

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1792/2001

Wednesday, this the 22nd August, 2001

Hon'ble Shri S.A.T. Rizvi, Member (Admn)

1. Shri O.P. Dhiman,
S/o Late Shri Soran Singh
2. Shri Naval Singh
S/o Shri Pyare Lal
3. Shri Sri Ram,
S/o Late Shri Kahuman Singh

(All the applicants are working under the
Regional Provident Fund Commissioner, Bhavishya Nidhi
Bhawan, Sector 15-A, Faridabad)

.. Applicants
(By Advocate : Shri K.K. Patel)

Versus

1. The Provident Fund Commissioner,
Ministry of Labour,
Government of India,
Bhavishya Nidhi Bhawan,
14, Bhikaji Cama Place,
New Delhi
2. The Regional Provident Fund Commissioner,
Haryana Bhavishya Nidhi Bhawan,
Sector 15-A, Faridabad

.. Respondents.
(By Advocate : Shri V.S.R. Krishna)

O R D E R (ORAL)

The applicants, 3 in number, all Head Clerks/Section Supervisors under the respondents, were transferred by respondents' office order dated 14.6.2001 from their Regional Office (RO) at Faridabad to their Sub Regional Office (SRO) at Karnal (Annexure P-2 colly.). The aforesaid orders have been issued in accordance with the policy circular issued by the respondent No.1 on 31st May, 2001 (Annexure P-2 colly.). Aggrieved by the aforesaid transfer order, the applicants had filed OA No. 1556/2001 which was disposed of with a direction to the respondents in

turn to dispose of the representations filed by the applicants by passing a speaking order. The respondents have accordingly considered the matter and have passed speaking orders dated 13 July, 2001 (Annexure P-1 colly.) rejecting the representations filed by the applicants on 8th, 11th and 12th June, 2001. Both the aforesaid orders dated 14th June, 2001 and 13th July, 2001 are under challenge in the present OA along with the aforesaid policy circular dated 31 May, 2001.

2. I have heard the learned counsel on either side at length and have perused the material placed on record. I have, in particular, gone through the detailed orders passed by the respondent-authority on 13 July, 2001 against the representations filed by the applicants.

3. The main contention raised by the learned counsel appearing on behalf of the applicants is that the impugned policy circular of 31 May, 2001 which has been adhered to by the respondents in issuing the transfer orders dated 14 June, 2001 cannot be said to supersede the earlier policy circular of 7 July, 1995 which governs the entire matter concerning the transfer of Head Clerks/Section Supervisors. I have carefully perused the aforesaid policy circular of 31 May, 2001 and find that the same merely issues certain clarifications with regard to the preparation of roster utilised for implementing the rotational transfer policy relating to Section Supervisors. From

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a reading of the aforesaid circular it would appear that certain representations had been made by the staff unions pointing out the anomalies in the preparation of roster, and simply in order to remove the anomalies in question and to ensure transparency and objectivity in implementing the rotational transfer policy, the respondents have issued clarificatory directions through the impugned policy circular of 31 May, 2001 in the following term.

".....you are requested to prepare the roster of Section Supervisors in Regional Office in the order of seniority based on the length of stay at Regional Office without interruptions in the Grade of Section Supervisor irrespective of the fact whether they are promoted on regular basis or Adhoc. Once the roster is prepared i.e. as on 1st April, the transfer from Regional Office to the Sub Regional Offices should be ordered according to that seniority list/roster. The Section Supervisor with the longest period of the stay in the Regional Office who on the top of the roster will go first followed by the second person and so on like that. Section Supervisors promoted on Adhoc basis are also to be added to the list and period of stay to be reckoned from the date of promotion."

4. The question here in my view is not whether the impugned policy circular supersedes the previous circular of 7th July, 1995, but whether the respondent-authority (respondent No.1) has the competence to issue clarificatory direction with a view to secure proper, effective, smooth and transparent implementation of the transfer policy earlier issued on 7th July, 1995. In my view, the previous policy circular of 7th July, 1995 is required to be read with the impugned policy circular of 31 May, 2001 so as to enable the respondents to deal with

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the transfer matters objectively and in a transparent manner.

5. The applicants qua Section Supervisors/ Head Clerks have an All India transfer liability. They do not have a right to continue in a post without being transferred in the exigencies of public service and in the discretion of the respondents exercised properly, fairly and objectively. In this context, it will be useful to reproduce the following paragraphs incorporated in the aforesaid policy circular of 7th July, 1995.

"अगर मद सं० १ से ६ में निर्मित किसी बात के होते हुए भी :
क्षेत्रों में आयुक्त का निर्णय अन्तिम होगा । और वे किसी
भी कर्मचारी के चक्रगत स्थानान्तरण के मामले पर निर्णय लेते
समय अपने स्वविवेकाधिकार का प्रयोग कर सकेंगे । "

The aforesaid provision clearly states that despite the policy parameters laid down in the circular, the orders issued by the Regional Provident Fund Commissioner will be final and further that ^{निर्णय} matters of transfer on rotational basis, the same said authority will be competent to take decisions in accordance with his own discretion.

6. Transfer is an incidence of service and is not a punishment. Considering the number of persons involved and the differing circumstances in which they live and work, it is not possible to achieve hundred per cent accuracy in the arithmetical sense in matters relating to the transfer of employees. All said and done, an amount of discretion is required to be exercised by the competent authority whenever and

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wherever transfers are involved. It is precisely for this reason that the respondent-authority has incorporated the provision reproduced in para 5 above conferring ~~the~~ discretion on the respondent-authority. No transfer policy can be successfully operated and implemented without conferring discretion on the competent authority for the simple reason that human beings cannot be dealt with like ^{va} lifeless commodity. As ^{stated} ~~said~~, there are bound to be difficulties, both individual and organisational, in implementing a transfer policy. Conferment of discretion, as above, however, cannot mean that the respondent-authority is free to act in the manner it likes without any checks and balances. It is settled law that a transfer order issued on malafide considerations is illegal. Similarly, such orders passed against a statutory rule or issued in arbitrary ^{exercise} ~~use~~ of power will also be illegal and liable to be quashed and set aside. In the present case, there is no allegation of personal malafide. All that has happened is that in the public interest the general policy regarding transfers earlier issued on 7th July, 1995 has been modified by the impugned policy circular of 31st May, 2001 ~~in~~ entirely in the interest of effective implementation of the policy itself in a transparent and objective manner. The applicants have been transferred within the same State and will be brought back to their original positions after one year. The distance involved is just about 150 KMs. In the circumstances, in my view, it will be totally unfair to call in question the transfer order dated 14th July, 2001,

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which, in my view, is ~~very~~ in order and has been passed in the public interest.

7. Furthermore, a perusal of the impugned orders dated 13th July 2001 also reveals that the respondents have passed reasoned and speaking orders by ~~dealing with~~ ^{✓ dealing with ✓} each and every issue raised by the applicants in their representations. No attempt has been made therein to be less than objective in dealing with the matter. In the circumstances, I find nothing wrong with the aforesaid orders either.

8. For all the reasons mentioned in the proceeding paragraphs, the OA fails on being found ^{to be ✓} devoid of merit. The same is dismissed. There shall be no order as to costs.

S.K. Talwar

(S.A.T. RIZVI)
MEMBER (A)

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