7. Moreover, as per the settled law by the Apex Court if the transfer is in violation of the statutory rules or guidelines the same cannot stand scrutiny of law.

8. As transfer guidelines which are not disputed and are applicable to applicant being Group 'A' officers envisage transfer before completion of three years' tenure on administrative grounds but mandate the grounds for such a transfer to be spelt out in the transfer order itself, which would give a right of effective representation to the concerned government servant.

9. From the perusal of the transfer order whereby applicant has been transferred before completion of three years tenure at headquarters office, in absence of any grounds and reasons recorded the same violates policy guidelines issued for transferring Group 'A' officers.

10. As the transfer is in violation of the transfer policy the same cannot be sustained in law. Accordingly OA is allowed. Order dated 30.5.2002 is quashed and set aside. As applicant in view of an interim order passed on 4.6.2002, where the operation of the impugned order was stayed is still continuing, be continued in the aforesaid post. No costs.

S. Raju

(Shanker Raju)
Member (J)

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