

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A. 440/98

FRIDAY, THIS THE 1ST DAY OF MAY, 1998.

C O R A M:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. M.S. Sudha  
Section Supervisor,  
Regional Office,  
Employees Provident Fund Organisation,  
Thiruvananthapuram.
2. K. Vijayakumaran Nair  
E.D.P. Supervisor,  
Regional Office,  
Employees Provident Fund Organisation,  
Thiruvananthapuram.
3. N. A. Sebastian  
Section Supervisor,  
Regional Office,  
Employees Provident Fund Organisation,  
Thiruvananthapuram.
4. N. Sreekumar,  
Section Supervisor,  
Regional Office,  
Employees Provident Fund Organisation  
Thiruvananthapuram.
5. Marykutty Abraham,  
Section Supervisor,  
Sub Regional Office,  
Employees Provident Fund Organisation,  
Kallur.
6. Madava Kurup,  
Section Supervisor,  
Sub Regional Office,  
Employees Provident Fund Organisation,  
Kallur. ....Applicants

By Advocate Mr. Pirappancode V. Sudheer.

Vs.

1. Union of India represented by the  
Secretary, Ministry of Labour,  
New Delhi.
2. Regional Provident Fund Commissioner,  
Grade-I, Pattom,  
Thiruvananthapuram.

*AS*

3. The Employees Provident Fund Staff Association represented by its General Secretary Sri Sivasankara Pillai, Section Supervisor, Regional Provident Fund Office, Thiruvananthapuram. . . . . Respondents

By Advocate Mr. Mathews J. Nedumpara, ACGSC for R-1

By Advocate Mr. N.N. Sugunapalan for R2

By Advocate Mr. V. R. Ramachandran Nair for R 3-8

The application having been heard on 22.4.98, the Tribunal delivered the following on 1.5.1998

O R D E R

HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

The applicants in this O.A., six in number, are Section Supervisors (SS for short) working under the administrative control of the 2nd respondent, the Regional Provident Fund Commissioner, Thiruvananthapuram. The 5th and the 6th applicants are now working outside the Regional Office (RO) i.e. the office of the 2nd respondent at the Sub Regional Offices (SROs) nearing completion of the 1st cycle of their rotational transfers. The other four applicants (1) to (4), have completed the first cycle of transfers and are presently working in the office of the 2nd respondent (RO). The 1st applicant had recently been sought to be transferred out of that office (RO) to an SRO by the 2nd respondent. That order (A7), which has been impugned, has, however, been stayed by us.

2. These applicants have specifically and basically challenged the transfer policy dated 27.1.98 which is incorporated in the agreement of the same date, (A2), between the recognised union enjoying the support of the majority, called Employees Provident Fund Staff Association with the respondent No. 3, Shri Sivasankara Pillai, as its General Secretary and the respondent No.2, i.e. the Regional Provident Fund Commissioner, Kerala, Thiruvananthapuram. Both these respondents have signed

*RS*

that agreement regulating the rotational transfers of the Section Supervisors between the SROs and the RO in Kerala. That agreement A2 has been impugned here.

3. According to the applicants, the provision of the first para in A2 that for the 2nd cycle of rotational transfers, the Section Supervisors, who were promoted to that cadre, i.e. as SS, based on the results of an Examination from the cadre of UDCs against the 1/3rd quota, called Examination Quota promotees (EQ promotees for short), as per the provisions in the Recruitment Rules, should first be transferred from the RO to the SROs as long as any of them is available at the RO and that only thereafter the SQ promotees (the Seniority Quota Promotees against the 2/3rds quota who are promoted based only on seniority from the cadre of UDCs) should then be liable for such rotational transfers, is untenable and unconstitutional. It is so on the grounds, according to them, that this provision creates an artificial distinction in the same cadre of SS between the EQ promotees on the one hand and the SQ promotees on the other hand and that based on this classification, which has no reasonable nexus with the objects of rotational transfer of SS as a single homogenous cadre, it discriminates illegally against the EQ promotees who belong to the same cadre of SS. The applicants have also pointed out that the impugned transfer order at A7 transferring the 1st applicant has admittedly been issued only in pursuance of that provision in A2.

4. The applicants have sought the following reliefs:

"i) call for the records leading to the issuance of A2 and quash A2 to the extent stating that the transfer shall be made by transferring Examination Quota promotee on the first instance and failing that Seniority Quota promotee, and A7 to the extent

*RJ*

that the 1st applicant is transferred to Calicut;

ii) declare that the condition in A2 that "Examination Quota promotee on the first instance and failing that Seniority Quota promotee" is void;

iii) declare that the applicants are not liable to be transferred from their respective stations before their seniors with more length of service in the same station are transferred.

iv) direct the respondents 1 & 2 not to give effect to A2 with the objectionable condition that Examination quota promotee shall be transferred on the 1st instance and failing that Seniority Quota promotee;

v) direct deletion of "Examination Quota promotee on the 1st instance and failing that Seniority Quota promotee" from A2.

vi) direct the 2nd respondent to dispose of A3 to A6 representations expeditiously and within the time limit to be fixed by this Hon'ble Tribunal;

vii) grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and

viii) grant the cost of the Original Application."

The Govt. of India in the Ministry of Labour, the administrative Ministry under which the Respondent No.2 functions, has been impleaded as the 1st respondent. However, the said first respondent has chosen not to file a reply statement. This has happened in spite of a specific averment in para 21 of the O.A. that the impugned provision of A2 has the effect of laying down a policy on rotational transfers which is against the guidelines governing transfers issued by the first respondent. The latter guidelines, according to the applicants, are to the effect that the persons who are seniors and who have more length of service at a particular station are, in the order from senior to junior, liable to be transferred. Even at the arguments stage, this particular aspect was not touched upon by the learned counsel for the 1st respondent.

5. Apart from the original party respondents, i.e. the

*R.S*

3rd respondent who signed the agreement between the 2nd respondent and the 3rd respondent, the latter in his capacity as the General Secretary, EPF Staff Association, another 5 party respondents were permitted to be impleaded as additional respondents 4 to 8. Both the 2nd respondent, i.e. the Regional Provident Fund Commissioner, Kerala, Thiruvananthapuram and the party respondents 3 to 8 have filed reply statements.

6. On behalf of the respondents, the reliefs prayed for by the applicants in this case have been contested. The primary grounds urged in defence of the impugned provision in the new rotational transfer policy for Section Supervisors under the control of the 2nd respondent at A2 are as follows.

7. The impugned policy is only an extension of the earlier policy at R(2)(a) dated 31.8.81 regulating the transfer of Head Clerks (now redesignated as Section Supervisors) between the RO and the SROs based on the same principle that governs the impugned provision of A2, namely that whenever EQ promotees are available in RO, they would be transferred to SROs and only thereafter the SQ promotees would be liable for transfer. Recently, a third SRO has been opened at Kannur and the first cycle of transfers by rotation based on the policy at R(2)(a) have been practically completed and therefore there was a need to extend the rotational transfer policy for the SS for the second cycle. The A2 policy, incorporating the same principle as governed the earlier policy at R(2)(a), laid down now in the form of an agreement with the recognised union, cannot be permitted to be challenged by the applicants at the present stage. For, all along, i.e. since 1981, the R(2)(a) policy on rotational transfers

LJ

based on the same principle has been accepted by them and transfer orders carried out in conformity therewith. They are therefore estopped from doing so, the respondents have thus argued.

8. As regards the allegation of an unsustainable classification within the same cadre of SS, between the SQ promotees and the EQ promotees both constituting the same cadre, the official respondent i.e. the 2nd respondent has argued that the equal treatment of the officers belonging to the same cadre of SS for certain purposes like promotion, other service benefits, etc. does not necessarily entail equal treatment of the same officers belonging to that cadre coming from two different modes for the purpose of transfers. He has contended that the SQ promotees, though admittedly not in all cases, are by and large older than the EQ promotees. Further, the EQ promotees getting into promotional cadre of SS somewhat earlier in terms of the years of service put in the feeder category of UDCs than the SQ promotees, who wait for their turn for promotion to the cadre of SS based only on their seniority, can therefore look forward to longer tenures at and better promotional opportunities for still higher posts. Therefore, if the rotational transfer policy at A2 does laydown that so long as EQ promotees are available at the RO for transfer to SROs, they should first be transferred to the SROs; but at same time it does not prohibit in clear terms the transfer of SQ promotees at the RO to SROs when EQ promotees are exhausted in the process, the number of EQ promotees being only 1/3rd of the total cadre strength of the SS, no unfair discrimination can be held to have been created against

*AS*

the EQ promotees under the impugned provision of A2, the 2nd respondent has further contended. At the same breath in response to an allegation made in the O.A., the 2nd respondent has categorically maintained that the impugned policy is not based on the age of the incumbent of the posts in the SS cadre and that no distinction has been made under the impugned policy between EQ promotees and SQ promotees based on the fact that in general most of the the SQ promotees would be older than most of the EQ promotees. According to the 2nd respondent, in essence the same principle for rotational transfers as was incorporated in the earlier R(2)(a) policy has been extended under the impugned provisions of A2 policy. The applicants who had found nothing objectionable about that earlier R(2)(a) policy should have no grievance against the R(2)(a) policy, the 2nd respondent has averred. He has finally argued for the dismissal of the O.A.

9. The party respondents 3 to 8 on the other hand have specifically defended the impugned policy on the ground, inter alia, that the SQ promotees are in general older than the EQ promotees and, therefore, they are more vulnerable to the dislocations and other inconveniences arising from frequent transfers. Hence, they have argued, they have been accorded some relative protection against the rotational transfers vis-a-vis the EQ promotees who are younger. They have, however, denied the allegation made by the applicants that the present policy is the result of the pressure on the management from the recognised unionn of which the 3rd respondent is the General Secretary. On the other counts relating to the better deal enjoyed by the EQ promotees in respect of promotions to still higher posts, etc. vis-a-vis the SQ promotees, the party

*LJ*

respondents have endorsed and further expanded on the same basic contentions urged by the 2nd respondent briefly summarised by us above. They have further taken the specific position in this context that considering that kind of better deal enjoyed by the EQ promotees in those matters like promotion, relative advantages extended to the SQ promotees under the impugned rotational transfer policy is well justified.

10. Regarding the prolonged continuance of the 3rd respondent at the RO without any transfer, the party respondents have asserted that he is protected under the special policy relating to the retention of the office bearers of the recognised unions at the same place. They have finally stated that the O.A. is devoid of any merits and should therefore be dismissed.

11. We have gone carefully through the pleadings and other relevant materials placed before us in this case and heard the learned counsel appearing for the parties.

12. To deal with the major threshold point made by the respondents against the challenge to the impugned provisions of the A2 policy, namely that the applicants are estopped from raising such a challenge when they have all along accepted effectively the same policy since 1981 under the R(2)(a) granting a preferential treatment to SQ promotees in the particular matter of rotational transfers of SS cadre of officers between the RO and the SROs, all we really need to see is whether or not on a plain and careful reading of the earlier policy in this behalf at R(2)(a), it had covered rotational transfers of SS cadre officers between the RO and the SROs for the second cycle in the manner now prescribed under the impugned provision of A2. To bring out the similarity or the distinction

*LS*

between the previous policy at R(2)(a) and the present policy at A2, it may be useful to quote the relevant paras (iii) and (iv) of the former policy at R(2)(a) and the para 1 of the impugned policy at A2 and then examine whether para 1 of A2, i.e., the principle behind the impugned policy was really subsumed under the relevant paras of R(2)(a) or even flows naturally, and as a necessary corollary, from the same. We therefore quote them below:

(From A2)

Existing policy to continue for transfer to Sub Regional office, Kozhikode and Kochi with the following addition and modification:

In case SSs are not available for transfer as above then second cycle of transfer shall commence. In this cycle transfer shall be made from senior to junior SSs in Regional Offices, EQ promotee on the 1st instance and failing that SQ promotee. In this Cycle an SS shall be transferred only to one of the SROs including Kannur depending upon the turn and need...."

(From R(2)(a)

"(ii) All optees shall be transferred to the Sub Regional Office.

(iii)

In the case of posting of Head Clerk s (redesignated as SS later) in the Sub Regional Offices the optee shall be posted at the first instance when sufficient number of optees are not available, persons promoted against Direct Recruitment Quota (now called EQ promotees) who had not been

*LJ*

transferred compulsorily to Sub Regional Offices ever before shall be transferred in the order of their seniority as per the rank obtained in the Examination and they shall be re-transferred to the Regional Office on completion of a minimum period of one year. When sufficient number of optees as well as Examination passed candidates (EQ promotees) are not available, promotees against Departmental Promotion Quota (SQ promotees) shall be transferred strictly in the order of their seniority downwards and they shall be retransferred to the Regional Office on completion of a minimum period of one year.

(iv) Failing (iii)above, promotees under departmental promotion quota (SQ promotees) who had not been transferred compulsorily ever before to Sub Regional Offices shall be transferred in the order of their juniority upwards i.e. starting from the juniormost of such promotees."

13. It is evident from a comparative examination of the two sets of provisions quoted above that para 1 of A2 does indeed introduce a new principle in modification, in particular, of the provisions of para (iv) of the policy at R(2)(a) read with para (iii) thereof. Under these relevant provisions of the previous policy at R(2)(a) there was no prescription perpetuating the preferential treatment of SQ promotees for subsequent cycles of transfers, like the 2nd cycle of transfers as now prescribed under the impugned provisions of A2. We, therefore, are of the considered view that the applicants are not estopped from challenging those provisions of A2 in the present proceedings nor are they barred by time from doing so.

*RJ*

14. Regarding the contention of the respondents that SQ promotees are also likely to be transferred under the impugned policy because the number of EQ promotes is only 1/3rd of the total number of officers in the SS cadre, we are unable to appreciate the logic behind such an assertion. The normal tenure for SS officers at an SRO being only a year, it is quite conceivable that some EQ promotees or other are physically available practically at any given point of time at the RO who may have just returned from an SRO after completing that normal term. Under the impugned policy such as EQ promotee will have to be transferred to an SRO again even if other SQ promotees with much longer stay at the RO are available. Thus, the transfer of an SQ promotee to an SRO will remain only a remote possibility under the dispensation now ordered by A2. The impugned policy cannot be interpreted in any other manner. In fact, it is the comprehension of this implication of the impugned policy that has prompted the applicants to file this O.A. Further, in the case of the 1st applicant it has not been denied by the 2nd respondent that compared to her stay at the RO since her return from a tenure at an SRO there are ~~as~~ <sup>as</sup> SQ promotees in SS cadre at the R.O. whose stay at the RO after a similar tenure at an SRO is longer. The 2nd respondent has merely stated that in response to her representation against her impugned transfer under the A7 order, she has since been sent a reply that the said order of transfer cannot be changed in public interest. That ground of alleged public interest, however, does not offer any rational explanation or justification, even a cryptic one, for the impugned policy, in the terms of which alone the impugned order A7 has admittedly been passed.

*A. J.*

15. The next question that has arisen is whether the evidently preferential treatment in favour of the SQ promotees under the A2 transfer policy, particularly the para 1 thereof, can be held as legal and therefore tenable.

16. We do recognise that a transfer including a rotational transfer is an incidence of service under the Government. However, what has been challenged here is essentially a transfer policy and only consequentially an individual order of transfer which has admittedly been passed in implementation of the impugned policy. we will therefore, have to examine the legality of the transfer policy itself.

17. Though framing of an appropriate transfer policy lies squarely within the domain of Executive policy making, the Executive while making such a policy cannot be permitted to contravene the guarantee of the right of equal treatment enshrined in our Constitution under Articles 14 and 16 thereof in respect of public service.

18. A twofold classification within the single cadre of SS officers under the control of the 2nd respondent for the purpose of rotational transfers between the RO and the SROs for the second cycle of such transfers has been made i.e. into (a) SQ promotees and (b) EQ promotees under para 1 of A2. This has been done without relating it to the age of the incumbents or the length of stay at the RO or a combination of both these factors or similar rational factors. The object sought to be achieved admittedly is to minimise the inconveniences and dislocations caused by

*AS*

such transfers. In our considered view, such a classification violates the fundamental right of equality of treatment before law and in public service guaranteed under the Articles 14 and 16 of the Constitution. We have not been able to convince ourselves that the said classification of the common cadre of SS officers between SQ promotees and EQ promotees for the purpose of their treatment for rotational transfers can be validly considered as having a reasonable nexus either with the objects that the impugned policy seeks to achieve or with efficiency in Public Administration, which object has not been cited in defence of the impugned policy even in passing.

19. The EQ promotees by virtue of their relatively earlier promotion to the cadre of SS officers after taking the prescribed examination and proving themselves successful, which opportunity was equally open to SQ promotees, can doubtless look forward to longer tenures because of their relatively younger age at the still higher promotional posts above the SS cadre. We hold that this fact cannot be used against them and be considered as a valid ground for discrimination against them in respect of rotational transfers. We are indeed intrigued by the adoption of this strange, almost perverse, logic in the defence of the impugned policy. In our opinion it amounts to punishing merit and encouraging mediocrity. Public Administration in India can hardly afford such costly mistakes and erroneous policies.

20. Thus irrespective of the fact that SQ promotees form an overwhelming majority i.e. 2/3rds of the number of

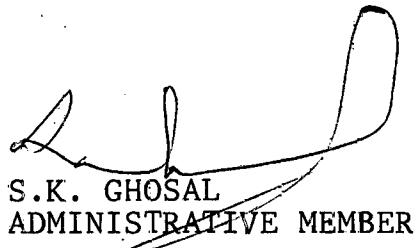
*AS*

officers in the SS cadre, any transfer policy designed for them (SS) will still have to conform to the standards of fairness and legality laid down by the Constitution. A simple and, in our opinion, unconstitutional recourse to the crude majoritarian principle will not remove from the impugned policy the stigma of being patently unconstitutional. The fact that the impugned policy is the result of an agreement between the management and the recognised Union, commanding the support of the majority, does not invest such a policy with immunity against constitutional provisions and therefore, will be of no avail while examining the legality of that policy.

21. In the light of the detailed discussions made above, we allow the O.A. and order that the impugned policy at A2 relating to the rotational transfers of Section Supervisors between the Regional office, Thiruvananthapuram and the Sub Regional Offices in Kochi, Kozhikode and Kannur of the Public Provident Fund Organisation in Kerala is set aside. The consequential order of transfer of the 1st applicant at A7 is also set aside. The 1st and the 2nd respondents are, however, free to evolve an appropriate rotational transfer policy keeping in view the need for efficiency in administration and constitutional requirements, and/<sup>in</sup> conformity with law.

22. With these observations and directions, the O.A. is allowed. There shall be no order as to costs.

Dated the 1st May, 1998



S.K. GHOSAL  
ADMINISTRATIVE MEMBER

KMN



A.V. HARIDASAN  
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A-2 : Terms of agreement entered into between the Regional Provident Fund Commissioner and the Employees Provident Fund Staff Association for rotational transfer of Section Supervisors from Regional Office to Sub Regional Office and Sub Regional Office to Sub Regional Office and Vice versa to fill up the vacancies arising in the respective offices of the 2nd respondent.
2. Annexure A-3 : Representation submitted by the 1st applicant addressed to the 2nd respondent, dated 9-3-98.
3. Annexure A-6 : Representation submitted by the 4th applicant before the 2nd respondent, dated 11-3-98.
4. Annexure A-7 : Transfer order No.KR/Adm.I(5)/98 dated 16-3-98 ( Office order No.46/98 ) of the 2nd respondent transferring the 1st applicant.
5. Annexure R(2)(a): Agreement dated 31-8-98 between the Regional Provident Fund Commissioner, Kerala and the Employee's Provident Fund Staff Association(Recognised).