

OA.No.170/00241/2018/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00241/2018

DATED THIS THE 31st DAY OF OCTOBER, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sri.S.Srinivas Kumar
 Son of Late R.Shamanna
 Aged about 47 years
 Working as Date Entry Operator (DEO)
 At Employees' Provident Fund Organization
 Regional Office
 I Floor, Bilwashree Arcade, 15th Cross
 SIT Main Road, Tumkur-572 103.
 C/o G.S.Narayana, T.P.Kailasam Road
 Sapthagiri Extension
 Tumkur-572 101.Applicant

(By Advocate Smt.Ashwini Rajagopal)

Vs.

1. Central Provident Fund Commissioner
 Office of the Employees' Provident Fund Organization
 Head Office
 Bhavishyanidhi Bhawan
 14 Bhikaji Cama Place
 New Delhi-110 066.
2. Additional Central Provident Fund Commissioner
 Head Quarters
 Office of the Additional Central Provident Fund
 'Kaveri', Bhavishya Nidhi Enclave
 HMT Main Road, Jalahalli
 Bengaluru-560 013.
3. Regional Provident Fund Commissioner-II
 Office of the Employees' Provident Fund Organization
 Regional Office, Bilvasree Arcade, 1st Floor, 15th Cross
 S.I.T. Main Road, Tumkur-572 103.
4. Union of India
 By its Secretary to the Government
 Ministry of Labour
 Sharamashakthi Bhavan
 New Delhi-110 001.Respondents

(By Advocate Sri M.Pradeep for R3)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Issue a writ in the nature of mandamus directing the respondents to consider the application dated 01.05.2017 of the applicant (Annexure-A20) and to grant the applicant conversion from the cadre of DEO to DPA retrospectively from 30th May, 2009, that is, the date from which he is eligible and grant all consequential benefits including monetary benefits and other reliefs.*
- b) *Issue a writ in the nature of mandamus directing the respondents to consider representations of the applicant dtd.10.04.2017 at Annexure-A17 and A18 and to grant children education allowance and reimbursement of Tuition fees and transfer grant, respectively, as computed at Annexure-A9, with interest at the rate of 18% from the date each of the amounts were due to the applicant till the date of payment of the amount, and grant all consequential benefits and reliefs.*

2. According to the applicant, he joined the services of the Employees' Provident Fund Organization on 13.11.1995 as Lower Division Clerk. On passing the requisite examination, he was appointed to the post of Data Entry Operator(DEO) Grade-A on 30.06.2000. On 24.08.2007, he submitted his resignation due to health reasons. However, before the resignation could be accepted, he withdrew the same on 19.10.2007. However, on 24.10.2007, Regional Office, Bengaluru accepted the resignation and relieved the applicant. He preferred OA.No.386/2008 before this Tribunal questioning the rejection of the request for withdrawal of notice of resignation. The Tribunal vide order dtd.01.04.2010(Annexure-A1) allowed the OA directing the respondents to take back the applicant for duty forthwith with all consequential benefits flowing therefrom. The WP.No.26763/2010 preferred by the Regional Office- Peenya was dismissed by order dtd.11.12.2013(Annexure-A2) holding that the applicant was entitled to continuity of service and only 50% of the arrears of salary. The Hon'ble Apex Court dismissed the

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SLP(Civil).No.14635/2014 preferred by Regional Office-Peenya by order
dtd.06.04.2015(Annexure-A3) confirming the order of the Tribunal as modified
by the order of the Hon'ble High Court. During the pendency of
CP.No.16/2014 filed by the applicant for non-compliance of order of the
Tribunal dtd.01.04.2010, the Regional PF Commissioner, RO Peenya, issued
order of reinstatement dtd.24.03.2014(Annexure-A4). Thereafter, the applicant
was paid his backwages by order dtd.25.08.2014. On reinstatement, the
applicant has not been reimbursed his son's tuition fees for the academic
years 2006-07 to 2013-14, under the Children Education Allowance Scheme.
The applicant's son was studying between 2006-07 to 2012-13 from 1st
standard to VII standard in Carmel School, Padmanabha Nagar, Bengaluru
and the details of fees for the academic years 2006-07 up to 2011-12 is
annexed under Annexure-A7. Respondent No.3 vide office order
dtd.07.04.2015(Annexure-A8) has reimbursed educational allowance of
Rs.18,000 for the academic year 2014-15. On reinstatement, the applicant
was paid consequential benefit of Productivity Linked Bonus(PLB) of
Rs.55,264 for the period 2006-07 to 2013-14. On reinstatement into service,
he was posted to Sub-Regional Office, Tumkur instead of Regional Office,
Bommasandra where he was working before being relieved and according to
the applicant, it is a transfer from one office to another thereby entitling him for
all transfer grant and allowances along with joining time. He reported for duty
on 28.03.2014 vide letter dtd.23.04.2014(Annexure-A10) submitted by the
applicant to the Sub-Regional Officer, Tumkur. The Employees Provident
Fund Organization Data Processing Assistant Recruitment Rules,
2009(Annexure-A11) is published in the Gazette of India Extraordinary on
30.05.2009. Column 11 of the Schedule appended to the said Rules provides
that the recruitment of Data Processing Assistants shall be 100% by direct

recruitment and as a one time relaxation on cadre restructuring, the existing Data Entry Operators/(Gr-A)/(Gr-B)/(Gr-C) possessing minimum educational qualifications with six years of regular service shall be deemed to have been appointed from the date of notification of these Rules. The applicant submitted representation dtd.23.04.2014(Annexure-A12) requesting for his conversion from the post of DEO to DPA, other consequential benefits including reimbursement of children tuition fees, payable from 2006-2007 till 2013-14. The applicant submits yet another representation dtd.23.04.2015(Annexure-A13) reiterating his request for conversion from the post of DEO to DPA. The Regional Provident Fund Commissioner-I (HRM) by its letter dtd.03.08.2016(Annexure-A14) wrote to the Additional Central Provident Fund Commissioner(Zones), stating that representations have been received from some DEOs that they have not yet been converted to DPAs, despite being eligible for conversion, thereby requesting that details of such employees be sent to the Head Office by 10.08.2016. The respondent No.3 by letter dtd.07.09.2016(Annexure-A15) wrote to the respondent No.2 that the applicant has completed 16 years of continuous service in the post of DEO from 30.06.2000 possessing Graduation in Science and Post-Graduation in Arts and hence is eligible to be considered for promotion/conversion to the post of DPA. The applicant submitted representations dtd.07.12.2016 & 10.04.2017(Annexure-A16 & A17 respectively) requesting to be considered for conversion and another representation dtd.10.04.2017(Annexure-A18) requesting for children education allowance and reimbursement of tuition fees and for transfer grant.

3. The Additional Central PFC (HRM) addressed a circular dtd.24.04.2017(Annexure-A19) to all the Additional CPFC (Zones) requesting to forward details of all the DEOs eligible to be converted to DPAs. In

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furtherance of the circular dd.24.04.2017, the applicant submitted application
dtd.01.05.2017(Annexure-A20) in the prescribed form requesting for
conversion from DEO to DPA. Since no action has been taken on the said
representations, the applicant has filed the present OA seeking the relief
stated above.

4. The applicant further submits that the delay in considering his case for conversion from DEO to DPA, placing juniors to the applicant as DPAs is arbitrary, illegal and discriminatory. Consequential benefits would include all benefits the employee or officer would be entitled to while in service. If he is denied children education allowance and the transfer grant, it would be violation of the orders of this Tribunal as well as Hon'ble High Court. He cannot be denied consequential benefits for the period of service interrupted on account of the void order.
5. The respondent No.3 has filed reply statement wherein he submits that the applicant having health issues had submitted leave application and thereafter he took frequent medical leaves. Despite several notices of recalling for duty, he did not report for duty and submitted resignation dtd.24.08.2007. Later on he submitted one more letter dtd.19.10.2007 to Officer-In-charge, SRO, Bommasandra seeking to withdraw his earlier letter of resignation. Meanwhile, RPFC-I, RO, Bangalore vide letter dtd.24.10.2007 has issued the letter of acceptance of his resignation. Aggrieved by which, he approached the Hon'ble Tribunal in OA.No.386/2008 which was allowed and Hon'ble High Court of Karnataka has also upheld the order of the Tribunal by modifying it to deduct 50% of the arrears of salary as nothing is placed on record to show that the applicant did not work elsewhere till that date after October 2007. The department has released 50% of salary arrears through OM dtd.22.08.2014.

6. He submits that the applicant has been reinstated vide office order dtd.24.03.2014 to Sub-Regional Office, Tumkur instead of Sub-Regional Office, Bommasandra both of which at that time were part of same region i.e Peenya. In the said office order, the competent authority has used the term 'reinstated' instead of 'transferred' and hence the applicant is not eligible for transfer grant and allowances with joining time. The respondent No.3 has duly forwarded the representations dtd.23.04.2014 and 23.04.2015 received from the applicant to the Regional Office, Peenya. However, the applicant's service period had a break for the period from 01.03.2007 to 24.08.2007 for which disciplinary proceedings for minor penalties were conducted against the applicant and the disciplinary authority having taken into account all the points, imposed only a minor penalty of 'Censure' on the applicant and his service period was regularized on 01.06.2016. The applicant's representation for conversion from DEO to DPA received at Regional Office, Tumkur on 11.05.2017(Annexure-R1) was forwarded to Zonal Office, Bangalore. However, the same was returned by Zonal Office, Bangalore on 12.05.2017 requesting the Officer-In-Charge to furnish the comments on the representation. The Region Office, Tumkur has forwarded the said representation along with comments to the Zonal Office, Bangalore on 18.05.2018. The SRO, Tumkur has taken suitable steps from time to time for placing the representation for conversion from DEO to DPA before competent authority for consideration vide letters dtd.19.05.2017(Annexure-R2) and 11/12.07.2018(Annexure-R3). The benefits of Children Education Assistance and reimbursement of tuition fee have been released to the applicant on 30.05.2018(Annexure-R4). Another proposal for conversion from Cadre of DEO to DPA has been sent by respondent No.2 office vide letter dtd.12.07.2018(Annexure-R5).

7. He further submits that all other consequential benefits except transfer grant have already been released by his office in compliance to the order passed by the Tribunal as well as High Court. The applicant has no locus standi to file the OA since his representation is being considered and forwarded to the competent authorities and is in the pipeline for needful and all the benefits sought by the applicant have been considered and granted to the applicant for which he is legally entitled to. The OA filed by the applicant is premature and he has not exhausted the remedy of statutory appeal before approaching this Tribunal and hence become infructuous.
8. We have heard the Learned Counsel for both the parties. The Learned Counsels for the applicant and the 3rd respondent have made submissions reiterating the factual position and their points as highlighted by them in the OA and reply statement.
9. We have gone through the main contentions of the applicant and reply of the 3rd respondent in detail. We find that even though the respondents in para-24 of their reply contend that the Department has nowhere and not denied any consequential benefits claimed by the applicant for which he is legally eligible and entitled to, their action does not support this contention. As rightly contended by the applicant, the respondents cannot deny the applicant the consequential benefits taking shelter under the void order set aside by this Tribunal and finally confirmed by the Hon'ble Apex Court. The order of termination of the applicant's services is held to be void, meaning that, in the eye of law, the impugned order had never been passed. It, therefore, goes without saying that the applicant has to be reinstated to the same post he was working and that he cannot be denied consequential benefits on account of the void order. It is also very clear as has been admitted by the respondents

that the applicant is eligible for being appointed as Data Processing Assistant(DPA) as evidenced by their own letter dtd.07.09.2016(Annexure-A15). As per the rules, he is eligible to be promoted as DPA w.e.f.30.05.2009 the date on which the rules were notified. However, it is seen that the respondents have taken their own sweet time in issuing a simple order to this effect and there has been a series of correspondences with the proposal lying idle at the Head Office of the respondents' organisation for several years for no valid reason. It is very unjustified on the part of the respondents to force the applicant to appeal at every stage for the benefits for which he is legally entitled to. The respondents' organisation is therefore directed to promote the applicant to the post of DPA without any further delay w.e.f.30.05.2009 and provide him with all the consequential benefits flowing therefrom.

10. We are also constrained to point out that as seen in Annexure-A19, the respondents' organisation has once again kept the door open for further litigation with respect to the seniority of some DEOs who are converted to DPA through relaxation saying that their seniority will be fixed below the present incumbents. If, as per the rules notified, a person is eligible to be promoted as DPA from 30.05.2009, he will have the seniority with effect from that date and not as casually mentioned by the respondents in Annexure-A19. It is made clear that the applicant will be entitled for all the benefits including seniority etc. from the date of his promotion as DPA w.e.f. 30.05.2009.

11. The respondents have submitted that the Children Education Allowance for the years 2006-07 to 2013-14 has been sanctioned to the applicant vide Annexure-R4. Here also, it is seen that there has been unconscionable delay in releasing the allowances for the education of children for which the applicant was legally entitled to. This delay cannot be pardoned and therefore,

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the respondents are directed to pay interest at the rate of 15% from the date
on which the allowances were due for the years 2006-07 to 2013-14.

12. The only issue pending relates to the payment of transfer allowance for the posting of the applicant to SRO, Tumkur. As has already been discussed, a legal finality has been achieved relating to the reinstatement of the applicant which will in effect mean that he should have been posted back to the place from where he was relieved namely SRO, Bommasandra. Merely because at the time of reinstatement, an order has been issued that he has been reinstated does not deliver the full import of the order of termination being considered void. As such, the applicant was entitled to be reposted on reinstatement to SRO, Bommasandra. Inasmuch as he has been posted to SRO, Tumkur, he is eligible for transfer allowance also. The respondents are directed to settle the above benefits within a period of two(2) months.

13. The OA is therefore allowed with the aforesaid direction. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00241/2018

Annexure A1: Order dtd.01.04.2010 in OA.No.386 of 2008

Annexure A2: Order dtd.11.12.2013 of the Hon'ble High Court in Writ Petition
No.26763 of 2010

Annexure A3: Order dtd.06.04.2015 of the Hon'ble Supreme Court in S.L.P.(Civil) No.14635 of 2014

Annexure A4: Order of reinstatement dtd.24.03.2014

Annexure A5: Central Civil Services (Educational Assistance) orders 2006 and Office Memorandum dtd.23.03.2006

Annexure A6: Office Memorandum dtd.02.09.2008

Annexure A7: Letter dtd.23.01.2016 issued by Carmel School, Padmanabha Nagar, providing details of fees for the academic Years 2006-07 up to 2011-12

Annexure A8: Office order dtd.07.04.2015, sanctioning Children Education Allowance for academic year 2014-15

Annexure A9: Table showing estimated dues of Children education allowance and transfer grant payable to applicant

Annexure A10: Letter dtd.23.04.2014, evidencing that the applicant reported for duties on 28.03.2014

Annexure A11: Employees Provident Fund Organization Data Processing Assistant Recruitment Rules 2009

Annexure A12: Representation of the applicant dtd.23.04.2014

Annexure A13: Representation of the applicant dtd.23.04.2015

Annexure A14: Letter dtd.3.8.2016 of respondent No1, requesting for details of employees eligible for conversion from DEOs to DPAs

Annexure A15: Communication of respondent No.3 dtd.07.09.2016 indicating that the applicant may be considered for promotion/conversion

Annexure A16: Representation by the applicant dtd.07.12.2016

Annexure A17: Representation by the applicant dtd.10.04.2017

Annexure A18: Representation by the applicant dtd.10.04.2017

Annexure A19: The Additional Central PFC (HRM) circular dtd.24.04.2017

Annexure A20: Application of the applicant dtd.01.05.2017 requesting for conversion from DEO to DPA

Annexures with reply statement:

Annexure-R1: Copy of Letter dtd.11.05.2015

Annexure-R2: Copy of Letter dtd.19.05.2017

Annexure-R3: Copy of Letter dtd.11/12.07.2018

Annexure-R4: Copy of Letter dtd.30.05.2018

Annexure-R5: Copy of Letter dtd.12.07.2018
