

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO: 408 OF 1995

Cuttack this the 22nd day of March 1996.

RADHA RAMAN DAS APPLICANT

VRS.

UNION OF INDIA & OTHERS RESPONDENTS

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal: or not? No.

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15 FEB 96

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ORIGINAL APPLICATION NO. 408 OF 1995

Cuttack this the 22nd day of March 1996.

CORAM:

THE HONOURABLE MR. H. RAJENDRA PRASAD, MEMBER (ADMN.)

Radha Raman Das, aged about 41 years,
Son of Late Akshaya Kumar Das resident
of Village/P.O./P.S. Ghasipura,
District-Keonjhar, at present working
as Head Clerk in the Office of Regional
Provident Fund Commissioner, Orissa,
Bhavishyanidhi Bhawan, Janapath, Unit-9,
Bhubaneswar-7, District-Khurda. Applicant

By the Applicant : M/s. K.C. Kanungo, S.S. Mohapatra, Advocates.

-Versus-

1. Central Board of Trustees, represented
by Central Provident Fund Commissioner,
2nd & 3rd Floor, Business Park, No.25,
Sivaji Marg, New Delhi-15.

2. Regional Provident Fund Commissioner,
Orissa, Janpath, Unit-9, Bhubaneswar-7,
District-Khurda. Respondents

By the Respondents : Mr. Ashok Mishra,
Senior Standing Counsel
(Central).

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O R D E R

MR. H. RAJENDRA PRASAD, MEMBER (ADM): A Sub-Regional Office of the Regional Provident Fund Commissioner, Bhubaneswar, was established at Rourkela in 1984. It was, however, found difficult to find adequate number of willing officials to man the posts of Head Clerks at the Sub-Regional Office and also there was no settled policy, initially, governing the transfers between the Regional and Sub-Regional Offices. On the basis of a verdict of this Tribunal, a system of cyclic panels was introduced whereby Head Clerks in the Regional Office are transferred in order~~s~~ of seniority to the Sub-Regional Office for a period of one year. Two panels, drawn-up on cyclic basis, have run their course and the third is in operation now.

2. The applicant, whose name figured at number 46 of the second cycle, was spared of the necessity of having to move to the Sub Regional office at Rourkela in terms of Central Provident Fund Commissioner Letter No.P.III/11(20)/82 dated 6.10.1993 which envisaged the ~~gratuity~~ of 'protection' from rotational transfers to the office-bearers of recognised unions upto 2 years during their incumbency in an elected post. During the operation of the 2nd cycle, the applicant was holding an elected post and was therefore 'protected' from the liability of transfer to Rourkela. In April, 1995, he lost the election and thereafter ceased to enjoy the 'protection' so granted to him earlier. On 7 June, 1995, he was asked to be in readiness to move to Rourkela under a liability which arose under the second

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cycle- which, incidentally had run its course by then, as may be seen from the names of other officials who were similarly asked to be prepared to move out; these four officials, it needs to be noted, belonged to the 3rd cycle while the applicant was in the second. He was transferred out the next day. On the same date, 8th June, 1995, the applicant submitted a representation to the Regional Provident Fund Commissioner, Bhubaneswar in which he pointed out that (a) the orders of transfer coming just a day after the warning order had left him no time to prepare for the shift, (b) his turn in the 3rd Cycle, which was now current, was yet to come, and (c) he had certain family problems to solve before moving out of Bhubaneswar. He requested for grant of six months to proceed to Rourkela. There is no evidence of this representation having been disposed of by Respondent 2. On 10.7.1995, one Bulakar Sahoo was posted in the applicant's place in the Regional Office. On 21.7.1995 orders were issued to the effect that the applicant stood relieved by the said Bulakar Sahoo on 14.7.1995 a date which was a week prior to the issue of the said orders.

3. The grievance of the applicant are two fold:

- (i) he had been exempted from transfer to Rourkela, while the 2nd Cycle was operative, on account of the fact that he had been holding an elective-post of office bearer of a recognised union;

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(ii) he has been transferred out by invoking a cycle which had already run its course.

The applicant apprehends that he shall have to move twice in quick succession as a defunct cycle has been invoked now, and again under the current cycle, when his turn comes, shortly.

4. The Respondents broadly confirm the facts of the case as stated by the applicant. They insist, however, that the applicant had been protected from a transfer under the 2nd Cycle and such protection being no longer available to him on account of his ceasing to be a Union office bearer - he has to move out in terms of the same cycle even if it has by now exhausted itself.

5. It is unarguably clear that a Cycle which has run its full course cannot under any circumstances be revived and applied, retrospectively, in individual cases against anyone, regardless of whether or not he is holder of ^a union office. This point does not warrant any elaboration. The main issue in this case is whether the concession against transfers granted to the union office-bearers is a 'protection' for a temporary period or 'exemption' for the period of a whole cycle. The circular letter (No.P.III/II (20)82 dated 6.10.1995) employs the two expressions alternatively - 'protection' twice, and 'exemption' five times



(including in the subject portion). That apart, it is evident from the said circular, that the concession of exemptions, and the basic idea underlying it, was to facilitate a proper and purposeful union activity which may not be achieved if its main functionaries are obliged to remain away from their headquarters. Certain legitimate, and by now widely-accepted, facilities are routinely extended by all the departments of the Government to the elected office-bearers of all recognised unions with a view to making it possible for them to function effectively as elected representatives of the employees. The arrangement involving exemptions from rotational transfers envisaged in the circular of the C.P.F. Commissioner, referred to in para 2 above, has to be viewed as an essential component of the industrial relations governing the ~~inst~~^{erac}tion between the department and the union. Although, the circular is not very specific on the question whether or not the exemptions granted to the four office-bearers of Regional Union, is in the nature of a permanent or temporary concession, ~~nature~~ it should be possible to derive a harmonious and logical interpretation from it - and it is that the exemption granted to such functionaries is of a permanent nature throughout the relevant cycle in operation at that point of time. Thus, if an office-bearer had not moved out on rotational transfer in his normal turn, before his election, then he shall not be required any more to do so, during the rest of the cycle for a period of two years. If, on the hand, his normal turn is reached after he ceases to hold an

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elected office, or completes two years as an office-bearer, whichever is earlier, then he shall be required to move out like everyone else. The in-built provision of two-year limit for availing this concession is a sufficient guarantee against any possible or attempted misuse of this fair and legitimate concession.

6. In the light of the preceding discussions, it is held that the transfer of Shri R.D.Das to Rourkela, by invoking a liability under an exhausted and defunct cycle, was irregular. The orders contained in R.P.F. Commissioner, Orissa, Memo No. OR/Pers/107/80/Vol.VI/2360(13) dated 21.7.1995 are hereby set aside. If the applicant has ~~moved out on transfer and has been at Rourkela for a certain length of time; in already to complete~~ the tenure of one year, and there is no need to disturb his placement at present. In that case, the period of his stay shall be reckoned and adjusted as if it was in the current cycle and he shall not be moved out once again under the third cycle. If he has not actually moved out already, then he shall be required to do so, as per his turn, in the third cycle.

7. The applicant shall apply for, ~~any~~ any leave he may be entitled to from 14th to 26th July, 1995, and the period shall be regularised by grant of suitable ^{due} type of leave ^{to him.}

^{are} ^{basis of those}
These orders passed wholly on the facts which have been projected in this case. This judgment, is therefore, to be regarded as one in personem, and shall not form a precedent for any future litigation. It is desirable that

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Respondent No.1 examines the facts of this case comprehensively and issue a clear ruling regarding the validity or otherwise of such 'exemptions' within or beyond a particular cycle, to eliminate the existing doubts and ambiguities in the Circular dated 6.10.1993.

Thus the Original Application is disposed of.
No costs.

(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15 FEB 96

K. N. Mohanty//

As authorised by Hon'ble Vice-Chairman
on 19.3.96 the order is pronounced in open court
on this day of 22nd March, 1996.

Harasimhasarhu

22/3/96
(N. SAHU)
MEMBER (ADMINISTRATIVE)