

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 482/91

199

~~TXXXNO~~

DATE OF DECISION 10.2.1992

L.G.Kajrekar

Petitioner

Mr. R.R.Lalvi

Advocate for the Petitioners

Versus

Regional Provident Fund
Commissioner & 2 ors.

Respondent

Mr. R.K.Shetty

Advocate for the Respondent(s)


CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

• The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

mbm*


(U.C.Srivastava)
V/C

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY
* * * * *

Original Application No.482/91

L.G.Kajrekar, Enforcement Officer,
Office of the Regional Provident Fund
Commissioner, Maharashtra & Goa,
341, Bhavishyanidhi Bhavan,
Bandra (East), Bombay 400 051.

... Applicant

V/s

Mr. M.Gurusamy,
Regional Provident Fund Commissioner,
Bhavishyanidhi Bhavan, Bandra (East),
Bombay 400 051 & 2 others.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. R.R.Dalvi, Advocate
for the applicant and
Mr. R.K.Shetty, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 10.2.1992

(Per. U.C.Srivastava, Vice-Chairman)

This application is directed against the transfer order transferring the applicant from Bombay to Nagpur. No interim order was granted and the applicant has admittedly has joined at Nagpur. Vide the impugned order the Respondent No.1 transferred as many as 27 Enforcement Officer/Assistant Accounts Officers to various Sub-Regional Offices of the Provident Fund Commissioner in the State. The applicant's grievance in this case is that although under the roster point which is followed by the Department in the matter of transfer the applicant was to be transferred to Pune as was indicated in the extract of office noting, a copy of which has been placed on the record by the applicant in which it has been said that he may be posted to P.F.I.Court and that he should be transferred to SRO, Pune as and when vacancy (post E.O.'s) falls vacant as he is due for

... 2/-

S.R.O. Pune as per roster point. Under the office order two persons were to be transferred to Nagpur but the order was placed in abeyance and ultimately the applicant instead of being transferred to Pune was transferred to Nagpur. Applicant has raised a grievance against the same ^{contending} ~~conducting~~ that even though his services were transferable but when the roster point was being followed and the applicant under the roster point was to be transferred to Pune he has been transferred to Nagpur for favouring two ~~persons who~~ are much junior to him and ~~max~~ has no claim for being transferred to Nagpur. The respondents have resisted the claim of the applicant ~~pleading~~ that the services of the applicant are transferable through out the country and the applicant cannot challenge the transfer order. Merely because it was mentioned that as per roster point the applicant will be transferred to Pune but he was not transferred to Pune under the exigency situation as his services were required elsewhere. Obviously the transfer is in the exigencies of service and normally no interference in the matter of transfer can be made. It is true that the hopes were given to the applicant or the applicant could have been transferred to Pune but the same was not done. This is a matter which is for the employer to consider but not for us to interfere. Learned counsel for the applicant placed reliance on the decisions of the Administrative Tribunal in two cases. But the cases are distinguishable. However, as the facts of the case indicate that there appears to be some substance in the plea which has been raised by the applicant and there appears to be no reason why the Department will not again consider the plea of the applicant for transferring him to Nagpur or transferring ^{him} to Pune as was decided by the Department earlier. Accordingly, with the observation

that the applicant may approach the Department and the Department will consider the applicant's prayer for transferring him ~~but~~ ^{to} Nagpur and post him at Pune. Let this consideration be made within a period of two months. With these observations the application is disposed of finally. No order as to costs.

Copy of the order may be issued within one week.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman

v/-

Tribunal's Order:

Mr.R.R.Dalvi for the Contempt
Petitioner and Mr.R.K.Shetty for the respondents.

2. C.P.58/92 is filed by the contempt
petitioner to charge the respondents for contempt
of court as per rule 15 of the ^{C.A.T} Contempt of Courts)
Rules, 1986 and cause them to post the applicant to
Pune as already decided.

3. Counter is filed to the CP opposing
the same. Today we have heard Mr.R.R.Dalvi for the
contempt petitioner and Mr.R.K.Shetty for the
respondents to find out whether any contempt
had been committed by the respondents in ~~not~~ not
implementing the directions of this Tribunal in
O.A. No.482/91. We have gone through the judgment
in O.A. 482/91. The operative portion of the
judgment reads as follows:

"However as the facts of the case
indicate that there appears to be
some substance in the plea which
has been raised by the applicant
and therefore appears to be no reason
why the Department will not again
consider the plea of the applicant
for transferring to Nagpur or
transferring him to Pune as was
decided by the department earlier.
Accordingly, with the observation
that the applicant may approach
the department and the department
will consider the applicant's
prayer for transferring him out
of Nagpur and post him at Pune.
Let this consideration be made
within a period of two months.
With these observations the
application is disposed of
finally. No order as to costs."

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As could be seen we do not see any specific direction as ^{has} been given in the said judgment to transfer the applicant from Nagpur to Pune. The only direction is given, as is clear, to consider the applicant for transferring him from Nagpur to Pune. The respondents in their counter have maintained that ^{with} due regards to the direction of the Tribunal dt. 10.2.92 the representation dtd. 17.2.1992 received from the applicant was examined without any bias and prejudice and the applicant has been intimated accordingly as per letter dt. 27.2.92 and that they have not violated any direction of this Tribunal. ^{As seen the respondents} ~~They~~ had considered the

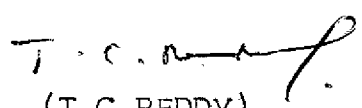
representation of the applicant for transfer to Pune and the applicant's request for transfer to Pune has not been granted by the respondents. We are unable to understand how his non transfer from Nagpur to Pune will constitute a willful disobedience of the direction of this Tribunal, as already pointed out ^{as} this Tribunal ~~does not~~ has not given any direction specifically to the respondents to transfer the contempt petitioner from Nagpur to Pune. ^{As} There is no contempt, ~~this~~ petition is liable to be dismissed.

4. The respondents ^{have} ~~are~~ maintained in their counter that the applicant has managed to submit non-existent note dt. 1.1.1991 before the Tribunal which has lead this Tribunal to believe that there is some substance in the plea of the applicant and Applicant's counsel's claim that respondent No.1 ^{managed to} had removed the note dt. 1.1.1991 is totally baseless and without any justification and evidence

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since note itself is non-existedt in the file. It is the contention of the learned counsel for the contempt petitioner that such a plea has not been taken in the O.A. and that the respondents are estopped from saying that the applicant has managed to submit a non existing note dt. 1.1.91 at this stage i.e. after the judgment. We are not deciding here about the said note dt. 1.1.91. We are concerned only whether the respondents have wilfully disobeyed any direction of this Tribunal in its judgment in O.A. 482/91 as already pointed out. We do not find any wilfull disobedience ^{on the part of} of the respondents. C.P. is dismissed.

MD


(T.C.REDDY)
Member(J)