

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

13/1/09

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

Heard learned counsel for
the parties

The on stand disposed of
by a separate order.

(B.L. Mathur)
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 13th day of January, 2009

ORIGINAL APPLICATION NO.400/2008

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

Sunder Lal Meena,
Social Security Assistant,
Employees Provident Fund Organisation,
Sub-Regional Office,
Nidhi Bhawan, Vigyan Nagar,
Kota.

... Applicant

(By Advocate : Shri Anupam Agarwal)

Versus

1. Union of India through
Central Provident Fund Commissioner,
14, Bhikaji Kama Place,
New Delhi.
2. Regional Provident Fund Commissioner (II),
Employees Provident Fund Organisation,
Sub-Regional Office,
Nidhi Bhawan, Vigyan Nagar,
Kota.

... Respondents

(By Advocate : Shri Amit Mathur, proxy counsel for
Shri R.B.Mathur)

ORDER (ORAL)

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA challenging the order dated 25.9.2008 (Ann.A/1), whereby headquarter of the applicant has been changed from Kota to Jodhpur by the

Regional Provident Fund Commissioner-II on the recommendation of the Review Committee. Through this OA, the applicant has sought for the following relief :

"The impugned order dated 29.9.2008 so far as it changes the headquarter of the applicant from SRO Kota to SRO Jodhpur may kindly be quashed and set aside. The respondents should be directed to retain the applicant at Kota as before."

2. The brief facts of the case are that a FIR was lodged against the applicant by one Shri Yogiraj Yogi and thereafter the applicant as well as said Shri Yogi had to execute a bond under Section 107, 151 & 116(3) Cr.P.C. The applicant was thereafter suspended in contemplation of disciplinary proceedings vide order dated 11.6.2008 (Ann.A/4). It was also ordered that during the period of suspension, headquarter of the applicant will remain at Kota and he will not leave the headquarter without prior permission of the competent authority. Thereafter, on recommendation of the Review Committee, headquarter of the applicant has been changed from Kota to Jodhpur, vide order dated 25.9.2008 (Ann.A/1).

3. Learned counsel for the applicant submitted that the applicant was continued under suspension without any hindrance inasmuch as no untoward incident occurred during the period. However, an order was passed on 25.9.2008 (Ann.A/1), whereby the applicant was informed with regard to continuance of suspension after review till further orders alongwith increase of subsistence allowance to 75% besides change of headquarter from SRO Kota to SRO Jodhpur. It was also submitted by learned counsel for the applicant that this order of change of headquarter has been passed by the

respondents without application of mind inasmuch as they have failed to give any sufficient reason for the change of headquarter. It was further submitted that the impugned order dated 25.9.2008 (Ann.A/1), changing the headquarter is nothing but transfer of the applicant during suspension/pendency of disciplinary proceedings, which contrary to the proposition held by the Principal Bench in the case of ***A.K.Gandhi v. Union of India*** [2004 (1) ATJ 134], wherein it was held that an employee should not be transferred before conclusion of the departmental proceedings. He has also relied on this judgement for the proposition that the respondents cannot supplement the pleadings by filing additional documents i.e. letter dated 8.8.2008 (Ann.R/1) in the present case. It was also submitted that the applicant is physically handicapped person, to the extent of 75%, and is unable to move without support. His services have also been appreciated, vide Ann.A/3, and nothing untoward has happened since June, 2008. Therefore, change of headquarter is without any reason and without any substance. A copy of medical prescription dated 10.1.2005 and the latest one dated 1/25.9.2008 have been filed collectively at Ann.A/7.

4. Learned counsel for the applicant also pleaded that child of the applicant is also studying in Class-VI and thus the applicant has been transferred in the mid-academic session. He has old widow mother of 85 years to look after. His father-in-law has expired in 1993 and since then he is also maintaining his mother-in-law as well as two brother-in-laws and two sister-in-laws. In case he is directed to report at

16A

Jodhpur, it would be very difficult for him to maintain two establishments.

5. Learned counsel for the respondents relied upon the reply filed and submitted, inter-alia, that suspension order of the applicant was placed before the review committee as per the provisions of law for periodical review. The review committee observed that the inquiry has not begun in the matter hence it would be in the interest of office to change the headquarter in the suspension period. He has also referred to the minutes of the meeting as well as recommendations, as per Ann.R/1. In para 5.4 of the reply, it is submitted that the applicant has not been transferred to some other place but his headquarter has only been changed. Learned counsel for the respondents also relied upon the case of Maneka Gandhi v. Union of India & Ors. [AIR 1978 SC 597], wherein it was held that it is not necessary to communicate the reasons, however, the reasons must exist on the file.

6. I have heard learned counsel for the parties and perused the material available on record. The facts of the case are that the applicant was suspended and his headquarter was retained at the same place with the direction that he will not leave the headquarter without permission. He was placed under suspension for the reason that one Shri Yogiraj Yogi had lodged a FIR against him because of the quarrel took place between them in the office. The applicant was placed under suspension for the said quarrel as well as some other official reasons viz, non-satisfactory work. Learned counsel for the applicant rightly contended that the review committee has not quoted

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any material to justify the change of headquarter. Besides, the Regional Provident Fund Commissioner-II, Kota, has issued the impugned transfer order only on the basis of recommendation of the review committee and without proper appreciation of the facts of the case. It has also been pleaded by learned counsel for the applicant that minutes of the meeting of the review committee have not been placed on record and it is only after filing of this OA that the Regional Provident Fund Commissioner-II, Kota's letter to the Regional Provident Fund Commissioner, Rajasthan, Jaipur-I, as per Ann.R/1, ^{has been filed.} recommending transfer of the applicant but it is not apparent from the letter whether it was ever considered by the review committee or by the officer who has passed the order for change of headquarter. Besides, learned counsel for the applicant has pleaded that the applicant is a handicapped person suffering from disability to the extent of 75%. He has also to look after his old mother as well as mother-in-law and other family members and it is very difficult for him to maintain two establishments. FIR was lodged against the applicant at Kota, in this connection it is pertinent to note that his presence will be required from time to time at Kota to attend the court case. Besides, he will also be required to attend the disciplinary proceedings at Kota. The headquarter can be changed for misconduct or in case the applicant is in a position to tamper with the evidence or influence the witnesses. All the ingredients are absent from the record produced before the Bench.

7. Accordingly, the present OA is allowed and the impugned order dated 25.9.2008 (Ann.A/1), so far as it relates to the

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change of headquarter, is quashed and set aside with a liberty reserved to the respondents that they can issue fresh order regarding change of headquarter on the basis of material which *may* justify misconduct of the applicant or if the respondents come to the conclusion that the applicant is in a position to tamper with the evidence or influence the witnesses. No order as to costs.


(B.L.KHATRI)
MEMBER (A)

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