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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.NO.370 OF 2004

Cuttack, this the 16th day of September, 2004

DEBI PRASAD BHATTACHARYA.

APPLICANT.

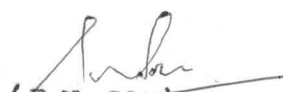
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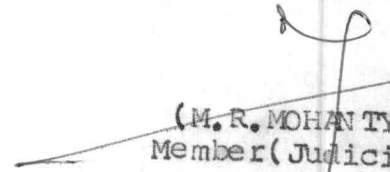
UNION OF INDIA & OTHERS.

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


(B.N. SOM)
Vice-Chairman


(M.R. MOHANTY)
Member (Judicial)

10/09/04

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 370 of 2004
Cuttack, this the 10th day of September, 2004

C O R A M:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDL.).

....

Sri Debi Prasad Bhattacharya,
Son of Sri Durga Prasad Bhattacharya,
Aged about 35 years,
at present working as Asst. Provident
Fund Commissioner, Office of Regional
Provident Fund Commissioner,
Bhubaneswar (under orders of transfer
to Regional Office, Kanpur) resident of
Qrs. No. B/1, EPF Colony, Sahidnagar,
BHUBANESWAR-751 007 DIST: KHURDA.

.... Applicant.

By legal practitioners: M/s. K. C. Kanungo,
S. Behera,
C. Padhi,
Advocates.

- V e r s u s -

1. Chairman,
Central Board of Trustees (EPF),
Shram Shakti Bhawan, Rafi Marg,
NEW DELHI-110 001.
2. Central Provident Fund Commissioner,
Bhavishyanidhi Bhawan, 14, Bhikaji
Cama Place, New Delhi-110 066.
3. Regional Provident Fund Commissioner,
Orissa, Bhavishyanidhi Bhawan,
Unit-9, Janpath, Bhubaneswar-751022,
Dist. Khurda.
4. The Regional Provident Fund Commissioner,
Uttar Pradesh, Nidhi Bhawan, Sarvodaya Nagar,
KANPUR-208005 (U.P.).

... Respondents.

By legal practitioner: Mr. S. S. Mohanty,
Advocate.

....

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Sri Debi Prasad Bhattacharya, working as Assistant Provident Fund Commissioner, has filed this Original Application under section 19 of the A.T. Act, 1985 being aggrieved by the order dated 15-06-2004 (Annexure-A/1) passed by the Respondent No.2 in rejecting his representation dated 08.04.2004 seeking posting to any of the three places chosen by him in accordance with the transfer policy guidelines of the Employees of EPFO Provident Fund organisation (in short 'EPFO') read with amended transfer policy guidelines dated 04-03-2004.

2. The case of the Applicant, in a nut-shell, is that he had challenged his posting from Bhubaneswar Regional Office of EPFO to Regional Office, Chhatisgarh issued by the Office of the Respondent No.2 dated 30-06-2003 (Annexure-A/4). This matter was brought before this Tribunal in Original Application No.393/03. This Tribunal, in its order dated 30.09.2003 directed the Respondents to retain the Applicant in Bhubaneswar till the end of December, 2003 in order to enable him to appear at the Final Law Examination and, thereafter, to relieve him to join in his new place of posting. The Applicant, however, carried the matter to Hon'ble High Court of Orissa in W.P.(C)NO.13691/03 and the

Hon'ble High Court of Orissa, in its order dated 02-04-2004 while upholding the orders of this Tribunal granted liberty to the Applicant to make representation to the appropriate authority for suitable posting in accordance with Clause-3 of Paragraph-4 of the guidelines. Accordingly, Applicant submitted a representation on 08.04.2004 to the Respondent No.2 seeking posting in one of the three choice stations indicated by him in his representation.

3. The grievance of the Applicant is that the Respondent No.2 has turned down his representation in a routine manner without proper application of mind. Contrary to the directions of the Hon'ble High Court of Orissa, the matter has not been considered in terms of Clause-3 of paragraph 4 of the revised guidelines and he has been posted out of the Zone to Kanpur; violating the conditions set-forth in the guidelines. He has also pointed out that Respondent No.2 has incorrectly stated in his order that he is not entitled to be posted either to Berhampur or Rourkela; as he has overstayed the normal tenure. He has disputed this plea on the ground that Berhampur and Rourkela being separate stations than Bhubaneswar and he having not ever worked either in Berhampur or at Rourkela, question of overstaying in those offices does not arise. He has also submitted

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that his transfer from Bhubaneswar to Kanpur constitutes posting of an APFC outside the zone; which is a deviation from the transfer policy guidelines and for making such a deviation it has not been disclosed; whether he had reported the matter to the Executive Committee of CBT as laid down in the transfer policy guidelines. He has, therefore, submitted that the impugned order of transfer and also rejection of his representation dtd. 08.04.2004 smells of mala fide and arbitrariness.

4. By filing counter, the Respondents while clarifying various aspects of the transfer policy, they have not thrown any light as to why, the Applicant was transferred out of the zone; although it is said in the revised transfer policy (Annexure-A/3) that as far as possible, officers at the level of APFCs and RPFC-I should be accommodated in the zone to which they belong. In the transfer guidelines at clause-II of paragraph-3 while describing tenure, it has been clarified that the tenure of an officer of the grade of APFC at one operational station will not extend beyond four years and total tenure shall be maximum for a period of five years, and for the purpose of tenure, SAOs located in the same municipal limits of a regional office will be included in the

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in the operational station for the purpose of counting of tenure. The posting at Headquarters and NATRSS, ZTIs & Sub ZTIs will be treated separate stations for determining the tenure. The Respondents have also not clarified as to why the request for posting in sub-Regional Office at Berhampur or Sub-Regional Office at Rourkela made by the Applicant cannot be considered. They have, on the other hand, stated that the Applicant has effectively given only two choice of places i.e. either Orissa or Kolkata and, therefore, his request could not be considered favourably. By filing rejoinder, the Applicant has controverted the submissions put forward by the Respondents in their counter as to why his choices could not be considered favourably.

5. Heard Mr. K.C. Kanungo, Learned counsel appearing for the Applicant and Mr. S.S. Mohanty, Learned Counsel representing for the Respondents and perused the materials placed on record.

6. We have carefully examined the rival submissions of the parties. The Hon'ble High Court of Orissa disposed of the Writ petition giving direction to the Respondents to consider the representation of the Applicant in terms of clause-III of paragraph 4 of the guidelines. For better understanding of the matter, we would like to quote the clause-III of the guidelines which are as under:-

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"III-Geographical span of movement:

As far as possible officers at the level of APFCs and RPFC-I should be accommodated in the zone to which they belong. This will be subject to availability of vacancies and administrative exigencies. The total tenure on an officer in a Zone shall not exceed 08 years.

Officers due for transfer from the station after completion of prescribed tenure will be allowed to indicate three stations of their choice in order of preference and posting which will be subject to availability of posts but will not be considered as a matter of right".


7. On a plain reading of Clause-III, it is crystal clear that there is a commitment on the part of the Respondents-Administration that at the level of APFCs and RPFC-I(may be including RPFC-II also) 'should' be accommodated within the zone. The intention of the Hon'ble High Court of Orissa was that the applicant's request for posting within the zone should be considered. After going through the order of the Respondent No.2 (Annexure-A/1), we are of the view that the representation of the Applicant was not seen/considered strictly within the ambit of para-I of Clause III; because the Applicant has been posted out of the zone. It is not the case of the Respondent No.2 that there was no post of APFC available on 15.06.2004 to accommodate the Applicant not only in Rourkela, Berhampur or Regional Office, Kolkata and its SOAs or the sub regional Office, Howrah and Titagarh but in other Regional/Sub Regional offices in the zone or

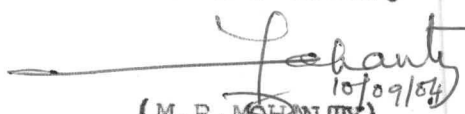
in the zonal training/sub zonal training centres in the zone. To this extent, the grievance ventilated by the Applicant that his representation was turned down, without application of mind cannot be brushed aside. As it is the declared policy of the Department to post the APFCs within the zone, no exception should have been made in this case. It is of no avail on the part of the Respondents to have stated in the counter that the Respondent No.2 has been given power to post a Gr.A officer outside the Zone for the reasons to be recorded in the larger public interest and in the administrative exigencies and with the approval of the Chairman of Central Board of Trustees ; because no such reason has been disclosed before us either through the Counter-affidavit or during the oral argument. We are also unable to hold that the order passed at Annexure-A/1 is truly a speaking order. We, therefore, hold that the representation of the Applicant dated 8.4.2004, has not been considered in terms of the directions of the Hon'ble High Court of Orissa as referred to earlier.

8. In the circumstances, we direct the Respondent No.2 to consider the representation dated 8.4.2004 submitted by the Applicant once again and post him to one of the operational stations chosen by him or if on administrative grounds, it is not feasible to accommodate him in one of these three places, he may be considered for posting in any other office including

the Zonal/Sub-zonal Training Centre located within the zone. Revised order on his representation dated 08.04.2004 should be passed within a period of 30 (thirty) days from the date of receipt of a copy of this order. In the meantime, the Applicant should be allowed to join in the Regional Office, Bhubaneswar pending disposal of his representation to minimise his hardship.

9. In the result, this Original Application is disposed of in the aforestated terms. No costs.


(B.N. SOM)
VICE-CHAIRMAN


(M. R. MOHANTY)
MEMBER (JUDICIAL)