

**Central Administrative Tribunal  
Madras Bench**

**OA/310/00858/2016**

**Dated the 11<sup>th</sup> day of February Two Thousand Twenty**

**P R E S E N T**

**Hon'ble Mr. P.Madhavan, Member(J)  
&  
Hon'ble Mr.T.Jacob, Member(A)**

B.Marghabandhu, Ex-LDC,  
H-7, EPF Quarters,  
LDC Road, Chokkikulam,  
Madurai-2. .. Applicant  
By Advocate **M/s.K.S.Govinda Prasad**

**Vs.**

1. Union of India rep by  
Sri PU Kulkarni,  
The Additional Central P.F.Commissioner (TN&KR),  
Zonal Office, Employees Provident Fund Organisation,  
37, Royapettah High Road,  
Chennai 600014.
2. The Additional Central P.F.Commissioner (TN&KR),  
Zonal Office, Employees Provident Fund Organisation,  
37, Royapettah High Road,  
Chennai 600014.
3. The Regional Provident Fund Commissioner-I,  
Employees Provident Fund Organisation,  
Regional Office, Lady Doak Road,  
Madurai.
4. Shri Rabindra Samal,  
The Regional P.F.Commissioner-I,  
EPFO, Bhavishya Nidhi Bhavan,  
Lady Doak College Road,  
Madurai 625 002.
5. The Permanent Inquiry Officer (South Zone),  
EPFO, 37, Royapettah High Road,

Chennai 600 014.

6. Shri Raman Dhanasekar,  
Permanent Inquiry Officer (South Zone),  
EPFO, 37, Royapettah High Road,  
Chennai 600 014. .. Respondents

By Adovacte **Mr.V.Vijay Shankar**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief(s):-

“(i) To call for the files/records relating to the Memo bearing No.TN/SRO/SLM/ADM/A[3]/Vig/VS/2001, dated 25.10.2013 [A-12] of the 3<sup>rd</sup> respondent herein and quash and set aside the same as non-est in the eye of law and thus render justice.

(ii) To call for the files/records relating to the order of the disciplinary authority bearing No.TN/MDU/RO/ADM/A8/VIG/F-290/2016 dated 01.4.2016 [A-16] of the 3<sup>rd</sup> respondent herein and quash and set aside the same as non-est in the eye of law and thus render justice.

(iii) To call for the files/records relating to the order bearing No.ZACC/Vig(185)/2016/2435 dated 26.4.2016 [A-19] of the 1<sup>st</sup> respondent herein namely the ACPFC(TN&KR) Appellate Authority, EPFO, 37, Royapettah, Chennai 60014, quash and set aside the same as non-est in the eye of law and thus render justice;

(iv) To call for the files/records relating to the Order bearing No.ZACC/Vig(185)/2016/2620 dated 02.6.2016 [A-21] of the 1<sup>st</sup> respondent herein namely the ACPFC(TN&KR) Appellate Authority, EPFO, 37, Royapettah, Chennai 60014, quash and set aside the same as non-est in the eye of law and thus render justice;

(v) To consequently direct the respondents 1 and 2 herein to reinstate the applicant forthwith and immediately as Lower Division Clerk, at RO, EPFO, Madurai and thus render justice.

(vi) To consequently direct the respondents 1 and 2 herein to treat the period of alleged unauthorised absence from 18.2.2011 to 27.2.2011 and from 24.3.2011 to 11.8.2013 and also from 01.4.2016 to date of rejoining duty as LDC, as one of duty for all purposes and consequently direct the respondents

herein to draw and disburse the pay admissible for the above said period and thus render justice;

(vii) To award a sum of Rs.50/- lakhs each as compensation to the applicant to be paid by the 2<sup>nd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> respondents herein and thus render justice.

(viii) To award exemplary costs payable by the respondents to the applicant herein and thus render justice.

(ix) To grant such other relief[s] which may be prayed for and/or which this Tribunal may deem fit, proper and just to be granted in the facts and circumstances of the case and thus render justice.”

2. The applicant was working in the Employees Provident Fund Office and he used to participate in the activities of Employees Provident Fund SC/ST Staff Uplift Union. After joining the department he became the Secretary of the above Union. According to him, the department had decided to install Generator sets and Modular Furniture in the offices as per letter dt. 01.2.96 for computerisation of offices. The Regional Provident Fund Commissioner, Tambaram had provided only skeleton infrastructure and the manner in which electric lines were drawn was done without taking safety measures and the employees were not given Modular Furniture as directed by the department. This has caused apprehensions of lack of safety among employees, as there is every chance of danger of electrocution as Steel Furniture was continued to be used. He took up the matter to the higher authorities and had filed WP No.25008/10 and obtained a stay.

3. In the meanwhile, the applicant was transferred to Regional Office, Madurai by

order dt. 17.2.11 on administrative grounds. He was also relieved from his office w.e.f. 17.2.11 (AN).

4. An urgent meeting of Union was called and the Union demanded immediate withdrawal of the transfer of the applicant. As there was no response, he filed WP 4601/5228 of 2011. The Hon'ble High Court stayed the order on 25.2.11 for a period of 4 weeks. Then the applicant was permitted to sign attendance by respondents. Later, the Hon'ble High Court dismissed the WP on 23.3.11 directing him to approach the appropriate forum. Then applicant filed OA No.461/11 before this Bench. The said OA was dismissed by the Tribunal. Thereupon, applicant filed WP 12968/11 before the Hon'ble High Court challenging the above order of Tribunal on 15.6.11, and the Hon'ble High Court also dismissed the WP. The applicant then filed SLP No.37405/12 before the Hon'ble Apex Court. But the said SLP was also dismissed on 15.12.12. He reported for duty at Madurai on 09.8.13 i.e. after a lapse of 2 ½ years. According to the applicant, he was having ailments like Migraine and Peptic Ulcer and it was because of that he became late in joining at Madurai.

5. On 25.10.13, he was issued with a Charge Memo (Annexure A2) for unauthorised absence from 2010-11, 2011-12, 2012-13 and 2013-14. He challenged the said Charge Memo by filing OA 1389/13, 1390/13, 1895/13. But the Tribunal dismissed those OAs on 26.8.14.

6. The applicant was not paid the salary of March 2011 and Bonus for the year 2010-11. An OA 1554/13 was filed and the Tribunal directed the respondents to

consider and pass orders on the representation pending before the respondents. A portion of amount Rs.10,000/- was paid by respondents. Since the respondents began to recover the Vehicle Advance, he filed OA 462/11 and 1430/13 and they were disposed directing respondents to consider the representation and pass speaking orders.

7. According to the applicants, the above incidents will show that his transfer was with malafide intention. The incident took place on 2010-11 and the Charge Memo was issued only after 3 years. This delay has prejudiced the cause of applicant. This memo was issued to avoid a promotion due to the applicant as Social Security Assistant.

8. According to the applicant, he was fighting for the rights of employees in various Courts/Tribunals from 17.2.11 to 15.12.12. According to him, the appointment of R6 as Inquiry Officer was improper. He had alleged malafides against the official respondents 2 and 3 and hence he had impleaded them in their personal capacity also. The Disciplinary Authority (R3) had ordered Compulsory Retirement and treated unauthorised absence as dies non (Annexure A17). The applicant filed OA 656/16 for quashing the order of the DA. The Tribunal finding that remedy of appeal was not exhausted, directed the applicant to file Appeal and directed the respondents to dispose of Appeal within 4 weeks. When he filed a Contempt petition, the respondents disposed off his Appeal dismissing the same.

9. The main grounds of the applicant is that -

“1) There has taken place undue delay in issuing Charge Memo and to the passing of

Final Order.

- 2) The DA at Madurai is not competent to issue Charge Memo as the alleged absence took place when he was in Thambaran Office. The Charge Memo is vague.
- 3) The finding of the Inquiry Officer is perverse as the dates mentioned in report has mistakes.
- 4) The action of the respondents is vitiated by malafides and the proceedings are liable to be quashed.”

10. The respondents filed reply denying the allegations made in this OA. According to the respondents, the applicant was in the habit of taking leave and unauthorised absence and he was earlier issued a warning memo on 15.6.04 while he was working in SRO, Vellore. He has a habit of misbehaving to the officers and he used to instigate staff members and conduct meetings during office hours without permission. The chaotic situation created by the applicant made the atmosphere not conducive for office functioning and considering that his presence in office is not in public interest, the applicant was transferred to Regional Office at Madurai on administrative grounds as per order dt. 25.2.11. The WP filed by applicant was dismissed on 23.3.11. The OA 461/11 filed by the applicant was also dismissed on 04.5.11. The WP filed against the CAT Order was also dismissed on 15.6.11. The SLP filed by the applicant against the order of Hon'ble High Court also happened to be dismissed on 09.11.12.

11. The applicant remained absent from duty eventhough there was no stay against

the order of transfer. He did not file any leave application also for his absence. On 23.7.13, a show cause notice was issued for unauthorised absence from duty. Then he submitted that he was suffering from migraine and peptic ulcer from 25.7.13 to 24.8.13 and sought 60 days time for filing his reply to notice. Even thereafter he did not file any leave application as per rules. On 12.8.13, he joined duty voluntarily. He gave leave application only on 29.11.15 after the initiation of inquiry. During inquiry also he sought adjournments citing pendency of OAs filed by him. The OA filed challenging the validity of Charge Memo was dismissed holding that there is no merit in the OA. The IO has given sufficient opportunity to adduce his evidence and cross examine witnesses. But applicant did not adduce any evidence on his side. After hearing both sides, IO filed report holding that the charges of misconduct and unauthorised absence was proved. A copy of report was given to the applicant and he was given opportunity to make his representation. He filed his representation on 29.11.15 along with 3 leave applications. The DA (the Regional Provident Fund Commissioner-I, Madurai) after considering the materials, report and representation passed an order for 'Compulsory Retirement'.

12. According to the respondents, there is no illegality or irregularity in the procedure adopted. The Appellate Authority had also considered the Appeal in detail and passed a detailed order confirming the order of DA on 02.6.16 (Annexure A21).

13. We have heard the counsels appearing for the applicant as well as the respondents. We had also carefully gone through the pleadings in this OA. It is an

admitted fact that the applicant was transferred from Tambaram Office to RPFO, Madurai on administrative grounds as per order dt. 17.2.11 and he was relieved from Tambaram office on the same day. The applicant thereupon filed a WP before the Hon'ble Madras High Court and obtained an interim order of stay against transfer on 25.2.11 for 4 weeks. He attended the office on the basis of stay order from 28.2.11. The Hon'ble High Court dismissed the WP on 23.3.11 and the applicant was also relieved from Tambaram office on 22.3.11. Though he filed an OA 461/11, there was no stay and the OA was dismissed on 04.5.11. The WP filed against the order of the Tribunal was also dismissed. The SLP filed against it was also dismissed. So, we can see that there was no stay against the transfer order from 23.3.11 onwards. It is an admitted fact that the applicant did not join duty at RPFO, Madurai till 12.8.13. According to the respondents, evenafter issuing show cause notice, the applicant did not file any leave application, till the inquiry is over in 2015.

14. Though the applicant alleges malafides in initiating departmental action against respondents and respondents 4 to 6 personally, the applicant has miserably failed to prove any malafides against them for initiating departmental action. It is clear that the applicant had failed to comply with the transfer order issued in 2011 and he also did not care to join Madurai office till 2013. Being a responsible government servant, he ought to have given his leave application for not attending office in the meantime. He had filed a leave application stating migraine etc. only in 2015 after the conclusion of inquiry. It is clear that the alleged illness is only an after thought of the applicant made to escape from punishment.

15. The counsel for the applicant cited the decision of the Hon'ble Apex Court in ***Transport Commissioner, Madras-5 v. A.Radha krishna Moorthy I(1995) 1 SCC 332*** in support of his contention that Charge Memo was vague and not clear. In this particular case, the applicant remained unauthorisedly absent from the date of his transfer till the date of his joining at RPFO, Madurai. The respondents had clearly given the period as the period was for more than 2 years. The same is elucidated by statement and we find that there is no merit in this argument. The above decision has no application to this case.

16. The counsel for the applicant would content that there was no wilful absence from duty. He relies on ***Krushnakant B.Parmar v. Union of India and Another I(2012) 3 SCC 178***. On a perusal of the pleadings, we cannot find any compelling circumstances to support the argument that absence was not wilful. The applicant was aware that there was no stay for the transfer order and he was bound to join at the new place. Even after dismissal of all the cases filed by him, he did not join the office. He also failed to give any leave application till 2015. It is clear from the facts that the act of unauthorised absence committed by him was wilful. So, the case relied on by the applicant has no bearing on the facts of this case.

17. Though the applicant would content that the departmental action was due to his activities in the Union, there is nothing brought before us to substantiate it. On the other hand, respondents would argue that the behaviour of the applicant has affected the discipline and vitiated the atmosphere in the office and it was because of that the

applicant was transferred on administrative ground. So, the applicant has failed to show any malafide intention on the part of respondents against the applicant.

18. The counsel for the applicant contends that there occurred undue delay in initiating Charge Memo and concluding the proceedings. He would rely upon the decision of the Hon'ble Apex Court in ***State of A.P. v. N.Radhakrishnan reported in I(1998) 4 SCC 154*** in this respect. On going through the pleadings, it can be seen that the cause for delay was mainly due to the cases filed by the applicant in every stage. He had challenged the transfer in Tribunal/High Court and even in Supreme Court. He had sought adjournments during inquiry stating that the OA filed to quash the Charge Memo was pending.

19. Facts being so, there is no merit in this contention of the applicant. Even the Hon'ble apex Court had stated that "*it is not possible to lay down any predetermined principle applicable to all cases and in all situations where there is delay in concluding disciplinary proceedings*". It is also stated that it depends on the facts and circumstances of each case. Considering the facts of this case, we are of the view that the applicant himself was responsible for the delay and the benefit of the above decision is not applicable to this case.

20. Another contention put forward is that the RPFO, Madurai has no jurisdiction to issue memo. On a perusal of pleadings, it can be seen that the applicant was relieved of his duties on 23.3.2011 and thereafter he was unauthorisedly absent from duty till he joined RPFO, Madurai on 12.8.13. When the Charge Memo was issued,

the applicant was working at Madurai and RPFO, Madurai is the competent Disciplinary Authority to initiate the Charge Memo. Hence there is no merit in this argument also. In view of the above findings, there is no ground to interfere in the penalty imposed in this case. There is also no grounds for granting compensation as claimed by the applicant.

21. In the result, we find that there is no merit in this OA and it is dismissed accordingly. No costs.

(T.Jacob)  
Member(A)

11.02.2020

(P.Madhavan)  
Member(J)

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