

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

Date of decision

25/8/92

O.A. No. 1681/92

Shri H.C. Tyagi ... Applicant
Vs.

Union of India ... Respondents
&
Ors.

Shri S.S. Tewari ... For the Applicant
Advocate

O.A. No. 1684/92

Shri M.C. Joshi ... Applicant
Vs.

Central Provident ... Respondents
Fund Commission

For the Applicant ... Shri Shiv Kumar, Advocate

For the Respondents... Shri K.C. Sharma, Advocate

CORAM:

Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J)

Hon'ble Member Shri I.P. Gupta, Member (A)

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

✓ 2. To be referred to the Reporter or not ? *yes*

J _ U _ D _ G _ E _ M _ E _ N _ T

[Delivered by Hon'ble Shri I.P. Gupta, Member (A)]

1st
In the aforesaid O.As. the applicants have sought for the relief that the order of transfer dated 23.6.1992 transferring the applicant in O.A. 1681/92 from regional office Haryana to S.R.O. Jabalpur and the applicant in O.A. 1684/92 from R.O. Delhi to R.O. Ahmedabad be set aside and the respondents should be directed to adopt the policy of "Last come first go" on the basis of seniority in case of abolition of post. In O.A. No. 1684/92 the applicant has also requested for a direction to the respondents to allow him an option to revert to his substantive post of U.D.C. in Delhi region.

2. The applicants were appointed as Hindi Translator Grade II in the Office of Regional Provident Fund Commissioner in 1981 and 1987 respectively. ✓

3. The Learned Counsels for the applicants contended that the transfer orders are arbitrary, violative of instructions and illegal. They argued that -

(1) Their appointment letters did not mention about the All India transfer liability. Transfer is not a condition of service with the applicants. Attention was also drawn to the respondents' letter dated 8.2.1991 where it has been mentioned that " it has been decided that as far as Group 'C' and Group 'D' posts are concerned, there is no necessity to incorporate the clause relating to All India transfer liability since these employees are not transferred outside their regions." Therefore the applicants cannot be transferred outside the region.

(ii) The letter of the respondents dated 18.6.1992 relating to review of staff as per revised norms would indicate that some posts of Hindi Translator Grade II in the Haryana and Delhi regions, apart from other regions, have been abolished. If consequential adjustments of surplus staff were to be made the well-settled principle of " last come first go" should have been adopted, which was not done in this case.

(iii) In case of transfer of one Ham Chand, R.O. Haryana to R.O., Uttar Pradesh

the terms and conditions of transfer were laid down by the respondents by letter of 9th March 1990 and his consent was obtained. No consent of these applicants has been obtained.

4. The Learned Counsel for the respondents contained that -

(i) Rule 8-A of the Employees Provident Fund (Staff & Conditions of Service) Regulations, 1962 as amended upto 30th September 1986 provided the following :-

" 8-A Liability to serve anywhere in India.- Every employee of the Organisation shall be liable to serve anywhere in India in any office of the Organisation and also to proceed on tour to any place in India as may be directed in the interest of work".

Therefore transfers are consistent with the rules. It is not correct to say that they were declared surplus and hence they were transferred. In fact, the applicants in D.A.No. 1681 was one of the senior-most Hindi Translator in Haryana region and there was no question of his being declared surplus.

(ii) The posts of Hindi Translator are isolated posts and appointments are made through competitive examination. The examination is conducted on All India basis. By letter of 11.9.1990 it was also directed that the seniority list of Hindi Translator be prepared on All

India basis.

70

5. Analysing the facts and arguments in the aforesaid two cases we observe that the conditions of service of the applicants are governed by the Employees Provident Fund (Staff & Conditions of Service) Regulations, 1962, as amended upto 30th September 1986. Rule 8A clearly provides for All India transfer liability of the employees. While it is true that the letter of the respondents dated 8.2.1991 mentioned that Groups 'C' and 'D' posts are not transferred outside their regions but such communications are non-statutory in character ^{and cannot override the Rule}. If this ^{Link} communication has sanctity then on the same analogy it cannot be denied ^{that in 1990 the respondents had also issued instructions (which do not appear to have been modified or superseded) for maintaining seniority list on All India basis of Hindi Translators Grade I and Grade II. If the transfers are not permissible from one region to another, the maintenance of seniority list on All India basis would not carry much meaning. As observed in the case of Union of India and Others v/s H.N. Kirtania [JT. 1989 (3) SC 1317] transfer orders should not be interfered with unless there are strong and pressing grounds rendering the transfer orders illegal on the grounds of violation of statutory rules or on grounds of malafide. In this case the statutory rules provide for All India transfer liability and we do not find any ground of malafide to warrant interference. Hence the requests for setting aside of the transfer orders dated 23.6.1992 cannot be acceded to. However, we would hasten to add that in O.A. 1684/92 the applicant has also requested for a direction to the respondents to give an option to the applicant to revert to his substantive post of U.D.C. in the Delhi region. The counsel for the respondents said that the applicant's lien in the post of U.D.C. had been terminated after he acquired a lien in the post of Hindi Translator Grade II and, therefore, it was not possible to give him option}

11

to revert. We expect a sympathetic consideration to the request of the applicant for reversion to the post of U.D.C., even though the lien would have been legally terminated, if there be a proper vacancy but we would clarify that this is not a direction.

6. With the above observations, the applications are dismissed with no orders as to costs. The interim orders stand vacated.

I.P. Gupta
Member (A)

25/8/92

Sanjay D. J.
Ram Pal Singh
Vice-Chairman (J)

True copy
attested

DM/cy.

25/8/92

Central Board of Secondary Education
Principal Bench
Cooper Nagar, New Delhi