

In the Central Administrative Tribunal
Calcutta Bench

OA No.1363 of 1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Paresh Chandra Karan

.... Applicant

Vs.

- 1) Union of India, through the Secretary,
Ministry of Labour & Employment, Shram
Shakti Bhawan, New Delhi.
- 2) Central Provident Fund Commissioner,
Mayur Bhawan, New Delhi.
- 3) Regional Provident Fund Commissioner-I,
West Bengal, Park Street, Calcutta.
- 4) Regional Provident Fund Commissioner(Adm),
West Bengal, Park Street, Calcutta.
- 5) Central Board of Trustees, through Provident
Fund Commissioner(Admn), Employees Provident
Fund Organisation, Regional Office, West
Bengal, Calcutta.
- 6) Regional Provident Fund Commissioner-II,
West Bengal, Howrah, S.A.C., Bellilious
Road, Howrah.

..... Respondents.

For the Applicant : Mr. Samir Ghosh, Ld. Advocate

For the Respondents: None

Heard on : 7-8-98

Date of Judgement : 7-8-98

ORDER

Heard Ld. Advocate Mr. Ghosh on behalf of the applicant. None appears on behalf of the respondents. Though the case was adjourned on the mention made by Ld. Advocate Mr. Ghosh on 6-8-98, to-day also Ld. Advocate for the respondents Mr. Roy did not come. Thereby, case is taken up for ex-parte hearing. I find that this is a case against the order of transfer which has been challenged by the applicant by filing this application.

Contd.....

2. According to the applicant, he is working as Section Supervisor in the office of the Regional Provident Fund Commissioner (Admn.) posted at Howrah and by order dated 24.9.96 (Annexure-A¹²), ^{sw} has the applicant has been transferred to Jalpaiguri. According to the applicant, as per medical certificate he is 50% physically handicapped. Thereby, he ought to have been exempted from rotational transfer on the ground of handicapness as per guidelines issued by the Government of India regarding regularisation of transfer of handicapped persons in the department. Hon'ble Tribunal, after hearing Id. Advocates for both the parties on OA No.1222 of 1996, directed the respondents to dispose of the representation of the applicant with a speaking order. Accordingly, respondents passed speaking order on 25.10.96 (Annexure A-13 to the application) and that speaking order has been challenged by the applicant in this application.

3. I find that the long order has been passed by the authority and it is admitted by the respondents that there is a guideline relating to the posting of physically handicapped person in the department. And there is a guideline that physically handicapped persons should be posted near to their native places. It is also stated in the guideline that in the case of holders of Grade 'C' or Grade 'D' post who have been recruited on regional basis and who are physically handicapped, such persons may be posted, as far as possible, subject to administrative constraints near to their native places within region. Considering the memorandum of Govt. of India, the authority rejected the representation and opined that there is no embargo fixed by the Govt. of India that handicapped persons should not be posted out. The only criteria stipulated are that they should be considered for posting near to their native places within the region. Accordingly, the respondents refused to interfere with the order of transfer on the ground that Jalpaiguri is not a very far off place and it is within the region of West Bengal. According to the applicant, Jalpaiguri is more than 750 k.m. from his native place. ⁵⁰ ~~It is also opined by~~ the Regional Provident Fund Commissioner, West Bengal that his posting was made to Jalpaiguri which is not a very far off place and it is within the region of West Bengal. ^{and,} Moreover, Jalpaiguri is well-connected by railway /

As per Commission to the Guideline
transport system from Calcutta and transfer order issued is also for
as per Commission to the Guideline of the Govt.
limited period of 1 year. ~~It was further observed by him in the im-~~
~~pugned speaking order that~~ neither his appearance nor his movements
are indicative or suggestive of any serious physical deformity which
can interfere with his movements in any manner. *are contrary to the*
guideline and by the Silt

4. I have considered all the observations made in the speaking
order and I find that the guideline in the Memorandum in question was
issued considering the welofareness of the physically handicapped per-
sons. From the Doctor's certificate it is found that he was 50%
handicapped. Doctor is concerned with the patient only. In view of
the aforesaid circumstances, I am of the view that the speaking order
does not show what public interest would suffer if he was not trans-
ferred from Howrah to Jalpaiguri. It is found that it was not passed
after considering material facts and circumstances on records to justify
the public interest for which the applicant was transferred from Howrah
to Jalpaiguri and thereby, I find that the impugned order of transfer
is not in the public interest as stated in the order of transfer and it
was issued ignoring the guideline given in the Memorandum in question
as mentioned and thereby, I set aside the impugned order of transfer as
well as the speaking order dated 25.10.96 passed by the Regional Pro-
vident Fund Commissioner, West Bengal and accordingly, application is
allowed awarding no cost.

11/11/98
(D. Purkayastha)
Member (J)