

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/121/2016

Date of Reserve:13.01.2020

Date of Order:28.02.2020

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Shri Pankaja Kumar Lenka, aged about 46 years, S/o. Shri Haladhar Lenka, Plot No.918/6303, New Colony, Palasuni, PO-Rasulgarh, PS-Mancheswar, Bhubaneswar-751 010 – at present Enforcement Officer/Accounts Officer, Office of Regional Provident Fund Commissioner-II, Sub-Regional Office, 1st Floor, PAN Complex, Payal Cinema, New Bus Stand Road, Berhampur-760 001, Dist-Ganjam, Odisha.

...Applicant

By the Advocate(s)-M/s.K.C.Kanungo
Ms.Chitra Padhi
S.Pradhan

-VERSUS-

- Employees Provident Fund Organisation represented through:
1. Central Provident Fund Commissioner, Employees Provident Fund Organisation, 14, Bhikaji Cama Place, New Delhi-110 066.
 2. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, Regional Office, Bhavishyanidhi Bhawan, Unit-IX, Janapath, Bhubaneswar-751 022.
 3. Regional Provident Fund Commissioner-II & OIC, Employees' Provident Fund Organisation, Sub-Regional Office, 1st Floor, PAN Complex, Payal Cinema, New Bus Stand Road, Berhampur-760 001, Dist-Ganjam, Odisha.
 4. Regional Provident Fund Commissioner, Employees' Provident Fund Organisation, 37, Royapettah High Road, Royapetta, Opp.Swagat Hotel, Chennai-600 014.

...Respondents

By the Advocate(s)-Mr.S.S.Mohanty

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Applicant, while working as Enforcement Officer, Employees' Provident Fund Organisation (in short EPFO), Regional Office, Bhubaneswar, vide order dated 18.3.2015 (A/1) was placed under deemed suspension with effect from

13.03.2015 on the ground of he having been detained in judicial custody for more than 48 hours. During the period of suspension, applicant's headquarters was fixed at Berhampur and it was directed that he shall not leave the headquarters without obtaining the previous permission of the Competent Authority, i.e., Regional Provident Fund Commissioner-I (Respondent No.2). While continuing under suspension, vide order dated 7.12.2015 (A/2), the Additional Central PF Commissioner (HRM) based on the recommendations of the Suspension Review Committee, the Competent Authority revoked the suspension and it was ordered that consequent upon revocation of his suspension, the applicant is posted to RO, Chennai in a non-sensitive post. Being aggrieved, the applicant submitted a representation dated 09.12.2015 before the Respondent No.1 and since there was no response, he approached this Tribunal in O.A.No.260/00896/2015. This Tribunal disposed of the said O.A. vide order dated 15.12.2015 with direction to consider and dispose of the said representation by passing a speaking and reasoned order within a period of three months from the date of receipt of the said order. It was further directed that status quo as on date so far as the continuance of the applicant is concerned will be maintained until the representation is considered and disposed of. Complying with the above direction of this Tribunal, Respondent No.1 passed an order dated 19.02.2016 (A/5) whereby his request to allow him to continue at Berhampur or nearby station in the State of Odisha was rejected. Hence, the applicant in this Original Application under Section 19 of the A.T.Act, 1985, has approached this Tribunal seeking for the following reliefs:

- i) ...to quash Annexure-A/5 (order of posting the Applicant to the office of Respondent No.4, (Regional Provident Fund Commissioner, Chennai) for the ends of justice.

- ii) ...to direct the Respondent No.1 to retain the applicant at Bhubaneswar (office of Respondent No.2 where his wife is working) for the ends of justice.
- iii) ...to issue any other/further order(s) or direction(s) as deemed fit and proper in the circumstances of the case.

2. The grounds on which the applicant has based his claims are that the impugned order of transfer is in contravention of A/7 and A/8 read with A/6 & A/9. Applicant being a Group-B (Non-Gazetted) officer, his posting on transfer to other Regional than his parent Region is barred under Rule-11(2) of the Regulations, 2008. Applicant's wife is an employee under the Respondent No.2 at Bhubaneswar and therefore, in view of Office Memorandum under A/7 issued by the Government of India, he should be retained in the same place of posting where his spouse is working. This apart, it has been pointed out by the applicant that since the CBI has already submitted the charge sheet on 22.07.2015, the question of influencing the witnesses and/or causing hindrances to the investigation is out of place. According to applicant, there being vacancy in the non-sensitive post in the office of Respondent No.2, there is no justifiable reason to transfer of the applicant to another Region. The applicant has also brought to the notice of this Tribunal the education of his children and his father who is aged about 83 years is old and ailing and therefore, his continuance at Bhubaneswar is necessary to look after his father.

3. Per contra, respondents have filed a detailed counter. They have submitted that since the posting of the applicant was not under a normal transfer and was done under Para-11(4) of EPF Regulation, 1962, which provides that any employee maybe transferred from one region to another region or to Central Office of the Organization or vice versa on administrative

ground or in the public interest, the applicant cannot challenge the same. They have pointed out that the applicant was relieved from his duties with effect from 11.12.2015 from the EPFO, SRO, Berhampur with direction to report to Addl.CPFC(TN & kr), Chennai and therefore, he does not borne on the roll of EPFO, Sub Regional Office, Berhampur any longer. In view of this, it has been submitted that the O.A. being devoid of merit should be dismissed.

4. Applicant has filed a rejoinder to the counter.

5. Heard the learned counsels for both the sides and perused the records. We have also gone through the written notes of argument submitted by the applicant as well as citations relied upon by the respondents.

6. In the fitness of things, it would be proper to quote hereunder the relevant part of the consideration made by the competent authority while taking a decision on his representation dated 09.12.2015 in pursuance of the direction of this Tribunal in O.A.No.260/00896/2015.

"7. AND WHEREAS, on going through the representation of the applicant and facts submitted above, the following reasons are weighing my consideration for deciding his representation as under, that:-

- (i) SP, CBI vide his letter dated 17.03.2015 had recommended that the applicant's present place of posting be changed, as it is reasonably apprehended that he may try to influence the witness and may cause hindrance in investigation if allowed to continue at his present place of posting.
- (ii) As per Regulation 5 Employees' Provident Fund (Officers and Employees' Conditions of Services) Regulations, 2008, transfer of staff from one region to another in similar posts shall be made by the Central Provident Fund Commissioner or any authority delegated with powers to do so by the Central Provident Fund Commissioner.(iii)As per Regulation 11 of Employees' Provident Fund (Officers and Employees' Conditions of Service) Regulations, 2008, any employee may be transferred from one region to another on administrative grounds or in the public interest.

- (iv) In accordance with the provisions of FR 153 A, the official is entitled for travelling allowance as for a journey on tour to a Government servant who performs journey to attend Police/Special Police Establishment enquiry.

NOW THEREFORE, having considered the facts and findings, and in accordance with Hon'ble CAT, Cuttack Bench order dated 15.12.2015, I hold that, since a grave charge of accepting bribe and misuse of official position is under investigation, it is in the interest of the organization that he be kept away from Odisha Region in large public interest. I find no merit in the representation dated 09.12.2015 made by Shri Pankaja Kumar Lenka, Account Officer and accordingly, dispose off the same with the directions to him to report to Additional Central PF Commissioner (Tamil Nadu & Kerala)".

7. From the above, two contingencies can arise. Firstly, under Regulation-11 of Officers and Employees Conditions of Services) Regulations, 2008, the applicant could be transferred from one region to another on administrative grounds or in the public interest and secondly, as admitted by the respondents in their counter-reply, it is not a normal transfer. Thus, it is deducible and as a matter of course, admission of the respondents that the present transfer of the applicant is on the recommendations of the CBI on the ground that applicant's present place of posting should be changed as there was a reasonable apprehension that he might try to influence the witness and cause hindrance in investigation, if allowed to continue at his present place of posting. The applicant has taken a ground that the CBI has already filed the charge sheet on 22.07.2015. By the efflux of time of about four years by now, nothing is forthcoming from the respondents that the applicant has ever tried to influence or tamper with the evidence, witness or the inquiry and therefore, the whole genesis of such an apprehension, in our considered opinion, is without any basis, as seen from the materials on record at this stage.

8. In view of the above, this Tribunal remits the matter back to the Respondent No.1 to reconsider transfer of the applicant keeping in view the, Office Memorandum dated 30.09.2009 regarding posting of husband and wife at the same station and pass an appropriate orders within a period of thirty days from the date of receipt of this order.

9. With the aforesaid observation and direction, this O.A. is disposed of, with no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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