

59

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A. No. 850/93.

Dt. of Decision : 24-03-95.

Smt. Vasumathy Sethuraman

.. Applicant.

Vs

1. The Central Provident Fund
Commissioner, New Delhi.

2. The Addl. Commissioner, Hyderabad.

3. The Regional Provident Fund
Commissioner, Barkatpura,
Hyderabad.

.. Respondents.

Counsel for the Applicant : Mr. G. Parameshwara Rao

Counsel for the Respondents : Mr. Vilas V. Afzalpurkar. SC for PC

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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JUDGMENT

X as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri G.Parameshwara Rao, learned counsel for the applicant and Sri Vilas V.Afzalpurkar, learned Standing Counsel for the respondents.

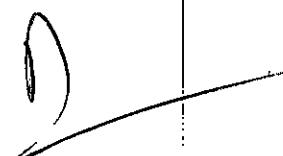
2. The applicant in this OA was working as UDC in the office of Regional Provident Fund Commissioner, at Madras. She was initially appointed as LDC in the office of Regional Provident Fund Commissioner's office, Tamil Nadu & Pondicherry States in terms of office order dt. 9.12.1974. She was later promoted as U.D.C. in that office. She was regularly appointed as UDC on 18.9.1980 and was also appointed substantively to both grades of LDC & UDC in the office of Regional Provident Fund Commissioner office, Tamil Nadu & Pondicherry with effect from 1.7.1983 and 14.8.87 respectively.

3. While she was working so, she sought inter-transfer to Delhi as her husband who was till then working at Madras was transferred as Assistant Finance Manager in Hindustan Fertilisers Corporation Limited, a Government of India undertaking at New Delhi. Her representation was forwarded by the Madras office by letter dt. 21.7.1989 to both the Central Provident Fund Commissioner and Regional Provident Fund Commissioner, New Delhi for consideration. She was informed by letter dt. 1.9.1989 (Annexure-V) that the Regional Provident Commissioner, Regional office, New Delhi has since informed that her request cannot be acceded to and that however, she can be considered for accommodation as junior-most UDC and she was accordingly advised to give her consent in that regard.

But, no time-limit was given for option in the Regional Provident Fund Commissioner, Regional office, New Delhi. At the same time, she was also informed by letter dt. 6.11.1989 (Annexure-VI) of the Regional Provident Fund Commissioner, Madras that the Central Provident Fund Commissioner was pleased to approve her transfer to the central office on the following terms and conditions:-

- (i) Her pay will remain the same as in the post of UDC in the Regional office, Tamil Nadu at the time of her transfer by fixing her pay in the LDC cadre.
- (ii) The transfer being allowed at her own request she will not be entitled to any TA and joining time to join the Central office as junior-most LDC, and
- (iii) She will be absorbed in the Central office as junior-most LDC from the date of her joining and lien will be terminated from the Regional office, Tamil Nadu from the date of her joining the Central office.

4. As the applicant was eager to join her husband who had already shifted to New Delhi and further as her pay drawn in the cadre of UDC was sought to be protected, she agreed for the above said terms and conditions under the impression that in due course she would be accommodated as UDC at the central office particularly so when she was a substantive member of the cadre of UDCs. On her relief from Madras office, she joined the Central office on 15.11.1989.



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5. It is alleged for the applicant that she could not visualise at the time of her joining that she will be put to financial loss permanently and that she has to forego her promotional chances. At the time of her relief from Madras, she was drawing a pay of Rs. ~~1530/-~~^{1530/-} p.m. and while joining as LDC in the Central office, Delhi, her pay was fixed at Rs.1500/- p.m. the maximum of the pay scale in the cadre of LDC, thus suffering a monetary loss of Rs.30/- p.m. plus D.A. She further states that she was made to work under her juniors as LDC though she was a substantive holder of UDC post at Madras. She further states that she had also lost promotion to higher grades due to her joining in the Central office at Delhi as LDC accepting the bottom seniority.

6. The applicant alleges that her transfer to Central office, New Delhi is governed by office order No. Adm. (RII) 29/(8)/77-HR-17643 dt. 7.7.1980; but her transfer to Central office at Delhi in the lower grade of LDC is in contravention of the said guidelines. ~~W~~ndue advantage was taken out of her helplessness to stay at Madras without her husband and her eagerness to join her husband at New Delhi. She also relies on a Judgment dt. 8.1.1986 in W.P.No.15377 of 1985 on the file of Karnataka High Court between Smt. Glory Thomas Vs. Central Provident Fund Commissioner, New Delhi and others to state that her demotion to the post of LDC on transfer is against rules and that ~~s~~ she should also be given the same relief as granted in the above said Writ Petition.

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7. She preferred representations to the Additional Central Provident Fund Commissioner, New Delhi on 11.10.90 followed by similar representations. It is further submitted for the applicant that while her representation was pending for consideration with the authorities, she perforce had to seek transfer to Regional office at Hyderabad as her husband joined ICRISAT at Patancheru. On her request she was transferred to the Office of the Regional Provident Fund Commissioner, Hyderabad as junior-most LDC with effect from 21.10.1991. By this transfer she alleges that she not only lost the benefit of past service but also precluded from appearing in departmental examinations to next higher - - -

8. The applicant also represented to the Addl. Central Provident Fund Commissioner, Hyderabad on 4-6-1991 on similar lines to the representation submitted to the Addl. Central Provident Fund Commissioner, New Delhi. She did not receive any reply to her representations. Aggrieved by the above, she has filed this OA praying for quashing the impugned orders No.P.III/14(20)89-TN/20522 dt. 30.10.1989 and No.P.III/14(20)/89/TN/24521 dt. 14.10.1991 of the Central Provident Fund Commissionew, New Delhi holding ~~as~~ ~~xxed~~ both the orders as void and illegal inasmuch as the absorption of the applicant in the lower grade of LDC is clearly in violation of guidelines governing ~~intervention~~ - - - it amounts to reversion to a lower ~~xxed~~ cadre and for a further declaration that she is deemed to have been continued as UDC with all consequential benefits viz. seniority, pay protection, right to appear in the departmental examinations and entitled to be considered for promotion to the next higher grade post on such seniority.



64

9. The respondents in their counter affidavit state that as she was not likely to be absorbed as junior-most UDC in the near future in the Regional Provident Fund Commissioner's office, at New Delhi in terms of letter dt. 1.9.1989 (Annexure-V), she in her eagerness to join her husband quickly gave her consent on her own volition to join Central Provident Fund Commissioner's office, New Delhi accepting the posting as Junior-most LDC terminating her lien from the Regional Provident Fund Commissioner's office, Tamil Nadu in terms of letter dt. 6.11.1989 (Annexure-VI). As the clerical cadre is a de-centralised cadre in the organisation there is no possibility for transfer from one region to other. The applicant had given her consent Delhi in terms of her letter dt. 21.8.1989 (Annexure R-2). Hence, the respondent acted under F.R.15 accepting her request in writing for transfer to a lower post at the Central office, at New Delhi. Her pay was fixed in the grade of LDC under F.R.22(a)(iii). They deny the allegation that the applicant was not aware of the incidence of posting to a lower post as the letter dt. 6.11.1989 clearly specifies the consequences of the transfer to a lower post.

10. The respondents further state that the guidelines issued by letter dt. 7.7.1980 in regard to inter-transfer of staff, have no application to the applicant as she has come on her own voluntarily and willingly accepting the reversion as junior-most LDC in the Central Provident Fund office, New Delhi. As the respondents had the responsibility to ensure that the claim of other regular officials in the transferee region is not prejudiced by the

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transfer of the applicant, she was taken as LDC in the Central office, New Delhi and she was further transferred to the Regional office, Andhra Pradesh on her request. Hence, the respondents submit that the seniority assigned to her as junior-most LDC on the date of her joining in A.P. Region is correct and in accordance with the regulations dt. 19.12.1989 for fixing seniority of the employees of the Employees Provident Fund organisation (Annexure R-V).

11. The respondents conclude that the cause of action for the applicant arose for the first time on 15.11.1989 when she was transferred to New Delhi on accepting the conditions of such transfer to New Delhi. She was transferred from New Delhi to Hyderabad on 21.11.1991 i.e. about 1½ year earlier to the date of filing of this OA. The application is therefore barred by limitation and may promotion as Head Clerk also as she is not put in the requisite period of service in the lower grade of UDC as she is only an LDC.

12. We will now revert back to the contentions of the applicant for taking her as UDC on her transfer to Delhi and further posting at Regl. Provident Fund Commissioner's office, Hyderabad. The applicant's contentions are three fold.

(a) She was transferred and posted to the Central Provident Fund Commissioner office, New Delhi on 15.11.1989 in violation of rules for inter-regional transfer of staff (Annex.VII) dt. 7.7.1980. She relies on para-5(v) of the above quoted guidelines to state that an employee can be transferred as junior-most in the cadre in which she/he is serving.

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As she was serving as UDC at the time of her transfer from Madras, she can only be posted as junior-most UDC in the office of Central Provident Fund Commissioner, New Delhi and not as junior-most LDC. She also relies on the judgment dt. 8.1.1986 in writ petition bearing W.P.No.15377 of 1985 decided by Karnataka High Court to state that the rule provision does not permit for demotion to a lower grade on inter-unit transfer.

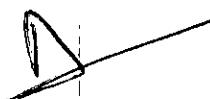
(b) Because of her helplessness to stay at Madras without her husband, who had been transferred to New Delhi undue advantage was taken out of her helplessness while transferring her to the office of Central Provident Fund Commissioner, New Delhi. She was exploited in her transfer by taking an undertaking from her to go on transfer as junior-most LDC to Central Provident Fund Commissioner's office, New Delhi and because of that she was transferred to Hyderabad later in the same category. Because of this transfer, she had lost heavily and such conditions imposed on her for transfer to Delhi and thereafter to Hyderabad is unfair and unreasonable.

(c) The last contention is in regard to absorbing her in the cadre of UDC against direct recruitment quota when she was transferred to Central Provident Fund office in New Delhi. It is stated for the applicant that direct

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recruitment quota to the extent of 25% was in force in 1989 when she was transferred to New Delhi and she should be deemed to have been transferred against that quota at the time of her transfer to New Delhi and her seniority ~~to be~~ ^{fixed} ~~has~~ accordingly at Central Provident Fund Commissioner's office, New Delhi and she is brought in the same grade to Hyderabad following the guidelines dt. 7.7.1980 for inter-regional transfer of staff.

13. The Regional Provident Fund Commissioner, New Delhi in his letter dt. 1.9.1989 (Annexure-V) has not acceded to her request for inter-regional transfer to Regional office. However, it is stated that if the applicant herein desires she can be considered for accommodation as a junior-most UDC and she was requested to give her consent letter in this regard immediately. This letter is very ambiguous. At one breath it is stated that her request was not acceded to but it also states that she will be considered for accommodation as junior-most UDC if she ~~xxxxx~~ gives her consent letter. From this letter it is to be understood that there is no certainty of accommodating her in the Regional Provident Fund Commissioners office at New Delhi as UDC. Even if she gives her consent to be posted on transfer as junior-most UDC. On the other hand, the Central Provident Fund Commissioner had approved her transfer to his office in terms of his letter dt. 6.11.1989 stipulating the terms and conditions. The terms and conditions have already been extracted in para--3 supra. One of the conditions is to give her consent in writing for accepting the condition of absorption in Central Provident fund office as junior-most UDC terminating her lien in Tamilnadu Regional office.



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This is a positive offer to her though in the lower grade. If the condition 5(v) of the guidelines for inter-transfer of staff dt. 7.7.1980, which reads as follows,

"Whether the employee is prepared to go on transfer as the junior-most in the cadre in which he/she is serving; "

is to be followed, the possibility of her going to Delhi may be remote and the date of issue of such order following the procedure laid down in 7.7.1980 letter will be indeterminate. In effecting regional transfers on the basis of the letter dt. 7.7.1980 on personal/domestic/compassionate grounds, it should be/"approach" of the authorities concerned to see that the difficulty of the individual staff member who is seeking such transfer is not exploited on the one hand and the chances of promotions of official in a post in the transferee region on the other hand to which he/she seeks transfer are not jeopardised. The above approach will mean that an employee seeking transfer has to wait till a post becomes available in the transferee unit and it does not cause any set-back to the official in the transferee region. If the employee who seeks transfer desperately to go to the other region he/she on the basis cannot expect to get the transfer order issued at the earliest/ of para-5(v) of the above said letter. In the present case the applicant herein was very much in need of a transfer to Delhi/as per her/admission that she is not able to live in Madras without the assistance of her husband who was transferred by then to Delhi and she was in urgent need to go to Delhi to join her husband. Had she waited for transfer to Delhi following the condition 5(v) of the letter dt. 7.7.1980 she would not have got the

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transfer in a reasonable period. Knowing this difficulty because of her urgency to go to Delhi on transfer she had accepted the condition as laid down in letter dt. 6.11.1989 of Central Provident Fund Commissioner and had given her consent also as per Annexure R-III letter. She joined the office of Central provident Fund Commissioner as junior-most LDC on 15.11.1989. If she ~~xx xx~~ has not accepted the condition to join as junior-most LDC, in terms of letter dt. 6.11.1989, she could have easily refused to give her consent for transfer. In that case, she would not have been transferred in the grade of LDC, but she may have to ~~xx~~ wait for a long time for transfer to Delhi in the appropriate grade. It cannot be said that she has not understood the implication of giving a consent in terms of letter dt. 6.11.1989. She is an educated lady ^{and hence} having worked in the department for over 15 years, she cannot now say that she has not understood the implication of giving such a consent. It has to be inferred that she ~~had~~ given her consent to go on transfer to New Delhi as junior-most LDC in the Central provident fund Commissioners office knowing that she was going in a lower grade sacrificing ^{after} her earlier service. Hence/a lapse of about 7 years, her request for giving her the status of UDC at New Delhi in terms of guidelines dt. 7.7.1980 is untenable.

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LDC

14. The applicant relies on the judgment of Karnataka High Court referred to above to state that her demotion on transfer is against rules and she should have been sent to Delhi on transfer in the same grade. In the above referred judgment the point that arose for consideration was the proper construction of Rule-6, in Schedule-III of

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70

the Employees Provident Fund Staff (Conditions of Service) Regulation, 1962. The said rule reads as follows:-

"Transfer of staff from one Region to another Regional office to Head Quarters office and vice-versa in similar posts can be made with the approval of Central Provident Fund Commissioner. Necessary travelling allowance and joining time should be allowed on such transfer except when any transfer is allowed on the request of an individual "on each such transfer seniority pay, etc. will remain the same as in the post held before transfer".

A perusal of the above quoted judgment will indicate that the Central Provident Fund Commissioner, though entered appearance in the proceedings has not filed any objections denying the averments of the petitioner in the said writ petition. The facts of the case are not clearly spelt out. It is also not clear whether the petitioner therein had given any consent for reversion or not. In view of scanty details available, it will not be proper to come to any conclusion on the basis of the said judgment. Hence, it is not proper to draw any inference from the above judgment either for or against.

15. We have already explained in details in paras-13 & 14 supra in regard to her contention that she has been exploited in transferring her to Central Provident Fund Commissioner's office, New Delhi and later to Regional Provident Fund Commissioner, Hyderabad. It is needless to repeat the same. However, there is no bargain or contract in her transfer either to Delhi or Hyderabad in the present case. As she was not offered transfer in UDC cadre, it can be presumed that there were no vacancies in UDC cadre in the Central office and Central Provident Fund Commissioner was constrained to offer her only LDC post at the bottom seniority. The respondents came with the alternate offer to accommodate her and hence this offer cannot be treated as exploitation. It was left to her to decide whether she should stay back at Madras as UDC or go to Delhi as LDC.

71

She has decided on her own to go to Delhi accepting the junior-most position as LDC. This decision was her own, knowing fully well the implications because of her need to join her husband. What she lost in her career she had gained partially in her domestic front. In view of this, this contention is only to be rejected.

16. At the time of hearing, the learned counsel for the applicant brought to our notice the recruitment rules for the post of UDC at the time of her transfer in 1989 in Central Provident Fund Commissioner's office. It was stated by him that 25% of posts of UDC vacancies have to be filled at that time through direct recruitment. If the applicant is taken against the said direct recruitment quota, the employees in the transferee unit will not be put into any disadvantage by loss of one post of UDC as in any case the direct recruitment quota will be filled from outsiders only. It was further stated that the administration also should not have any reason to object to this as taking her against direct recruitment quota in no way affects the functioning of the department rather it helps the department as an experienced employee is posted as UDC in the new unit as against a fresh recruitment from the open market. Though, it may be possible to consider such request, it is too late to consider this now. If at all any post earmarked for direct recruitment was available at the time of her transfer to Delhi, the same would have been filled by now. Further, the learned Standing counsel submitted that the above said rule had already been

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72

amended and the promotion to the cadre of UDC as per amended recruitment rules is only by way of promotion to the extent of 75% on the basis of seniority-cum-suitability and the rest 25% on merit-cum-seniority basis. In view of this, it was contended by the learned counsel for the respondents that it would not be possible to accommodate her against direct recruitment quota which is not in existence now. There is force in the contention of the learned counsel for the respondents as more than six years passed after she came on transfer. The direct recruitment vacancy which was existed at that time would have been filled by now. It would not be possible to accommodate the applicant against that quota now. Further, as the Recruitment Rules have been amended deleting the direct recruitment quota, it would not be possible to show her against direct recruitment quota now. Hence, the contention of the applicant in this connection also cannot be upheld.

16. It is unfortunate that the applicant had lost her higher grade and further promotion due to her transfer to Delhi and later on to Hyderabad. But, it is too late, now to grant her any relief. It is stated by her that she is stagnating in the maximum of the grade of LDC. Instructions exist to grant stagnation increment as per the recommendations of the IV Pay Commission report. R-2 may consider her case for granting stagnation increment if she is due as per extant instructions and if she is not yet given the same. Now that a quota of 25% is earmarked for Limited Departmental Competitive Examination (LDCE) she can also offer her candidature for the same as all LDCs are eligible to appear for the same.

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17. In view of what is stated above, we do not see any merit in the OA and hence it is only liable to be dismissed. Accordingly we do so. No costs.

(R.Rangarajan)
Member (Admn.)

Malini
(V.Neeladri Rao)
Vice Chairman

Dated 24th March, 1995.

Afzalpurkar
Deputy Registrar (J) CC

Grh.

To

1. The Central Provident Fund Commissioner,
New Delhi.
2. The Addl.Central Provident Fund Commissioner,
Hyderabad.
3. The Regional Provident Fund Commissioner,
Barkatpura, Hyderabad.
5. One copy to Mr.Vilas V.Afzalpurkar, SC for P.F. CAT.Hyd.
6. One copy to Library, CAT.Hyd.
7. One spare copy.

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