

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.04.2007

OA 475/2006

Mr. Anupam Agarwal, counsel for applicant.
Mr. Amit Mathur, proxy counsel for
Mr. R.B. Mathur, counsel for respondents.

Additional
Affidavit
Filed

Learned counsel for the applicant
prayed for and is granted one week's time to
enable him to go through the affidavit filed
by the learned counsel for the respondents.

List on 3.5.2007.



(J.P. SHUKLA)
MEMBER (A)

vk

3.5.07

Mr. Anupam Agarwal, Counsel for the applicant
Mr. Amit Mathur, Proxy Counsel to
Mr. R.B. Mathur, Counsel for respondents

Heard the learned counsel for the parties
The OA has been disposed of by a separate order for the
reasons stated therein.


(Kuldeep Singh)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,

JAIPUR, this the 3rd day of May, 2007

ORIGINAL APPLICATION No.475/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN

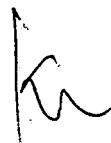
1. Vikas Goyal s/o Shri Jai Kishan Goyal, a/a 30 years, r/o 247-A Mansarovar Colony, Jaipur
2. Rajendra Singh Sosodia s/o Shri Inder Singh a/a 34 years, r/o D-345, Malviya Nagar, Jaipur
3. Ravindra Kumawat s/o Shri R.S.Kumawat, a/a 32 years, r/o 38 Nidhi Vihar Colony, Jyoti Nagar, Jaipur
4. Sanjay Jain Chhabra s/o Shri P.C.Jain, a/a 32 years r/o 49, Nidhi Vihar Colony, Jyoti Nagar, Jaipur

.. Applicants

By Advocate: Shri Anupam Agarwal)

Versus

1. Union of India
through the Central Provident Fund Commissioner,
14, Bikaji Cama Palace,
New Delhi.
2. The Additional Central provident Fund Commissioner,
West Zone, Nidhi Bhawan, Bandra East, Mumbai
3. The Regional Provident Fund Commissioner (Adm.),
Nidhi Bhawan, Jyoti Nagar, Jaipur
4. The Asstt.Provident Fund Commissioner (Adm.), Nidhi
Bhawan, Jyoti Nagar, Jaipur
5. The Rajasthan Employees Provident Fund Employees
Union through its Secretary, Nidhi Bhawan, Jyoti
Nagar, Jaipur.

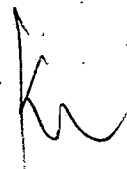


.. Respondents

(By Advocate: Mr. Amit Mathur, proxy counsel to Mr. R.B.Mathur)

O R D E R (ORAL)

It is a joint application filed by four applicants challenging their transfer which has been made by the impugned order Ann.A1. The applicants are the employees of respondents. It is stated that the applicants have been transferred from Jaipur to Sub Regional Office (SRO), Jodhpur allegedly under the guise of the policy dated 5th August, 2005. The applicants submit that they have been transferred earlier also under then existing policy which was made in consultation with respondent No.5 i.e. Rajasthan Provident Fund Employees Union. The main grievance of the applicants is that the department has been changing its policy of transfer from time to time targeting the applicants so the applicants submitted that they are not only assailing the transfer order itself but they have also assailed the transfer policy. It is stated that due to work load, the respondents had opened a Sub Divisional Office at Jodhpur in the year 1997 and since then the employees from Regional Office, Jaipur are being transferred to man it. Earlier there was no transfer policy and there were lot of complaints, accusation etc., therefore, a decision was taken with the concurrence of



respondent No.5 at the meeting held on 19th October, 2001 whereby certain guidelines were framed to transfer the employees, so it was a first transfer policy. The same is annexed at Ann.A2. It is stated that as per the first policy there was clear understanding to re-transfer only after completion of the rotation and there was no provision of any kind of relaxation in the policy. In view of the first policy, applicants being new recruits and thus juniors were transferred vide order dated 25.7.2000 and the applicants remained at Jodhpur till 12.8.2002 and were transferred to Jaipur vide order dated 12.8.2002 (Ann.A3) and when the name of senior employees started coming for rotation transfer, the respondents again issued another policy in consultation with respondent No.5 on 23.9.2003 vide Ann.A5. Thus a new policy was effected on 10.11.2003. Seniors were retained and under the new policy again the applicants were targeted for transfer. Some of office bearers of respondent No.5 stated to have demonstrated their unhappiness of the policy issued in the year 2003 so again another policy was issued on 5th August, 2005, which is the latest one. As per it, not only lot many relaxation has been given to various categories but the rotation has been started afresh without even completing it as per the second policy and according to clause 7 again targeted the applicants as it has provided the employees who were earlier transferred will not be given any relaxation. Thus, it is stated that the transfer policy is discriminatory and

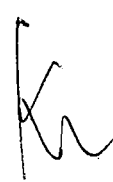


violative of rights of the applicants. Since earlier policy had not completed its rotation even and by framing new policy the other senior employees escaped the transfer. Thus, framing of the policy is itself malafide action of the respondents against the applicants. It is, therefore, prayed that the terms and condition so far it relate to the applicants and the transfer of the applicants may be quashed.

2. The respondents have contested the OA. The respondents in their reply submitted that the transfer policy has been framed in consultation with the employees union. After giving thoughtful consideration to the representations submitted by various employees, the respondents with the consultation of employees union has framed the policy of transfer. As such, the order dated 4.12.2006 has been passed in accordance with the policy of transfer and therefore applicants cannot raise any grievance against this policy. It is further stated that the applicants are the electorates of the employees union and if they are aggrieved with the act of their union, they should raise their grievance in the union itself. The respondents further submitted that since the policy has been issued on 5.8.2005, the applicants should have approached this Tribunal within a period of one year from the date of issue of the policy. Now it is too late to challenge the policy.



It is further submitted that the Sub Regional Office, Jodhpur was opened in the year 1997 but as the staff was not available to be posted at SRO, Jodhpur, it was decided that employees may be transferred to the SRO Jodhpur for effective working of that office. It is admitted that earlier there was no policy of transfer but after establishment of office at Jodhpur a policy was framed in consultation with the employees union. The first policy came into existence in the year 2001 while the applicants were transferred in the year 2000 itself. As such, their transfer was not under the rotational transfer policy of the year 2001. It is further submitted that since certain objections were raised by the employees as well as the employees union over the transfer policy as there was no provision of any relaxation in the first transfer policy while there were some genuine cases which were requiring consideration, so after considering representations of the employees and with the consultation of the employees union, the new transfer policy was issued wherein it was provided that those employee who are transferred for two years in the SRO office will be considered and they will be entitled for transfer in the regional office without any allowances. It was also provided if any promotion has been given in the SRO office then the employee will be transferred in the regional office after completion of his tenure. Thus, certain amendments were required to be made but it was not framed for targeting the employees. The



allegation of targeting is baseless. Again representations were received against the transfer policy which were considered and in consultation with the Union, keeping in view the interest of the employees, a policy has been framed on 5th August, 2005. Since there were certain lacuna in the earlier policy as there was no provision of any relaxation to the lady employees, disabled employees and in the matters when there are certain indigent circumstances, so their interests were taken into consideration and a new policy was framed but without targeting any employee.

The respondents also submitted that since the policy issued by the respondent Department is not statutory policy, in some cases, it is also not necessary that the transfer should be in accordance with the policy. Certain employees can be transferred in the administrative exigency. Policies are merely guidelines which are generally followed but in certain circumstances it can be relaxed. It is admitted that the applicants were earlier transferred to Jodhpur and it is stated that they had not completed two years period and returned back after the one year period on their own request. It is further submitted that there is no ill will against the applicants.

3. In the rejoinder, certain allegations were made as per Ann.A13 that certain persons have not been transferred at all. The respondents have filed additional reply and

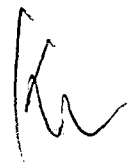


submitted that almost all the persons named in Ann.A13 have been transferred to SRO after its creation.

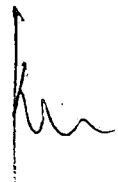
4. I have heard the learned counsel for the parties and gone through the record.

5. It is well settled law that transfer is a right of the management and the management should ensure how to utilize services of its employees and where the employee should be posted. Judicial interference in the matter of transfer has not been appreciated by the Apex Court and by various High Courts because it infringes the rights of the management to utilize best services of its employees. It is also trite law that only where there is exercise of malafide in the transfer order only then the court can certainly intervene. In this case, the grievance of the applicants is mere of transfer policy rather than the transfer of the applicants itself, but at the same time the applicants also state that all these policies which have been framed from time to time have been issued in consultation with the employees union of which the employee concerned are members. Once the transfer policy has been adopted in consultation with the employees union of which the applicants are members, I do not think that the applicants can challenge the same, which does not suit them.

It seems that the SRO office Jodhpur has been established recently and since manpower was not available



at Jodhpur so certain persons have to be transferred to Jodhpur office. The transfer policies were issued in quick succession but the same are issued always in consultation with the employees union so that some guidelines should be followed for transferring the employees. It is unfortunate that firm policy could not be adopted till date. The management itself has been amending the transfer policies time and again. They had framed policy to provide benefit to certain category of employees and similarly again in the second policy and then they have issued a transfer policy in the year 2005. However, malafide against the applicants of the management could be ruled out because while framing the policy, they have also consulted the employees union itself and it is only after the agreement of the union, transfer policy had been framed. Though by virtue of the policy itself, the applicants are being transferred second time or third time but it is not the case of the applicants which could be said malafide action on the part of the respondents and since it is the department who is to run the office at Jodhpur so the department itself is best judge how the transfer policy has to be adopted and worked out and who are the employees who should be posted at Jodhpur or Jaipur. I can simply hope that the latest policy which has been adopted by the respondents will work for longer duration and the applicants being transferred now will get transfer to join the station of their choice at appropriate time. In the present case, I do not find any



malafide so I do not find any scope for interference. Hence the OA is dismissed. The stay already granted is vacated. The parties are left to bear their own costs.


(KULDIP SINGH)
Vice Chairman

R/