

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO. 1627/91

DATE OF DECISION: 12/5/92

SHRI KAHAN CHAND

APPLICANT

VERSUS

CENTRAL PROVIDENT FUND
COMMISSIONER, NEW DELHI.

RESPONDENT

CORMA:-

THE HON'BLE MR. T.S. OBEROI, MEMBER(J)

THE HON'BLE MR. P.C. JAIN, MEMBER(A)

FOR THE APPLICANT : SHRI D.R. GUPTA, COUNSEL

FOR THE RESPONDENT : SHRI K.C. SHARMA, COUNSEL

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes

2. To be referred to the Reporters or not? No

JUDGEMENT

(delivered by Hon'ble Mr. T.S. Oberoi, Member(J))

The facts giving rise to the filing of this O.A, briefly stated, are that the applicant, an ad hoc Upper Division Clerk in the office of Sub-Regional Office, Employees Provident Fund Department, Amritsar wanted to come on transfer, by mutual exchange, if possible, to Delhi, on the ground that his wife was posted at Delhi, ^{and} had applied for the same, to the Central Provident Fund Commissioner, Employees Provident Fund Organisation, Central Office, New Delhi. As, however, there was no vacancy of Upper Division Clerk in the Central Office or in the Regional office at Delhi, he was advised, that the same is not feasible, but in case he wants to come over as a Lower Division Clerk,

his case can be considered. He was also told that certain conditions, which, in the event of his transfer to Delhi as a Lower Division Clerk, would be applicable. He readily accepted the same conditions. In this connection, it may be mentioned here that the applicant was functioning as an ad hoc Upper Division Clerk in the Sub-Regional Office at Amritsar, though he was regular in the post of Lower Division Clerk. His transfer in the capacity of Lower Division Clerk was accordingly ordered vide order at Annexure-5 (Page 16 of the paperbook).

In the meantime, one Ms. Raj Rani Jaswal, ^{an} Upper Division Clerk in the Regional Provident Commissioner's office at Delhi, ^{also} wanted her transfer to the Regional Office at Shimla, and on learning about it, the applicant applied for mutual transfer, as per their request for mutual transfer at page 14 of the paper book. This, however, was not accepted by the respondents, on the ground that, while applicant was only an ad hoc Upper Division Clerk, Ms. Jaswal was regular Upper Division Clerk, besides the stations concerned were different i.e. applicant was serving at Amritsar while Ms. Jaswal wanted her transfer to Shimla. Besides, as per respondents case, applicant's transfer had since been effected about three months prior to that of Ms. Jaswal, and could not have therefore been retrospectively ordered, as prayed for by the applicant. Aggrieved with respondents' refusal to treat his case as of mutual transfer, and for his posting as Upper Division Clerk, at Delhi, or in the

and alternative, the protection of his pay as Upper Division Clerk, which the applicant was drawing in the office of S.R.O., Amritsar, the applicant has filed the present O.A., under Section 19 of the Administrative Tribunals Act, 1985.

2. We have heard the learned counsel for the parties and have perused the material, placed by both the sides, on record.

3. The plea of the learned counsel for the applicant was that the applicant having worked for nearly 4½ years in the capacity of Upper Division Clerk, he can no more be treated as an ad hoc Upper Division Clerk, the spell being fairly considerable, as normally, ad hoc appointments are made to meet stop gap arrangements, for brief spells like 6 months or so, and therefore, he should be treated as a regular Upper Division Clerk in the office of S.R.O., Amritsar, and his transfer to Delhi be adjusted against that of Ms. Jaswal, who was transferred to Shimla, and both the office of S.R.O., Amritsar and that of Shimla, being under the administrative control of the Regional Provident Commissioner, Punjab, Himachal Pradesh and Union Territory of Chandigarh, and there being a common seniority of all the functionaries, in both these offices. The learned counsel for the applicant also prayed that the applicant's transfer in the junior most capacity as Lower Division Clerk at Delhi, had hit him very hard, and, in the interest of justice also, his request for transfer, against the

post held by Ms. Jaswal, be suitably adjusted.

4. We have also heard the learned counsel for the respondents, who pleaded that it was at the instance of the applicant himself that he had readily agreed to the terms of his transfer to Delhi, as per conditions contained in the letter No.P-III/14(10)/89/PN/7604 dated June, 1990 (page 22 of the paperbook) and as such, the applicant was bound by the consent conveyed to him vide his letter dated 17.4.1989, enclosing the terms of his transfer, in the enclosure thereto (page 25 of the paperbook). By referring to applicant's letter dated 26.10.1990 (page 13 of the paperbook), the learned counsel for the respondents stated that a perusal of the matter would show that it was much later that the applicant, on coming to know about Ms. Jaswal also trying for her transfer to Shimla that he thought of getting his transfer adjusted against her vacancy, which however, could not be acceded to by the respondents, his transfer having since been effected/materialised much earlier. Though the applicant had also alleged discrimination having been exercised by the respondents, in not meeting his transfer, by citing the case of Smt. Vasumati and Sh. Davinder Kumar, the respondents refuted the same, applicant's being different and distinguishable from the said two cases.

5. We have carefully considered the rival contentions, as briefly discussed above. In the presence of the specific undertaking by the applicant, accepting

the conditions of his transfer to Delhi, as contained in his written undertaking to this effect, we do not find any force or merit in the present O.A. His allegation regarding discrimination perpetrated in his case is also being rejected, having ^{not} been substantiated, besides, the applicant being bound by his own undertaking, as earlier referred. In result, the application is dismissed, being devoid of merit. There shall, however, be no order as to costs.

(P.C. JAIN)

MEMBER(A)

(T.S. OBEROI)
MEMBER(J)