

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

DATE OF ORDER : 21.12.1998.

O.A.NO. 300/1998.

Jawahar Lal S/o Shri Rewat Ram By Caste Suthar, R/o 141, Section VII Extension, Opp. New Power House, Jodhpur, working as Section Supervisor, Sub Regional Office, 121, K.N.Nagar, Chopasni Road, S.R.O. Employees Provident Fund Organisation, Jodhpur.

..... APPLICANT.

VERSUS

1. The Union of India through the Labour Secretary, Government of India, Shram Shakti Bhawan, Rafi Marg, New Delhi.
2. The Regional Provident Fund Commissioner (I), Nidhi Bhawan, Jyoti Nagar, Jaipur-5.
3. Shri J.K.Koli, Regional Provident Fund Commissioner (I), Nidhi Bhawan, Jyoti Nagar, Jaipur-5.
4. The Assistant Provident Fund Commissioner & Incharge, Sub-Regional Office, Employees Provident Funds Organisation, 121, Kamla Nehru Nagar, Chopasni Road, Jodhpur.
5. The Central Provident Fund Commissioner, HUDCO Vishala, 14, Bhikaji Kama Place, New Delhi.

..... RESPONDENTS

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Mr. M.C.Bhoot, Counsel for the Applicant.

Mr. N.M.Lodha, Counsel for the Respondents.

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CORAM

HON'BLE A.K.MISRA, JUDICIAL MEMBER

HON'BLE GOPAL SINGH, ADMINISTRATIVE MEMBER

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O R D E R

(PER MR. A.K.MISRA, JUDICIAL MEMBER)

The applicant has filed this O.A. with the prayer that the impugned order of transfer dated 24.9.98

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(Annex.A/1) be quashed and the applicant may be awarded cost. By way of interim relief, the applicant prayed that operation of the Transfer order be stayed.

2. After hearing the learned counsel for the applicant, notice of the O.A. was ordered to be issued to the respondents. The operation of the transfer order was, however, not stayed.

3. The applicant who is presently posted as Section Supervisor, Sub Regional Office of Employees Provident Fund Organisation, Jodhpur, was transferred by the impugned order in the same capacity to Sub Regional Office of the Provident Fund Organisation/ and was relieved by the competent authority on 25.9.98. The Kota  
applicant has challenged the transfer order on the following grounds :-

- i) Transfer is a mala fide one ;
- ii) Transfer has been effected to curtail the applicant's Union activities ;
- iii) Transfer of the applicant is an instance of frequent transfers;
- iv) The Transfer of the applicant is a mid term educational session transfer;
- v) Transfer has been made to victimise the applicant and is arbitrary.

4. Notice of the O.A. was given to the respondents who have filed their reply. The respondents have denied all the allegations of the applicant and have stated that the Sub Union of which the applicant

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claims himself to be a President is not a recognised Union. The transfer has been made in exigencies of service and in administrative interest. The transfer has not been made in violation of any statutory direction. No instance of mala fides have been shown, therefore, the transfer cannot be interfered with. The Application deserves to be dismissed.

5. We have heard the learned counsel for the parties and considered the rival arguments.

6. It was argued by the learned counsel for the applicant that applicant who factually as per Photo Annex.A/4 and other documents is President of the Union Jodhpur of the Staff Members of the Sub Regional Office, /has been transferred to Kota and thereby the administration has obstructed the applicant from discharging his duty as elected President of the Staff Union. This action of the administration amounts to unfair Union practice and consequently the transfer deserves to be quashed.

7. On the other hand, it was argued by the learned counsel for the respondents that Sub Regional Office Staff Union is neither a recognised Union nor the Constitution of the Federation of Union of the Employees Provident Fund Organisation has been placed before the Tribunal to show that Staff Union of Sub Regional Office of the said Organisation is an approved activity of the Central Union of the said Organisation. Therefore, simply because the applicant was administered oath by the Officer of the Organisation, does not mean that the Staff Union of Sub Regional Office was recognised by the Organisation or its Sub Regional Office. Moreover, such Sub Union cannot come into being unless otherwise

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provided by the Constitution of the Central Union. Therefore, this ground to challenge the transfer is not available to the applicant.

8. We have considered the rival arguments. There is nothing on record to show that Constitution of the Central Union provides for any such Staff Union to come into being in the Sub Regional Office. Therefore, in our opinion, the status of the applicant as elected President of the said Staff Union cannot be given any legal recognition simply because one of the officers of the said Organisation administered oath to the applicant. Even if for argument sake, it is admitted that such Staff Union of the Sub Regional Office of the Organisation is an approved step even then elected office bearers are not immuned from being transferred from one place to another. Transfer of an officer is depended on many considerations including smooth running

of office and coordial relations amongst the staff and the officers.

9. We have also considered the arguments of the learned advocate for the applicant about transfer being mala fide. In our opinion, no specific allegation of mala fide against any of the officers has been levelled in the OA. We are called upon by the learned advocate to infer mala fide from the facts and circumstances as pleaded but we are unable to agree to this submission because there should be some factual description of mala fide and then remaining gravity of malafide could be found out from the circumstances arising by narration of facts. In the instant case, it is alleged that having refused to talk to the executive

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committee of the elected union on the point of grievances of the staff, the prejudices of the local officer is very much clear and his annoyance has resulted into transfer of the applicant. But, there is nothing on record to show that there were number of pending grievances of the staff the demand for redressal of which was pressed by the applicant. The Officer and the Union can be said to be in confrontation with each other only when certain legitimate demands have been raised by the Union, which were allowed to remain pending for pretty long time and the officers refused to redress them. But here in the instant case, there is nothing to show any such thing. Annex.A/5 is an application by applicant himself to respondent No. 3 in respect of his pending grievances. This letter reminds of all earlier representations of the applicant relating to such pending grievances. It does not speak of any single collective grievance of staff members. Therefore, it cannot be said that applicant had been refused audience by the officer in respect of some pending demands of the staff members. The applicant cannot be allowed to press for his own demands in the capacity of a President of the said Staff Union. In other words, the applicant in the capacity of the President of the Staff Union cannot be allowed to say that he was pressing for the grievances of the staff while he has initiated submissions in respect of redressal of his own demands. In our opinion, this is a case which clearly goes to show that applicant is trying to make his own grievance as that of grievances of staff members and has tried to press his personal demands in the garb of demands of the staff members in the capacity

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of the President. This, in our opinion amounts to misuse of office by the applicant and if in these circumstances for better and smooth running of the office, the applicant has been transferred to another sub region, that does not amount to either victimisation or unfair administrative action in service matters.

10. Hon'ble the Supreme Court has time and again very clearly said that the transfer of an employee cannot be interfered with unless the same is found to be mala fide and in colourable exercise of power. In the instant case, no mala fide has been shown or established by the applicant. The applicant has also not been able to establish that the transfer is in colourable exercise of powers. When a person has a transfer liability of either through-out India or through-out the region, then the transfer has got to be taken as an incident of service and not as a punishment. It is generally seen that certain persons for their selfish ends get themselves elected to such sub unions or regional unions and then try to consolidate their position by insisting to stay at that particular station. It should be made clear that no employee has a vested right to stay at a particular station. On this point, we are not convinced that the applicant was transferred from Udaipur to Jodhpur only a year back and has again been transferred to Kota and thus is being subjected to frequent transfers. In our opinion, this is not a frequent transfer. All that we can say is that an employee has to prove his worth to his officer so that he may be indispensable instead of showing himself to be intolerable. There may be reasons with the applicant in respect of his non adjustment on a particular atmosphere ~~for some specific reasons~~ but office is not a place where

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such grievance or dis-satisfaction can be allowed to raised without being curbed. Naturally, transfer in such matter is the only solution, therefore, we are not convinced in the instant case that transfer is a mala fide one or has been done in order to victimise the applicant.

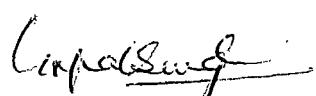
11. Rulings 1995 (29) ATC 45 -

G.Prabhakaran Versus Divisional Railway Manager, Southern Railway, Madras and Others, (1996) 34 ATC 255 - Vinod Sahi Versus Union of India and Others and few other rulings cited by the learned advocate for the applicant, were considered. There cannot be two opinions about the rules propounded therein but transfer is a matter which is more depended on factual aspect than on legal aspect. Since the facts and the circumstances of each case are different, therefore, rules propounded in one case cannot be applied in another case. Moreover, these two rulings cited above, are also distinguishable. This is not the case of the applicant that he was transferred to adjust and accommodate someone in his place, therefore, the case of G.Prabhakaran is not applicable. This also not the case of the applicant that his transfer has been made to frustrate the demands of the staff members in respect of strike or similar union activities, therefore, the case of Shri Vinod Sahi too is not applicable. Hence, the citations of learned advocate for the applicant are of no help to him.

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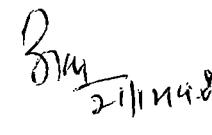
12. So far as the question of mid term transfer is concerned, we have considered the aspect and also the ruling cited by the learned counsel for the applicant i.e. (1994) 28 ATC 99 - Director of School Education Madras and Others Vs. O.Kuruppathevan and Others. No doubt, the applicant has claimed that his children are college going but there is nothing on record to show that his children are studying in various classes, as alleged by him. Even if for argument sake, it is admitted that applicant has college and school going children even then the transfer cannot be interfered with. The transfer order was passed as far back as ~~September 1998~~ and was challenged before us in the end of November 1998. The personal convenience and difficulties cannot be allowed to be paramount than public interest. Every Government servant renders job in public interest, therefore, if he has been transferred to Kota he has to discharge his duty at Kota because it is his first and foremost obligation. In the instant case, the successor of the applicant has come and joined the duties. Therefore, staying the transfer till the end of the educational session is also out of question because that would necessarily mean retransferring the applicant's successor from their post who is not a party before us and has not been called upon to explain his own difficulties in the instant case. Therefore also, the applicant's transfer cannot be interfered with.

13. From the foregoing discussion, we come to the conclusion that the Original Application has no force and deserves to be dismissed and is hereby dismissed with no orders as to cost.

  
(GOPAL SINGH)

Admvt. Member

MEHTA

  
(A.K. MISRA)  
Judl. Member

Copy Recd

Gov

24/11/98

Part II and III destroyed  
in my presence on 24/11/98  
under the supervision of  
Section Officer (1) as per  
order dated 26/11/98

Section Officer (1) record

Copy of order

Sent to S. M. H. Hudda

by Regd AD Bldg

No 503

dt 28/11/98

re  
28/11/98