

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 177/2009

Date of Order: 21.2.2011

CORAM:

HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER

Jawahar Lal S/o Shri Rewat Ram, aged about 54 years, R/o 141, Sector 7 Extn. New Power House Road, Jodhpur, presently working as Section Supervisor, in the office of Employees' Provident Fund Organization, Sub-Regional Office, Jodhpur.

...Applicant.

Mr. Manoj Bhandari, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, New Delhi.
2. The Employees Provident Fund Organization through Central Provident Fund Commissioner, Bhavishya Nidhi Bhawan, 14, Bhikaji Kama Place, New Delhi.
3. The Additional Central Provident Fund Commissioner (HR&RAJ), Sector 16-A, in front of Kothi No. 174, Old Faridabad (Haryana).
4. The Regional Provident Fund Commissioner (I), Employees' Provident Fund Regional Organization, Nidhi Bhawan, Jyoti Nagar, Vidyut Marg, Jaipur (Raj.).
5. The Regional Provident Fund Commissioner (Administration), Employees' Provident Fund, Regional Organization, Nidhi Bhawan, Jyoti Nagar, Vidyut Marg, Jaipur (Raj.).
6. The Regional Provident Fund Commissioner (II). & Officer In-charge, 130, Paschim Pal Vihar Yojna, Opp. Shankar Nagar, Chopasni Housing Board, Sub-Regional Office, Employees' Provident Fund Organization, Jodhpur.

... Respondents.

Mr. D.C. Sharma, counsel for respondents.

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ORDER
(Per Justice S.M.M. Alam, JM)

Applicant Jawahar Lal has preferred this Original Application seeking relief that by appropriate order or direction, the order dated 06th August, 2009 (Annexure A/1) passed by the respondents transferring the applicant from SRO Jodhpur to SRO Udaipur on the post of Section Supervisor be declared illegal and be quashed and set aside, with further prayer that the respondents be directed to keep the applicant in the office of SRO, Jodhpur on the post of Section Supervisor and pay him salary month by month.

2. At the very outset, I would like to say that the facts of the case and the circumstances which gave rise to the filing of the Original Application have been fully mentioned in the separate orders passed by the Hon'ble Member (Judicial) Dr. K.B. Suresh and Hon'ble Member (Administrative) Shri V.K. Kapoor (now dead), and therefore I do not feel any necessity to rewrite the facts and circumstances of the case giving rise to the filing of the Original Application. However, on perusal of both the judgments, I find that on similar facts and circumstances, both the Hon'ble Members have arrived at different findings. According to the finding of the Hon'ble Member (J), the impugned order Annexure A/1 whereby the applicant Jawahar Lal has been transferred to SRO Udaipur from SRO Jodhpur and has been relieved with effect from 07.08.2009 (A/N), suffers from malafides and so Hon'ble Member (J) quashed the transfer order and also imposed a cost of Rs. 10,000/- (Rupees Ten Thousand) on the respondents. On the other hand, the Hon'ble Member (A) was of

the view that the order of transfer was not apparently malafide rather the same was made on administrative ground keeping in view larger interest of the organization and so he opined that there was no need of calling for any intervention in the impugned order and accordingly he dismissed the Original Application. Now, before me, the question is which of the views is correct and according to the law.

3. At the very outset, I would like to say that it is settled law that an employee holding a transferable post cannot claim any vested right to work at a particular place, and order of transfer from one place to another place in public interest or in the interest of administration cannot be quashed and set aside by the Tribunal / Court unless it is proved that the same suffers from malafide.

4. The learned advocate appearing for the respondents, in support of his argument that the applicant's post is transferable, has placed before me the guidelines incorporated in the Employees' Provident Fund (Officers and Employees' Conditions of Services) Regulations, 2008 (hereafter will be called as EPF, Regulations, 2008). He submitted that as per Rule 11 (2) of the abovementioned EPF, Regulations, 2008, every employee of the Organization carrying a scale of pay of a group 'B' (Non-Gazetted) post under the Central Government and group 'C' and 'D' employees shall be liable to serve anywhere in the respective regions in which they are appointed. He submitted that there is no dispute that the applicant's transfer and posting will be governed by Rule 11 (2) of EPF, Regulations, 2008. He further submitted that as per this EPF, Regulations, 2008, no tenure is

fixed for transferring any employee from one place to another. Learned advocate of the applicant while arguing the case did not dispute this point and conceded that the post of the applicant is transferable within the region in which he was appointed. Thus, I have no difficulty in holding that the order of transfer i.e. annexure A/1 is not violative of any Rules or Regulations framed by the department. So, there appears no illegality in passing the said impugned transfer order by the respondents.

5. Now the next point is that whether the impugned transfer order suffers from any mala fide. In this regard, learned advocate of the applicant has placed several decisions before me in support of his submission that if an order of transfer is affected by mala fide, such transfer order should be quashed and set aside. He has placed reliance upon the following decisions to support his contention: -

- (i) AIR 1988 SC 2005 – **The Governing Body, St. Anthony's College, Shillong and others vs. Rev. Fr. Paul Petta of Shillong East Khasi Hills.**
- (ii) (1997) 6 SCC 169 – **Arvind Dattatraya Dhande vs. State of Maharashtra and Others.**
- (iii) 1994 Supp (2) SCC 666 – **Director of School Education, Madras and Others vs. O. Karuppa Thevan and Another.**
- (iv) WLR 1991 (S) Raj 136 – **Narpat Singh Rajpurohit vs. State of Rajasthan.**
- (v) AIR 1987 SC 287 – **B. Varadha Rao vs. State of Karnataka and Another.**

I have perused all the abovementioned decisions relied by the applicant's lawyer. In the case of **The Governing Body, St. Anthony's College, Shillong and others vs. Rev. Fr. Paul Petta of Shillong East Khasi Hills** (AIR 1988 SC 2005), the applicant Rev. Fr. Paul Petta was appointed as Principal of St.

Anthony's College getting deficit grant-in-aid from Government, was transferred to another institution as a Teacher by governing body of the college and so in this background, it was held by the Court that his transfer from the post of Principal seriously affected his status and would not have been ordered without giving him opportunity of hearing. In the instant case, the transfer of the applicant from one place to another place by impugned order did not affect his status and so this decision cannot be applicable in the present case.

In the case of **Arvind Dattatraya Dhande vs. State of Maharashtra and Others**. [(1997) 6 SCC 169], it was found that the work of transferred officer Arvind Dattatraya Dhande, Inspector Flying Squad, Jalgaon, was found commendable, but even then on complaint made by some Country Liquor Vendors, he was transferred, so the order of transfer was quashed by the Hon'ble Apex Court and it was held that the order of transfer was mala fide and arbitrary. But the applicant's case as pleaded in the Original Application as well as in the reply of the respondents shows that the applicant has got very checkered career and he has been punished in a disciplinary proceeding for misconduct. Moreover a vigilance enquiry was also conducted against him for acquiring property beyond his known source of income and so this decision can also be of no help to the applicant.

In the case of **Director of School Education, Madras and Others vs. O. Karuppa Thevan and Another** (1994 Supp (2) SCC 666), the order of transfer was stayed because of the fact that it was found that the applicant was transferred in mid-

academic term when his children were studying in the school. But so far the instant case is concerned, there is no such pleading of the applicant, so this decision is also of no help to the applicant.

In the case of **Narpat Singh Rajpurohit vs. State of Rajasthan** (WLR 1991 (S) Raj 136), the order of transfer was quashed because of the fact that the transfer order was passed against the guidelines / instructions issued by the Government. But so far this case is concerned, I have already stated above that the order of transfer is as per the regulations issued by the Department, so this decision is also of no help to the applicant.

So far the case reported in AIR 1987 SC 287 (**B. Varadha Rao vs. State of Karnataka and Another**) is concerned, I find that the same is related to seniority matter and not related to transfer matter and so this decision is not applicable in this case.

6. On the other hand, the respondents lawyer has placed reliance upon the decision of the Hon'ble Apex Court in the case of **State of U.P. and others vs. Siya Ram and another** (AIR 2004 SC 4121) in support of his argument that the order of transfer passed purely on administrative grounds and in public interest and if not mala fide, is not liable to be interfered by the Court.

7. I have referred the guidelines of the concerned department in the above paras with regard to the transfer of its employee. I have also made discussion upon the decisions relied by the respective parties in the above paras, and I have come to the conclusion that none of the decisions relied by the learned

advocate of the applicant is applicable in this case. However, it is settled law that if the order of transfer suffers from any mala fide, it is liable to be quashed.

8. The contention of the learned advocate of the applicant is that the impugned transfer order suffers from mala fide because of the fact that the authorities are biased against the applicant and they had initiated departmental proceedings against him and has also levelled false charges of amassing wealth beyond the known source of income, which was found baseless after the enquiry by the Directorate of Vigilance. He submitted that although the Directorate of Vigilance has exonerated the applicant from all charges but the impugned order shows that the order of transfer was issued in pursuance of the letter of Vigilance, Head Office bearing letter No. Vig. V (3) 07/9160 dated 29.05.2009 and this proves the mala fide on the part of the respondents. In support of argument that after vigilance enquiry the applicant was exonerated from the charges of amassing wealth beyond his known source of income, the learned advocate of the applicant has placed before me the investigation report submitted by the Assistant Director (Vig.) WZ in respect of case no. Vig. (WZ) 33 (84) 07. I have gone through the investigation report of Assistant Director (Vig) WZ dated 17.10.2008 submitted in case no. Vig (WZ) 33 (84) 07 and I have come to the conclusion that the applicant by producing this report has cleverly tried to mislead the court as it appears that two vigilance cases were pending against the applicant, one bearing No. Vig (WZ) 34 (82) 2007 and another bearing no. Vig (WZ) 33 (84) 2007. It appears that in the case

bearing no. Vig (WZ) 34 (82) 2007, the report was submitted on 22.10.2008 by Zonal Vigilance Director (WZ), which was not brought on record, whereas in case no. Vig (WZ) 33 (84) 2007 a report dated 17.10.2008 was submitted by the Assistant Director (Vig) WZ in which the applicant was exonerated from the charges. Thus, it appears that the applicant by producing the report submitted in vigilance case no. Vig (WZ) 33 (84) 2007 has tried to confuse the court. The fact that against the applicant two vigilance cases were instituted also stands proved from the applicant's own document which is Annexure A/14, and therefore I am of the view that at this stage the applicant cannot take the plea that he had no knowledge about this fact that two vigilance cases were pending against him, and thus I find that the applicant has not come with clean hand to establish that he has been exonerated in both the vigilance cases.

9. As regards the allegation that the authorities were biased against the applicant and that is why the authorities levelled false charges against him, I find that these allegations are not at all connected with the order of transfer passed against the applicant. The fact is that the applicant was facing enquiry since the year 1999 and by order dated 09.12.2002 he was penalized by the disciplinary authority. It is a different matter that in appeal the punishment was set aside and de novo enquiry was ordered to be held and later on the revisional authority again set aside the order of the appellate authority. The reply filed by the respondents further shows that in the year 1995 also the applicant was charge-sheeted for remaining on unauthorized absence for which the competent authority imposed penalty of

withholding of two annual increments. Thus, it appears that the applicant has very cleverly tried to connect the order of transfer with the disciplinary enquiry initiated against him in the year 1999. I am, therefore, of the view that the order of transfer is not at all connected with the disciplinary proceeding rather the same was passed in the interest of administration in order to keep the image of the department clean. The order of transfer is not of punitive nature and therefore I am of the view that it should not be interfered with. In such view of the matter, I agree with the finding of the Hon'ble Member (Administrative), late Shri V.K. Kapoor.

10. In the result, I find and hold that the relief as claimed by the applicant cannot be granted and the impugned transfer order dated 06.08.2009 (Annexure A/1) cannot be interfered with. Accordingly, the Original Application stands dismissed and the order of stay dated 11.08.2009, passed by this Bench of the Tribunal, is vacated. However, in the circumstances of the case, there will be no order as to costs.

S.M.M. Alam
(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

दिनांक 24/4/16 के आदेशानुसार
मेरी अधिकारी से दिनांक 9/6/16
को भाग-II का III नमूने दिये गए।

अदेश अधिकारी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर न्यायपीठ, जोधपुर