

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1933/2017
With
O.A.No.3012/2017 & M.A.No.3675/2017

Order reserved on 23rd May, 2018
Order pronounced on 29th May, 2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

O.A. No.1933/2017

Tapas Kumar Ghosh, Group A, Assistant P F Commissioner, aged 57 years
s/o late Vivekananda Ghosh, resident of, Santiniketan, Netajee Para
Jalpaiguri (WB) – 735101 ..Applicant
(Mr. H D Sharma and Mr. S K Khanna, Advocates)

Versus

The Central Provident Fund Commissioner (Under Ministry of Labour)
Bhavishya Nidhi Bhawan, EPF Organization, Head Office, 14, Bhikaji Cama Place
New Delhi – 110 066 ..Respondent
(Mr. Keshav Mohan, Advocate)

O.A. No.3012/2017

Tapas Kumar Ghosh, Group A, Assistant P F Commissioner, aged 57 years
s/o late Vivekananda Ghosh, resident of, Santiniketan, Netajee Para
Jalpaiguri (WB) – 735101 ..Applicant
(Mr. H D Sharma and Mr. S K Khanna, Advocates)

Versus

1. The Central Provident Fund Commissioner (Under Ministry of Labour)
Bhavishya Nidhi Bhawan, EPF Organization, Head Office, 14, Bhikaji Cama
Place, New Delhi – 110 066
2. Additional Central Provident Fund Commissioner (Under Ministry of Labour)
Bhavishya Nidhi Bhawan EPF Organization, Head Office, 14, Bhikaji Cama Place,
New Delhi – 110 066
3. Additional Central Provident Fund Commissioner
D K Block, Sector-II, Salt Lake City, Kolkata-700091
4. Regional Provident Fund Commissioner
Officer in-Charge of Regional Office
Amar Complex, Hijiguri, A T Road, Tinsukia, ..Respondents
(Mr. Keshav Mohan, Advocate)

O R D E R

Mr. K N Shrivastava, M (A):

Since common issues of facts and laws are involved, it was decided to dispose of these two O.As. by this common order.

2. The applicant joined the Employees Provident Fund Organization (EPFO) as Lower Division Clerk and subsequently promoted as Assistant Provident Fund Commissioner (EPFC), on *ad hoc* basis, to meet administrative exigencies, vide office order dated 29.12.2008 and posted at Regional Office (RO), Tinsukia. He was served with a charge memorandum

dated 05.08.2011 under Rule 10 of EPF Staff (CC&A) Rules, 1971. The inquiry officer submitted his report on 03.09.2013 concluding therein that the 'charges leveled against the applicant are not proved'. However, the disciplinary authority, vide its order dated 21.03.2016, issued disagreement note, and finally, it, vide order dated 01.07.2016 (Annexure A-3), imposed a penalty of "reduction by one stage in the time scale of pay for a period of one year without cumulative effect" on him.

3. The respondents in terms of Department of Personnel & Training (DoPT) O.Ms. dated 24.12.1986 and 14.09.1992, as a consequential action, withdrew the *ad hoc* promotion of the applicant and reverted him to his substantive post of Enforcement Officer (EO) and issued Annexure A-1 order dated 22.05.2017 to that effect. The order also transferred him from RO, Tinsukia to RO, Jalpaiguri.

4. The applicant filed O.A. No. 1933/2017 impugning the order dated 22.05.2017 seeking the following main relief:-

"(a) Pleased to set aside the order dated 22.05.2017 (A/1) and the recommendation dated 07.04.2017 at the DPC for not recommending the case of the applicant on the ground of undergoing penalty."

5. On 30.05.2017, when O.A. No.1933/2017 was taken up for admission, while admitting the O.A. and issuing notices to the respondents, the Tribunal passed the following interim order:-

"In the meantime, the status quo with regard to the present status in respect to the impugned order shall be maintained by the respondents. This order shall be subject to the objections from other side."

6. The respondents misinterpreted the order of the Tribunal dated 30.05.2017 and they came to a conclusion that in compliance of the interim

order, they are required to maintain status quo as it existed on the day of passing of the order. According to their records, since the applicant had already been reverted from the post of EPFC (*ad hoc*) to the post of EO/AO and posted to RO, Jalpaiguri vide order dated 22.05.2017, and was relieved of his charge by another dated 24.05.2017, the respondents felt that maintenance of status quo, as it existed in their records, as on 30.05.2017, would be the true compliance of the Tribunal's interim directions.

7. The respondents issued office order dated 20.06.2017 (Annexure A-1 to O.A. No.3012/2017) issuing certain directions to the applicant. The contents of this order read as under:-

“Sri T.K. Ghosh, APFC (Ad-hoc) may refer to his joining report dtd. 01.06.2017 submitted alongwith the copy of interim order of the Hon'ble Principal Bench CAT, New Delhi in OA NO. OA/100/1933/2017 dtd. 31.05.2017 which was forwarded to the Addl. Central P.F. Commissioner (KZ) vide letter No. SRO/TSK/Adm/P. file/T.K. Ghosh/772 dtd. 01.06.2017 (copy enclosed) for necessary orders. In response to the said letter Zonal Office, Kolkata vide letter No. EPFO/ACC/KZ/85/NER/Legal/526 dtd. 15.06.2017 (copy enclosed) directed not to allow Sri T.K. Ghosh, APFC (Ad-hoc) to join at RO, Tinsukia for maintaining the status quo i.e. relieving of Sri T.K. Ghosh, APFC (Ad-hoc). This office vide letter No.SRO/TSK/ADM/P.file/T.K.Ghosh/996 dtd. 19.06.2017 (copy enclosed) has sought guidance from Addl. Central P.F. Commissioner, Zonal Office, Kolkata. In response, the Addl. Central P.F. Commissioner, Zonal Office, Kolkata vide letter No.EPFO/ACC/KZ/85/NER/Legal/558 dtd. 19.06.2017 (Copy enclosed) has conveyed that as Sri T.K. Ghosh, APFC (Ad-hoc) had been relieved from R.O Tinsukia to report for duty as EO/AO at R.O Jalpaiguri vide relieving order dtd. 24.05.2017 (copy enclose), hence this status quo is to be maintained in the light of CAT order dated 31.05.2017.

In view of the above Sri T.K. Ghosh, APFC (Ad-hoc) is advised to comply with the direction of Addl. C.P.F.C., Zonal Office, Kolkata as pointed out in his letter dtd. 19.06.2017.”

8. Against the *ibid* order of the respondents dated 20.06.2017, the applicant filed yet another O.A., being O.A. No.3012/2017 praying for the following main reliefs:

“i. To quash and set aside the orders dated 15.06.2017, 19.06.2017 and 20.06.2017

ii. To pay all unpaid dues relating to the post of Assistant Provident Fund Commissioner as the applicant discharged the duties of the post.”

9. While considering O.A. No.3012/2017 on 04.09.2017, the Tribunal stayed the impugned order dated 20.06.2017. The applicant had filed two separate C.Ps., being C.P. No.451/2017 in O.A. No.1933/2017 and C.P. No.639/2017 in O.A. No.3012/2017, alleging non-compliance of the Tribunal's interim directions in its orders dated 30.05.2017 and 04.09.2017 in respective O.As. Both these C.Ps. have already been ordered to be closed by two separate orders dated 29.05.2018.

10. We have heard the arguments of learned counsel for the parties and perused the materials placed on record.

11. As is noticed from the records, the applicant is aggrieved of his reversion from the post of EPFC (*ad hoc*) to the post of EO/AO and his transfer from RO, Tinsukia to RO, Jalpaiguri vide order dated 22.05.2017. The respondents have clarified that following the imposition of penalty of “reduction by one stage in the time scale of pay for a period of one year without cumulative effect” on the applicant, they had no option except to revert the applicant from APFC (*ad hoc*) to the post of EO/AO in terms of DoPT O.Ms. dated 24.12.1986 and 14.09.1992. Hence, we do not find any illegality in the orders dated 22.05.2017 and 20.06.2017 of the respondents.

12. The respondents have further brought to our notice that after the currency of penalty imposed on the applicant ended on 30.06.2017, they convened a Departmental Promotion Committee (DPC) on 30.08.2017 and

on the basis its recommendations, they have promoted the applicant to the grade of APFC and posted him to RO, Bellary where he has already joined.’

13. The records would also indicate that the applicant has worked as APFC (*ad hoc*) at RO, Tinsukia up to 21.05.2017 and had remained on leave from 22.05.2017 to 31.05.2017. He reported at RO, Tinsukia duly armed with interim order dated 30.05.2017 of the Tribunal. In other words, he never reported at RO, Jalpaiguri, nor did he work as EO/AO from 22.05.2017 to 31.05.2017. It is further noticed that the penalty of “reduction by one stage in the time scale of pay for a period of one year without cumulative effect” was imposed vide order dated 01.07.2016, but it was implemented much belatedly on 22.05.2017. Despite the penalty order dated 01.07.2016 being in place, the respondents, for the reason best known to them, did not implement it and allowed the applicant to continue working as APFC (*ad hoc*) at RO, Tinsukia and much belatedly, vide order dated 22.05.2017, implemented the penalty order, reverting him to the post of EO/AO and posting him to RO, Jalpaiguri.

14. Considering the fact that the applicant has already been promoted to the post of APFC on regular basis as per the recommendations of DPC, which had met on 30.08.2017, and the promotion order dated 31.08.2017 has been issued to that effect, and in compliance of the promotion order, he has already joined at RO, Bellary, we deem it appropriate to dispose of these O.As. in the following terms:-

(i) The applicant shall apply for sanction of appropriate leave, as available to his credit, for the period from 22.05.2017

to 31.08.2017 to the competent authority within two weeks from the date of receipt of a copy of this order.

(ii) The competent authority, on the receipt of the applicant's leave application, shall sanction the leave to him for the above said period within two weeks thereafter.

(iii) On sanctioning of his leave for the period from 22.05.2017 to 31.08.2017, the applicant shall be paid the salary of APFC (ad hoc) within four weeks.

(iv) Since the applicant has been promoted to the post of APFC on regular basis vide order dated 31.08.2017, he shall be paid salary of APFC from 01.09.2017 even though he might have joined a few days later at the transferred place, i.e., RO, Bellary.

15. In view of the order passed above, no separate order is required to be passed in M.A. No.3675/2017 in O.A. No.3012/2017. It is accordingly disposed of.

There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

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