

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 19 DEC 1988

APPLICATION NOS. 1773 & 1774 / 88(F)
W.P. NO. C/W
CONTEMPT PETITION (CIVIL) 185/88

Applicant(s)

Shri B.S. Vijayakumar & another
To

Respondent(s)

V/s The Regional Provident Fund Commissioner,
Bangalore & 4 Ors

1. Shri B.S. Vijayakumar
No. 85, 2nd Cross
1st Main Road, Hanumanthanagar
Bangalore - 560 019

2. Shri M.S. Virupakshaiah
No. 30, Subramanyam Lane
Akkipet Cross
Bangalore - 560 053

3. Shri S. Ranganatha Jois
Advocate
36, 'Vagdevi'
Shankarapuram
Bangalore - 560 004

4. The Regional Provident Fund Commissioner
No. 13, Rajaram Mohan Roy Road
P.O. No. 2584
Bangalore - 560 025

5. Smt B. Prema Jayadev

6. Shri George Felix Mani

7. Shri K. Ramesh

(Sl No.s 5 to 7 -

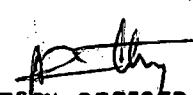
Head Clerks

Office of the Regional Provident
Fund Commissioner

13, Rajaram Mohan Roy Road, Bangalore - 560 025)

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~XXXX~~ ~~INTERIM ORDER~~
passed by this Tribunal in the above said application(s) on 16-12-88.


SECTION OFFICER
~~XXXXXX~~ ~~REGISTER~~
(JUDICIAL)

Encl : As above

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 16TH DAY OF DECEMBER, 1988.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And:

Hon'ble Mr. Sri P. Srinivasan.

.. Member(A).

APPLICATIONS NUMBERS 1773 AND 1774 OF 1988

c/w

CONTEMPT PETITION(CIVIL) 185 OF 1988

B.S. Vijayakumar,
S/o B. Suryanarayana Rao,
Head Clerk, Office of the
Regional Provident Fund Commissioner,
No.13, Rajaram Mohan Roy Road,
B.P.2584, Bangalore-560 025.

.. Applicant in A.No.1773/88
and Petitioner in C.P.185/88.

M.S. Virupakshaiah,
Head Clerk, Office of the
Regional Provident Fund Commissioner,
No.13, Raja Ram Mohan Roy Road,
P.B.No.2584, Bangalore-560 025.

Applicant in A.No.1774 of 1988.

(By Sri S. Ranganath Jois for Applicant in A.No.1774/88
and Petitioner in C.P.185 of 1988)

v.

1. Regional Provident Fund Commissioner,
No.13, Rajaram Mohan Roy Road,
P.B.No.2584, Bangalore-560 025.
2. Smt. B. Prema Jayadev,
Head Clerk, Office of the
Regional Provident Fund Commissioner,
Bangalore-560 025.
3. George Felix Mani,
Head Clerk, Office of the
Regional Provident Fund Commissioner,
Bangalore-560 025.
4. K. Ramesh,
Head Clerk, Office of the
Regional Provident Fund Commissioner,
Bangalore-560 025.
5. Sri H. Mondal,
Regional Provident Fund
Commissioner, Bangalore.

.. Respondents 1 to 4
in A.Nos. 1773 & 1774 of 1988.

.. Respondent in C.P.185/88.

(By Sri M. Vasudeva Rao, for R-1 in A.Nos. 1773 & 1774
/88 and Sole respondent in C.P.185 of 1988. Sriyuths
U.L. Narayana Rao and Noorulla Sheriff for Respondents
2 to 4 in A.Nos. 1773 and 1774 of 1988).



These applications having come up for hearing, Hon'ble Vice-Chairman made the following:-

ORDER

As the questions that arise for determination in these cases are either common or inter-connected, we propose to dispose of them by a common order.

2. A statutory Board of Trustees, briefly called as the Central Board ('Board') constituted by the Central Government under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (Central Act 19 of 1952) ('PF Act') to administer the Employees Provident Fund Scheme of employees in factories and other notified establishments in the country has been in existence for nearly four decades now. This Board comprising members as designated in Section 5A of the PF Act is the supreme policy making authority under the said Act. The Central Provident Fund Commissioner, New Delhi ('CPFC') is the administrative head of this Board. The Board has its Regional Offices in the States and for the State of Karnataka there is a regional office at Bangalore headed by the Regional Provident Fund Commissioner, Karnataka Region, Bangalore ('RPFC').

3. On and from 1-4-1979, the Board opened Sub-Regional Offices ('SROs') in various regions among which were those set up in the cities of Mangalore, Hubli and Gulbarga are in the Karnataka Region.

4. A trade union known as the Provident Fund Staff Union Karnataka, Bangalore, affiliated to the All India Employees Provident Fund Staff Federation, New Delhi ('Union') recognised by the RPFC and consisting of respondents 2 to 4 and several others as its members has been functioning for quite long. This Union is seen to represent the interests of a majority of the employees under the RPFC in Karnataka. A rival Union called the Karnataka Provident Fund Employees Union is said to exist of which the applicants and some others are its members. Bitter Inter-Union rivalry seems to be rife



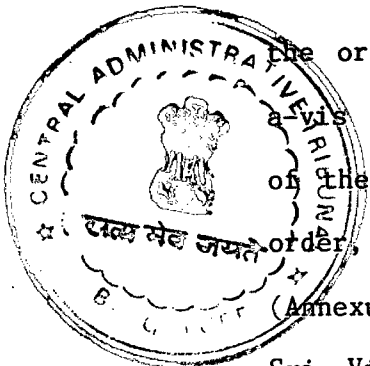
among the members of the two Unions.

5. Sri B.S.Vijayakumar who is the applicant in Application No. 1773 of 1988 and C.P (Civil) No.185 of 1988 and Sri M.S.Virupakshaiah who is the applicant in Application No.1774 of 1988, Smt. B.Prema Jayadev and Sri George Felix Mani who are respondents 2 and 3 in Applications Nos. 1773 and 1774 of 1988 have been working as Head Clerks in the office of the RPFC from 22-4-1984, 10-3-1982, 24-9-82 and 20-2-1984 respectively.

6. Sri K.Ramesh, respondent-4 in Applications Nos. 1773 and 1774 of 1988 was promoted as Head Clerk in order No.KN/PF/Adm-I/169 /88-89 dated 29-4-1988 by the RPFC which he has accepted. The RPFC by his Office Order No.39/1988-89 dated 4-5-1988 transferred respondent-4 and two others (with whom we are not concerned) to SRO, Mangalore with a direction that they be relieved from his office on 16-5-1988(AN). This was communicated to all concerned on 4-5-88. We shall refer to the other developments on this transfer when we deal with the case of respondent-4 at a later stage.

7. In his Order No.13 dated 12-4-1988, the RPFC transferred Vijayakumar to SRO, Mangalore, the validity of which was challenged by him before us in Application No.704 of 1988 under Section 19 of the Administrative Tribunals Act of 1985 ('the Act'). We shall hereafter refer to this case as the 'First Case'. On 26-5-1988 a Division Bench consisting of one of us (Justice Sri K.S.Puttaswamy) and Hon'ble Sri L.H.A.Rego, Member (A) substantially allowed the same, quashed

the order of the RPFC and directed him to re-examine his case vis-à-vis respondent-2 and others for rotational transfers in the light of the two guidelines issued by the CPFC. In compliance with this order, the RPFC by his Order No.138 of 1988-89 dated 21-10-1988 (Annexure-A in A.No.1773 of 1988) is seen to have again transferred Sri Vijayakumar to SRO, Mangalore, however retaining respondents 2 to 4 in his office, the validity of which is again challenged by



Sri Vijayakumar in Application No.1773 of 1988.

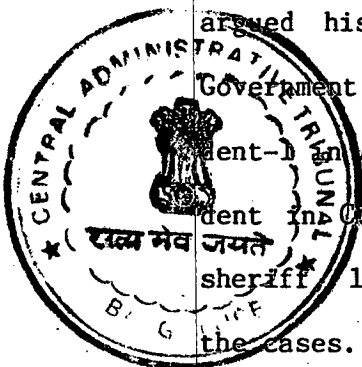
8. Sri Vijayakumar has also filed an application - C.P.(Civil) No.185 of 1988 - under Section 17 of the Act and the Contempt of Courts Act,1971 ('CC Act') against the RPFC personally asserting that he had disobeyed the order made in his favour in Application No.704 of 1988.

9. In his Order No.141 of 1988-89 dated 25-10-1988 (Annexure A in A.No.1774 of 1988), the RPFC had transferred Sri M.S.Virupakshaiah and four others (with whom we are not concerned) to SRO, Mangalore. In Application No.1774 of 1988, Sri Virupakshaiah has challenged his transfer to SRO, Mangalore and the retention of respondents 2 to 4 in the office of the RPFC.

10. In support of their respective cases, the applicants have urged a number of grounds which will be noticed and dealt by us in due course. In justification of the orders made, the RPFC has filed separate but identical replies in both the cases and produced the relevant record. Respondents 2 to 4 have filed their separate replies supporting respondent-1.

11. Sri S.Ranganatha Jois, learned Advocate appeared for the applicant in Application No.1774 of 1988 as also C.P.No.185 of 1988. The applicant in Application No.1773 of 1988 appeared in person and argued his case. Sri M.Vasudeva Rao, learned Additional Central Government Standing Counsel appeared for the RPFC who is respondent-1 in Applications Nos. 1773 and 1774 of 1988 and the sole respondent in C.P.No.185 of 1988. Sriyuths U.L.Narayana Rao and Noorulla Sheriff learned Advocates appeared for respondents 2 to 4 in both the cases.

12. We shall first deal with C.P.(Civil) No.185 of 1988 and then with the other cases.



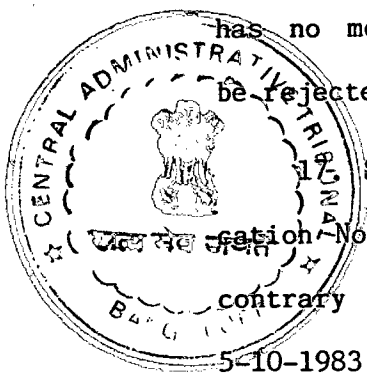
13. Sri Jois submitted that the RPFC had disobeyed the order of this Tribunal in Application No.704 of 1988 and, therefore, urged that we should initiate contempt of court proceedings against him under the CC Act.

14. Sri Vasudeva Rao urged that the RPFC had implemented the order both in letter as well as in spirit and even if the later order made by him was erroneous, then also, the same did not justify us to initiate contempt of court proceedings against him under the CC Act.

15. In pursuance of the remand order made by this Tribunal in Application No.704 of 1988, the RPFC had re-examined the matter and issued an elaborate order on 21-10-1988 transferring the applicant to SRO, Mangalore. With this itself the order made in favour of the applicant in Application No.704 of 1988 fully stands complied with.

16. Whether the second order made by the RPFC is a legal order or not, has necessarily to be examined and decided in Application No.1773 of 1988. Even if we were to take exception to that order on any ground which is urged in Application No.1773 of 1988, that does not mean that the RPFC had not obeyed and implemented the order made by this Tribunal in Application No.704 of 1988. From this it follows that C.P.(Civil) No.185 of 1988 which is really misconceived has no merit. On this conclusion C.P.No.185 of 1988 is liable to be rejected without initiating further proceedings under the CC Act.

17. Sri Jois urged that the transfer of the applicant in Application No.1774 of 1988 and the retention of respondents 2 to 4 were contrary to the two guidelines issued by the CPFC on 11-11-1980 and 5-10-1983 and were violative of Articles 14 and 16 of the Constitution. Sri Vijayakumar urged this very contention in support of his case also.



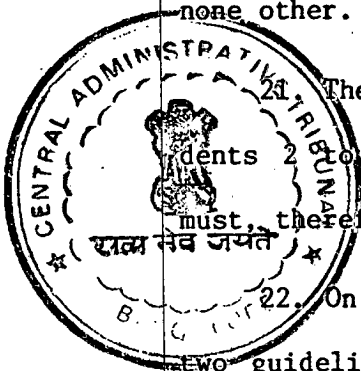
18. Sriyuths Vasudeva Rao and Narayana Rao refuting the contentions urged for the applicants justified the transfer orders made against the applicants and the retention of respondents 2 to 4.

19. We consider it necessary to state at the outset our views on the position of the Board.

20. In our considered opinion, the Board has been constituted to really exercise the sovereign functions of the Central Government which it could have legitimately exercised as a Department of Government. In this context, the Board, as a statutory authority has been essentially constituted to function effectively by fulfilling the objects and discharging duties as would have been accomplished by the Government of India through one of its Departments. Whatever be the claim of respondents 2 to 4 and other staff of the Board who subscribe to their view, and the decision of the High Court of Karnataka in REGISTRAR, TRADE UNIONS, MYSORE v. M.MARISWAMY [1973 (2) Mysore Law Journal page 256], we find it difficult to hold that the Board is an 'industry' and the staff working in the 'Board' in whatever capacity are 'workmen' within the meaning of those terms occurring in the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947). We have no doubt in our mind that the powers and functions exercised by the Board are really sovereign functions and none other.

21. The transfers of the applicants and the retention of respondents 2 to 4 are really inter-twined and cannot be separated. We must, therefore, examine them as one issue or question.

22. On the transfer of Head Clerks to SROs, the CPFC had issued two guidelines on 11-11-1980 and 5-10-1983. In the First Case we have extracted these guidelines in extenso and ruled that they are binding on the RPFC. In these applications, the applicants have not challenged their validity and are only seeking their implementation.



in the manner they understand them. On this view, it is not really necessary for us to reproduce them and deal with their legal effect over again. But, in order to make this order self-contained, we consider it proper to recapitulate them. They read thus:

"OFFICE OF THE CENTRAL PROVIDENT FUND COMMISSIONER
9TH FLOOR, MAYUR BHAVAN, CONNAUGHT CIRCUS, NEW DELHI-1

No.Adm.(R-II)/29(1)/80-Genl.

Dated 11-11-1980.

To

All the Regional Provident Fund Commissioners.

Sub:- Transfer of employees from Regional Office to
Sub-Regional Offices - policy regarding.

Sir,

I am to refer to this office circular letter No.ADM(R-II)/29(2)/76/UP dated the 20th March, 1979 and No.ADM (R.II)/29(1)/80-Genl./1980 dated 19-4-1980 on the above subject.

2. The duration for which an employee may be transferred from the Regional Headquarters to a sub-regional Office has since been reviewed in the light of the recommendations of the Faquir Chand Committee. It has become the accepted policy of the C.B.T. to open as many sub regional offices as necessary as a measure of decentralisation and to improve the efficiency of the Organisation and render prompt service to the members for whom this organisation exists. Pursuant to the above, 18 sub regional offices in various parts of the country had already been opened and a few more sub regional offices are going to be opened in 1980-81 and 1981-82. Although the prime consideration in opening the sub revisional offices is to cater to the convenience of the members to render prompt service to them, the hardship to the staff members cannot also be left sight off, as efficient and smooth running of the newly opened offices entirely depends on them. Being alive to the human problem as stated above, the Faquir Chand Committee have inter alia recommended as follows:-

(i) The Group-D staff and L.D.Cs must be recruited at the Sub-Regional Offices level itself;

(ii) There should be no compulsion in transfer from Regional Office to Sub-Regional Office and as and when necessary they can be taken on voluntary basis from among those who volunteer and who hail from the nearby places; and

(iii) The transferred employees should be kept in the Sub-Regional Office for a maximum period of two years. Within that period, the expertise could be developed in the Sub-Regional Office itself.

3. Having regard to the recommendations of the Faquir Chand Committee, the following guiding principles may be observed for manning the Sub-Regional Offices:-

(a) The Group-D staff and L.D.Cs should be recruited at the Sub-Regional Office level itself;



- (b) With regard to U.D.Cs who are the main operative elements, you may please draw up a list of such officials who may be willing to be posted to the Sub-Regional Offices in order of their seniority and send them as and when vacancy occurs. Such of the L.D.Cs as are in the consideration zone for promotion, may be so promoted and posted to the SRO. If any of them is unwilling to proceed to the SRO, the official next to him may be considered for promotion and posting. The serving LDCs in the SROs may also be considered for promotion locally provided they fulfil the eligibility condition, with a view to building up of a cadre of UDCs at the SRO gradually;
- (c) As regards Head Clerks, a list of such officials may be prepared in order of seniority and posted to the SRO. Most of the officials in this cadre particularly those who get promotion against seniority quota vacancies are in the age group of 35-45. Hence, their continuous stay in the SRO besides entailing hardship would also cause dislocation of their family life. They may, therefore, be brought back after one year on rotational basis unless they are willing to continue in the SRO for all time;
- (d) The list of persons to be transferred/brought back on rotational basis may be drawn up in such a way that it is possible to strike a balance between the individual's convenience and smooth running of the office;
- (e) When a Head Clerk, in the Sub-Regional Office becomes due for transfer it may please be ensured that his seat is upto date before he is transferred back to the Regional Head quarters and the concerned Head Clerk may be relieved of his duties only when his substitute joins duty at that station;

These principles will not be operative at the time of formation of SROs when staff would have to be transferred initially within the frame work of the existing policy.

4. While these are all guiding principles for manning the Sub-Regional Offices, difficulties may still arise in individual cases. Each region may present its own peculiar characteristics and difficulties that may arise in posting personnel to the Sub-Regional Offices. These may please be tackled within the frame work of the guidelines as laid down above and under the discretionary powers of the RPFCs. Hard cases, if any, should be considered on its own merits.

Please acknowledge receipt.

Yours faithfully,

Sd/- Lakshmidhar Mishra,
Central Provident Fund Commissioner."

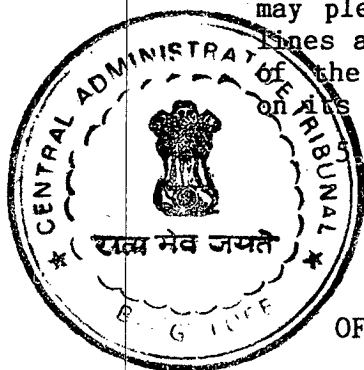
OFFICE OF THE CENTRAL PROVIDENT FUND COMMISSIONER,
9TH FLOOR, MAYUR BHAVAN, CANNAUGHT CIRCUS,
NEW DELHI - 110 001.

No.P.III/11(20)/82,

dated 5-10-1983.

To

All Regional Provident Fund Commissioners.



Sub:- Transfer of Head Clerks to Sub-Regional Office on rotational basis exemption of protected workmen.

Ref:- This office letter P.III/18(22)81 dated 16th April, 1983.

Sir,

The question regarding the exemption of the office bearers of recognised Union/Federation from rotational transfer has been re-examined in consultation with the Government. It has since been decided that a maximum number of 4 (four) office bearers of recognised federation and recognised regional (not sub-regional) union may be granted protection from the rotational transfers to sub-regional offices. These 4 office bearers could be President/Organising President, General Secretary or Secretary General (Chief Executive), one of the Vice Presidents, Treasurers (or any other office bearers as per the choice of the Union/Federation concerned).

2. An individual employee shall not be entitled to get the protection beyond two years i.e., once as per some criterion like rotational transfer of Head Clerk/U.D.C. on Seniority basis his turn for transfer comes, at the most for 2 years he may get the benefit of exemption from transfer from existing Headquarter as per this convention; after that he has to go on rotational transfer. This convention (regarding non-transfer of 4 office bearers of recognised Union/Federation) will not apply in the case of officials in Executive cadre (like Inspector or Enforcement Officer) who has completed 5 years at one station.

3. You are, accordingly requested to write to the recognised union of your region to intimate the names and designations of 4 office bearers who are to be granted exemption from transfers for each year. The four office bearers as intimated by the Union may be granted exemption from the transfers from Headquarters.

4. Please acknowledge receipt.

Yours faithfully,

Sd/= A.S.Sattanathan,
Director(Personnel & Training). "

On a reference made by the RPFC, the office of the CPFC on 11th December, 1988 had clarified the second Circular dated 5-10-1983 in these words:

"OFFICE OF THE CENTRAL PROVIDENT FUND COMMISSIONER,
9TH FLOOR, MAYUR BHAVAN, CANNAUGHT CIRCUS,
NEW DELHI - 110 001.

No. P.III/9(14)/88/KN/34868

Dated: 11-12-1988

The Regional Provident Fund Commissioner,
Karnataka.

Sub:- Transfer of H.Cs to S.R.O on rotational basis
- Exemption of protected workmen - transfer
of Sri G.F.Mani - Regarding.



Sir,

I am directed to refer to your letter No.KN/PF/Adm.I/993/88-89 dated 21-9-1988 on the subject cited above and to say that since Shri Mani has returned from Sub-Regional Office, Mangalore after his transfer, the earlier exemption will not be bar for exemption from present rotational transfer. Therefore, he should be granted exemption from rotational transfer as requested by Recognised Union which is in accordance with the instructions contained in our circular dated 5-10-1983.

[This issues with the approval of RC(RA)].

Yours faithfully,

Sd/- J.P.Samanta,

Assistant Provident Fund Commissioner,
for Central Provident Fund Commissioner."

We seriously doubt, whether this Circular emanated from the very authority that had issued the first circular on the subject. On any view, the import of the Circular dated 5-10-1983 must be construed on its own terms. In any event, these Circulars need to be read together harmoniously, in their proper context and collocation, to bring out their true meaning and import with reference to the concept or object they seek to articulate. We propose to do so.

23. In the First Case we have expressed that the Circulars were binding on the RPFC and that he was bound to follow them both in letter as well as in spirit (vide: para 3). We reiterate the same herein, categorically. In that case, referring to the true scope and ambit of Articles 14 and 16 of the Constitution (vide: para 14 of the order) examining all the fact-situations, we expressed thus:

"31. We have carefully examined all these facts and all other relevant circumstances in the light of the principles bearing on the same. On such an examination, we have no hesitation in holding that the RPFC had chosen the applicant for a hostile and discriminatory treatment and respondent-2 for a more favourable treatment. What was true on the earlier occasions, had manifested itself at the time of the transfer of the applicant on 12-4-1988. We are also of the view that the impugned transfer of the applicant is arbitrary and attracts the new dimension of Article 14 of the Constitution.

32. We are firmly of the view that the RPFC had not regulated the transfers to Sub-Regional Offices so far as the applicant and respondent-2 are concerned, who are before us, in accordance with the guidelines issued by the CPFC which were binding on him. Strange enough, we notice that the RPFC has been content in adhering to these guidelines rather literally but not in their spirit."



Bearing these principles in mind, we first propose to examine the aspect of the retention of respondents 2 to 4 seriatim.

24. As noticed earlier, respondent-2 who was promoted as a Head clerk on 24-9-1982 and should have suffered atleast 3 rotational transfers before we decided the First Case on 26-5-1988, seems to have been singularly lucky in staving the same even on the present occasion. In his order made on 21-10-1988, the RPFC has expressed the view that respondent-2 had become entitled to protection as a "protected work women" and, therefore, she could be transferred and that Sri Vijayakumar who was next in the line should be transferred instead to SRO, Mangalore. We must now examine, whether this is correct or not.

25. We have earlier reproduced all the Circulars. Clause 4 of the Circular dated 11-11-1980 which is material to decide this question reads thus:

"4. While these are all guiding principles for manning the Sub-Regional Offices, difficulties may still arise in individual cases. Each region may present its own peculiar characteristics and difficulties that may arise in posting personnel to the Sub-Regional Offices. These may please be tackled within the frame work of the guidelines as laid down, above and under the discretionary powers of the RPFCs. Hard cases, if any, should be considered on its own merits."

This clause empowers the RPFC to examine difficulties and hard cases which may arise in the application of rotational transfers. The terms 'difficulties that may arise' or 'hard cases' are not capable of a precise definition or formulation. Clause 4 makes it clear that the guidelines to be followed, do not confer an absolute and indefeasible right on the staff, to insist on their blind and mechanical implementation as a ritual, regardless of the fact-situation. On the language of this clause, we are of the view that it is even open to the RPFC to transfer a "protected person" if such transfer is considered necessary on the facts and circumstances of that case.

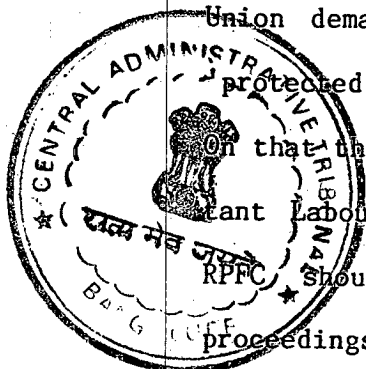


26. In the first Case Sri Vijayakumar had alleged that he had been singled out for a hostile and discriminatory treatment and

that respondent-2 ever since her promotion had been individually chosen for a favourable treatment leading to an irresistible impression that transfers were manipulated with an evil eye and an uneven hand. We had noticed that this allegation was not without truth. Sri Vijayakumar brought to our notice, that the cost of living in Mangalore was abnormally high and the dearth of reasonable residential accommodation was acute on account of which, the employees under the RPFC, were averse to be posted to this difficult station. In spite of these adverse circumstances, Sri Vijayakumar complained, that on every occasion he became the target of being posted to Mangalore almost with impunity. On the terms of Clause 4 above and our earlier orders, the RPFC was bound to examine honestly, the genuine difficulties and hardships of the employees under him and regulate their transfer with due regard to all the relevant factors. We must state once again with distress and anguish that the RPFC has taken recourse to almost a wooden approach, in effecting transfers of the employees working under him mechanically in gross disregard of the provisions of Clause 4 ibid and the previous order of this Tribunal in the First Case. From this, it follows that the transfer of Sri Vijayakumar and the retention of respondent-2 are illegal, improper and unjust.

27. In its letter dated 31-5-1988 addressed to the RPFC, the Union demanded that respondents 2 to 4 be accorded the status of 'protected workmen' in terms of the second Circular dated 5-10-1983. On that there appears to have been some proceedings before the Assistant Labour Commissioner, Bangalore. We are of the view that the RPFC should have regulated the transfers without reference to those proceedings but strictly in terms of the circulars of the CPFC and our order in the First Case.

28. In terms of the second Circular dated 5-10-1983 the Union has the right to nominate 4 office-bearers to be accorded the status of "protected workmen". On that demand, the RPFC does not appear to have any choice. But, this statement of ours, as we have noticed



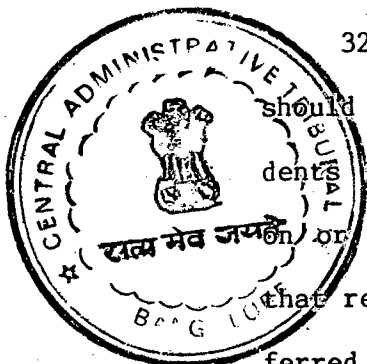
earlier does not impede the power conferred on the RPFC by Clause 4 of the Circular dated 11-11-1980.

29. That from the sequence of events, it is manifest even to the most friendly eye, that the order of this Tribunal in the First Case was wormwood to respondent-2, the Union and its members and that consequently they were hell-bent in thwarting the even course of justice and even scuttle it by defeating our orders by hook or crook, because of hubris or ignoble consideration. The case is indeed galling and abhorrent to the judicial mind and calls for severe condemnation. What is more shocking is that the RPFC should have fallen an easy prey to the machination of the Union and its members and handled the matter so maladroitly to the point of supine acquiescence with such manoeuvre. Thereby he has exposed the administration to justifiable criticism but unjustifiable weakness. This is symptomatic not merely of an aberration in administration but virtually of a threat of break-down of the whole system. We had on purpose, therefore, to express our cri de coeur, referred to this malefic practice as "surrogate transfers" in our order in the First Case and had strongly condemned the same.

30. On a conspectus of all facts and circumstances, we have no doubt that the RPFC had illegally retained respondent-2 and had transferred Vijayakumar in her place.

31. We now pass on to examine the case of respondent-3.

32. While the applicants contend that the period of two years should be reckoned only once in the career of an official, the respondents contend that the same should be reckoned once in two years or after every rotational transfer. In other words, they claim that respondent-3 who had once enjoyed protection and had been transferred thereafter to SRO and on his return therefrom to the Head Office was entitled to protection over again for a period of another



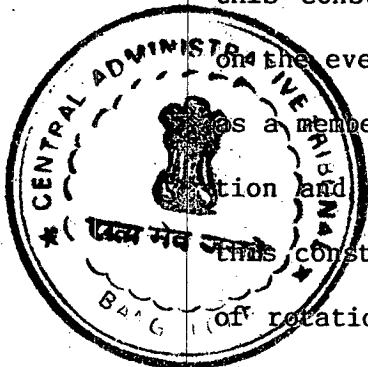
two years. On this, the respondents have also placed reliance on the aforesaid letter dated 11-12-1988 on which we have already expressed our opinion.

33. On facts, there is no dispute that respondent-3 had enjoyed protection once before and thereafter he had been transferred to SRO and that adhering to the roster, he should have been transferred on the present occasion, but for the protection.

34. Both sides rely on clause 2 of the Circular dated 5-10-1983 for their contentions, which reads thus:

"2. An individual employee shall not be entitled to get the protection beyond two years i.e., once as per some criterion like rotational transfer of Head Clerk/U.D.C on seniority basis his turn for transfer comes, at the most for 2 years he may get the benefit of exemption from transfer from existing Headquarter as per this convention; after that he has to go on rotational transfer. This convention (regarding non-transfer of 4 office bearers of recognised union/Federation) will not apply in the case of officials in Execution cadre (like Inspector or Enforcement Officer) who has completed 5 years on one station".

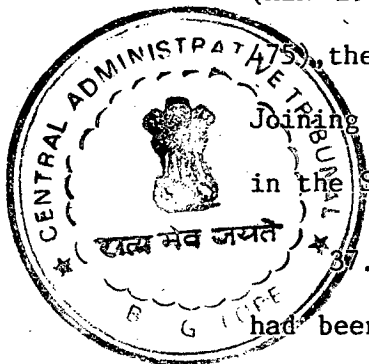
We must read this clause in its entirety and not in isolation or piece-meal. When so read, the object of the CPFC was that the person who was extended the benefit of protection, can claim that protection only for a period of 2 years in his entire career and not on every occasion in the event of transfer and return to headquarters. If this construction is accepted, then in that event an employee just on the eve of his becoming due for transfer, could get himself elected as a member of the Union and persuade the Union to claim such protection and thus defeat that very provision. We are of the view that this construction if accepted will defeat the whole scheme and object of rotational transfers evolved on the recommendations of an expert Committee. We have, therefore, no hesitation in holding that respondent-3 was not entitled to the benefit of protection on the present occasion. From this it follows that the retention of respondent 3 was clearly illegal. With this we now pass on to examine the case of respondent-4.



35. We have earlier noticed that respondent-4 had been promoted as Head Clerk and on acceptance of the same, he had been transferred on 4-5-1988 with a direction that he should be relieved on 16-5-1988. Before that date, respondent-4 made an application seeking for extension of 6 weeks' time to comply with the order. This was granted by the RPFC on 16-5-1988. But, before expiry of that period, the Union claimed in its letter dated 31-5-1988, that he should be accorded the status of a "protected workman". On that, without even modifying or cancelling any of the earlier orders made, the RPFC retained respondent-4 at headquarters without enforcing his own transfer order made on 4-5-1988.

36. As on 4-5-1988, on which day the RPFC made his order, respondent-4 had not been elected and was not a "protected workman". He appears to have been elected on 12-5-1988 as an Executive Committee Member of the Union. On these developments, the applicants contend, that the RPFC was bound to regulate the matters as on 4-5-1988 and enforce that order which had not become non est, inoperable and ineffective on any of the subsequent development. But, the respondents contend that when respondent-4 had not been relieved, there was really no transfer and the order of transfer itself had become non est inoperable and ineffective. In justification of this plea, Sri Narayana Rao placed reliance on RAJ KUMAR v. UNION OF INDIA (AIR 1969 SC 180) UNION OF INDIA v. SANKALCHAND HIMATLAL SHETH AND ANOTHER (AIR 1977 SC 2328), CHANDUL LAL v. RAM DASS AND ANOTHER (1969 SLR 175), the Fundamental and Supplementary Rules, Central Civil Services Joining Time Rules, 1979 and various other similar Rules prevalent in the State of Karnataka.

37. On facts there is no dispute that the Order dated 4-5-1988 had been made and communicated to respondent-4 and others. On this itself as also ruled by the Supreme Court in STATE OF PUNJAB v. KHEMI RAM (AIR 1970 SC 214) the order of transfer had become complete,



valid and effective. The time specified in the original or extended order cannot and does not render the order of transfer itself as non est inoperable and ineffective. Every one of the Rules and rulings relied on by the respondents do not alter this position. Every sound principle of law also does not support this specious plea of the respondents.

38. In B.S.PADMANABHA v. THE REGIONAL PROVIDENT FUND COMMISSIONER (Application No.16 of 1986 decided on 15-10-1986) a Division Bench consisting of one of us (Sri P.Srinivasan and Hon'ble Sri Ch.Ramakrishna Rao dealing with a transfer order of Padmanabha and its cancellation on the ground that he had not formally handed over charge of his office at Bangalore speaking through one of us (Sri P.Srinivasan) had expressed thus:

"First of all an order comes into force immediately it is passed. Communication to the concerned parties is made only to ensure that the order is carried out"

We are bound by this statement of law, which is correct and sound. We cannot distinguish the same either on facts or principle.

39. On the foregoing, it is obvious that the RPFC should have ignored the status claimed by the Union so far as respondent-4 was concerned and directed his order to be enforced against him. But, strange enough he did not do. On the other hand, he merely allowed the matters to drift and thereby allowed respondent-4 to take undue advantage and continue to remain at Bangalore, to which he was not entitled.

40. In effecting transfers of the applicants, the RPFC had overlooked the correct legal position and had not enforced the order of transfer made against respondent-4. We cannot, therefore, uphold the transfers of the applicants which are inextricably linked with the retention of respondents 2 to 4 at Bangalore.

41. On the "surrogate transfers" perpetuated for more than 5 to 6 years in the office of the RPFC we have alluded to that malaise

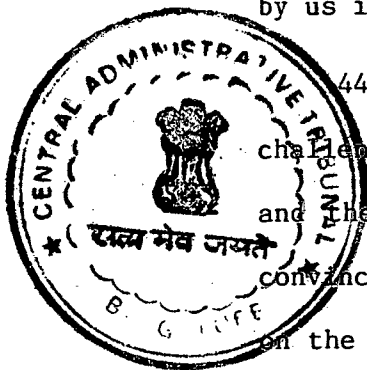


in some detail in the First Case. To compound that pernicious practice practised for a long time, the RPFC had also taken recourse to another evil practice of first transferring a person and then getting him back on the expiry or on the eve of completion of 6 months.

42. Clause (c) of the Circular dated 11-11-1980 of the CPFC in very clear and unambiguous terms stipulates that a person once transferred should be brought back to head office only 'after one year' and not earlier. The words 'after one year' mean the expiry of one year and cannot be anything other than that. We are consterned at the flagrant manner in which the RPFC had been violating the Circulars and breeding a pernicious practice and convention in a fancy-free manner to the defilement of justice, contrary to law and directions binding on him.

43. The transfers of the applicants and retention of respondents 2 to 4 as stated earlier are inextricably mixed up. When once we hold that the retention of respondents 2 to 4 cannot be sustained, it follows as a corollary, that the orders of transfers made against the applicants cannot be sustained. On this we should quash the transfer orders made against the applicants and direct the RPFC to examine their case vis-a-vis respondents 2 to 4 and others as directed by us in the First Case.

44. We have earlier expressed that the Circulars have not been challenged. We have carefully examined the Circulars, their impact and their implementation, at any rate, in Karnataka Circle. We are convinced that these Circulars apart from placing undue restriction on the power and discretion of the RPFC to effect transfers in public interest have only led to their abuse and sinister practice. We have not come across any Circulars of the like in Government Departments or in any other organisation. We are firmly of the view, that sooner all those Circulars are withdrawn, the better would it be



for the Board and all its offices in the country. Whether that should be done or not is a matter for the CPFC to examine and decide. But, we do hope and trust that the CPFC will give his serious attention to the matter and examine the same with earnestness and expedition, with the object of correcting this malaise, bearing in mind the legal maxim, that an evilpractice ought to be abolished - malus usus est abolendus.

45. In the light of our above discussion, we make the following orders and directions:

- i) We reject C.P.(Civil) No.185 of 1988 in limine.
- ii) We quash Office Order No.138 of 1988-89 dated 14/21-10-1988 (Annexure-A in A.No.1773 of 1988) and Office Order No.141 of 1988-89 dated 25-10-1988 (Annexure-A in A.No.1774/88) in so far as they relate to the applicant in that case.
- iii) We direct the RPF (Respondent No.1) to enforce his order of transfer dated 4-5-1988 as against respondent-4 by relieving him on a suitable date to be specified, giving him necessary time to join the Sub-Regional Office at Mangalore by reckoning the period of one year from that date only and not earlier.

We direct the Regional Provident Fund Commissioner, Bangalore (Respondent No.1) to re-examine carefully the case of the applicants, respondents 2 and 3 and all other officers vulnerable for transfer, in accordance with law, the guidelines issued by the CPFC on 11-11-1980 and 5-10-1983 and with our observations in the First Case and the present cases and effect transfers anew, only thereafter in true compliance with the legal maxim - let all things be done honestly and in order - omnia honeste et ordine fiant.

46. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

47. Let this order be communicated immediately to all the parties and also to the Central Provident Fund Commissioner, New Delhi who is not a party in these cases.



Sd/-

VICE-CHAIRMAN.

16/12/1988

TRUE COPY

Sd/-

MEMBER(A)

np/

AP 19/12/88
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE