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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated: This the 14th day of Nov 2005.

Original Application No. 1032 of 2005

Hon'ble Mr. K.B.S. Rajan, Member (J)
Hon'ble Mr. A.K. Singh, Member (A)

Gulab Chand Srivastava, S/o Sri G.S. Srivastava,
Presently Posted as UDC (SG), Employees Provident
Fund, Sub Regional Office, R/o Plot No. 13 Bhakti
Nagar, Main Lane,
VARANASI.

.....Applicant

By Adv: Sri Vinod Kumar

V E R S U S

1. Union of India through Secretary,
Ministry of Labour, Govt. of India,
NEW DELHI.
2. Central Provident Fund Commissioner,
14 Bhikhaji Kama Place,
NEW DELHI.
3. Regional Provident Fund Commissioner,
Nidhi Bhawan, Sarvodaya Nagar,
KANPUR.
4. Regional Provident Fund Commissioner (II),
Sub Regional Office, Ashok Vihar, Phase I,
VARANASI.
5. Shri Pankaj, Regional Provident Fund
Commissioner (II), Sub Regional Office, Ashok
Vihar, Phase-I,
VARANASI.

.....Respondents

By Adv: Sri N.P. Singh
Sri S. Chaturvedi.

O R D E R

By K.B.S. Rajan, JM

The applicant in this OA has challenged the
transfer order dated 22.07.2005 whereby he has been
posted from Varanasi (UP) to Behrampur (Orrisa).

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2. The applicant is working as UDC (SG) which is a Group 'C' post. According to the applicant as per order dated 08.02.1991 (Annexure RA-1), Group 'C' and 'D' are not liable to be posted out side the regions. In so far as general transfer is concerned according to him, during mid academic session transfers are not to be effected. Again as per the applicant the transfer order was not passed by the Competent Authority. It has also been contended that even if there is any need to transfer the applicant from Varanasi, the authorities could have posted him out of Varanasi but within the same Region.

3. Respondents have contested the OA and contended that the transfer order is legal and passed by Competent Authority. They have also stated that the need to transfer the applicant was felt as the applicant being Secretary of an Union which was de-recognized w.e.f. 01.10.2004 has been misguiding various employees and certain investigations are being conducted against him including in respect of certain corruption charges, and as such his retention any where in the UP Region would hamper smooth conducting of the investigation.

4. Pleadings having been complete, arguments were heard and we gave our anxious consideration. First, as to the transfer liability of the applicant.

True, as per order dated 08.02.1991, All India transfer liability was not extended to Group 'C' & 'D'. However, subsequently by Gazette notification dated 10.07.1992 published in the Gazette of India on 18.07.1992 the following modification has been made, vide Rule 8 (A) (d) of the Employees Provident Fund (Staff and Conditions of Service) Regulations 1962 as amended :-

"Notwithstanding anything contained in the paras (a) to (c) above, any employee may be transferred from one Region to another Region or to Central Office or vice-versa on administrative grounds or in the public interest."

5. In regard to the competence of the authority in effecting the transfer, the counsel for the respondents argued that the order was originally passed by the Central Provident Fund Commissioner Delhi who is competent to order interregional transfers. The impugned order only conveys the order of the Competent Authority. This has been based on records. And the main reason for transfer was that the continuance of the applicant in the same place would be highly prejudicial to the working environment and in this regard he had invited our attention to para 4 and 30 of the Counter Affidavit.

6. On the side of the applicant to substantiate the contention the following case laws have been cited:-

A. When transfer order is punitive in nature, the transfer is illegal

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i. *D.K. Gupta Vs. Union of India and others 2001 (3) ATJ 49*

ii. *Pradeep Goyal Vs. Regional Manager, Region IIInd, State Bank of India, Zonal Office, Meerut and others [(1992) 1 UPLBEC 223]*

iii. *State of UP and others Vs Jagdeo Singh, 1984 (Supp) SCC 413*

B. Transfer during the middle of the Academic Session would not be allowed

i. *Priyatosh Roy Vs. Union of India and others 2001 (2) ATJ 408*

ii. *Sukai Ram Vs. Union of India & Ors 2001 (2) ATJ 448*

7. On the side of the respondents, they have relied upon a recent comprehensive order in OA No. 1019 of 2005 of the this Bench.

8. In view of the fact that para 8 (A) (d) of the regularization provided for interregional transfer and the transfer order has been passed by the Central Provident Fund Commissioner, the contention of the applicant that Group 'C' and 'D' employees cannot be subjected to inter-regional transfer and that the impugned order has been passed by an incompetent authority crumbles to the ground. However, what is to be seen is whether the power to transfer has been appropriately invoked. Reason for transfer is that certain investigations against the applicant are going on and as such for smooth conduct of the investigation the applicant should be kept away from the scene. To a pointed question as to how long the investigation may take, counsel for the respondents fairly stated that it would be for a

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few months. If that be the case in the event of there being no material to the authorities to proceed with the disciplinary case, the applicant has to be brought back to UP Region since seniority is maintained region wise. This has been fairly conceded by the counsel for the respondents. The counsel for the applicant submitted that the allegations against the applicant as contained in the counter are so vague that it cannot be concluded that that are so grave as not to retain the applicant any where in the UP Region. He has stated that if at all the applicant has to be moved, intra regional transfer would suffice which would not hamper his seniority. But here again, he has submitted that even with respect to intra regional transfer, the authorities should not effect such transfer during the middle of the academic session. We agree with the submission of the counsel for the applicant. The authorities could have easily posted the applicant within UP region. Their contention that the applicant being an office bearer of the Union would exercise undue influence if he is posted any where in UP region is far fetched. Assuming without accepting that ^{their} ~~there~~ contention has merits, even then since according to the respondents the investigation is not likely to prolong, the applicant could have easily been posted on temporary transfer out side the region in case his presence within the region would hamper conducting of the investigation. Such a temporary transfer being for

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a short period, there would be no question of any disturbance to the education of the wards. The reasons furnished for the transfer also do not specify the exact nature of investigation so as to ascertain the gravity to arrive at a conclusion that the retention of the applicant within the UP Region would be prejudicial to the conducting of the investigation. The transfer order seems to have been passed just on the ground that the Central Provident Fund Commission has powers to effect inter-Regional transfers. That alone would not suffice. Though in matters of transfer the employer has wide powers, at the same time exercise of the said power should be on sound basis. The decisions of the Tribunal/High Court in regard to Mid Session Transfer as referred to above also goes in favour of the applicant. Again though in the impugned order it is not apparent that the transfer order is punitive from the counter it is manifest that the transfer order is punitive in character. Thus viewed from any angle the transfer out side the region which will entail disturbance of the seniority of the applicant is not justified.

9. In view of the above the OA succeeds. The impugned order dated 22.07.2005 is hereby quashed and set aside. The applicant is serving in the same place at Varanasi by an interim order against which the respondents have been stated to have filed a civil writ petition, which is also stated to have

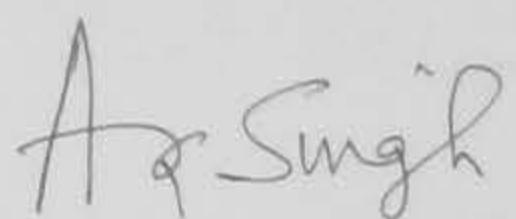
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been dismissed on the ground that the main OA has already been heard finally and orders reserved.

10. It is made clear that should the respondents feel that retention at Varanasi of the applicant would not be congenial even for a short period, the applicant could be shifted on temporary transfer if they so desire. They may also effect intra regional transfer but as the academic session is still on the respondents shall not effect any transfer order upon the applicant till the completion of the current academic session.

11. No costs.



Member (A)



Member (J)

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