

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Applications No.200/00106/2018

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Original Application No. 200/00107/2018

Jabalpur, this Tuesday, the 15th day of May, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Sagar lal Bhavedia, S/o Shri S.R.Bhavedia,
Aged about 45 years, R/o Shankar Nagar,
Katangi Road, Jabalpur (M.P.) - **Applicant in OA No.200/00106/2018**

Yogesh Shrivastaa, S/o Shri C.L.Shrivastava,
Aged about 51 years, R/o Shrivastava Niwas,
Goutamganj, Garha,
Jabalpur (M.P.) - **Applicant in OA No.200/00107/2018**

(By Advocate –**Shri Akash Choudhary**)

V e r s u s

1. Union of India, through its Secretary,
Ministry of Labour and Employment,
New Delhi-110001

2. The Additional Central Provident Fund Commissioner,
M.P. & C.G. Bhavishyanidhi Bhawan, 59 Arera Hills,
Bhopal-462011 (M.P.)

3. The Regional Provident Fund Commissioner (1),
Bhavishyanidhi Bhawan, 59 Arera Hills,
Bhopal-462011 (M.P.)

4. The Regional Provident Fund Commissioner (1),
Bhavishyanidhi Bhawan, Vijay Nagar,
Jabalpur-482002 (M.P.) -**Common Respondents in both the OAs**

(By Advocate –**Shri J.K.Pillai**)

(Date of reserving the order:-02.05.2018)

COMMON ORDER**By Navin Tandon, AM:-**

Since the issue involved in both the Original Applications is common, these are being disposed by this common order. However, for the purposes of this common order, reference is made to the facts and documents referred in Original Application No.200/00106/2018.

2. The applicants are aggrieved against the transfer from Jabalpur to Gwalior. Hence they have filed this Original Application.

3. The applicants have prayed for the following relief in both the Original Applications:-

“8. Relief Sought:-

8(i) Summon the entire relevant record from the possession of the respondents for its kind perusal.

(ii) Quash and set aside the order dated 31/01/2018 (Annexure A-1) so far it transfers the applicant from Jabalpur to Gwalior.

(iii) Command and direct the respondent authorities to permit the applicant to work at the present place of posting i.e. Jabalpur along with all consequential benefits.

(iv) Any other order/orders, which this Hon'ble Court deems, fit proper.

(v) Cost of the petition may also kindly be awarded.”

3.1 The applicants have submitted that the applicants are posted at Jabalpur from 12.08.2016 & 08.11.2016 respectively. They have

been transferred to Gwalior vide order dated 31.01.2018 (Annexure A-1). He submits that it is the policy of the respondent department that “longest stay will go first” as per communication dated 29.06.2012 (Annexure A-3).

3.2 However, the respondents have not followed this principle and Shri Roop Singh Maravi, who is posted at Jabalpur office from 13.10.2014 has not been transferred out.

4. The respondents in their reply have submitted that the rotational transfer are being carried out as per internal agreement with the union of the employees. The applicant has been transferred to Gwalior for short period of one year and thereafter on completion of period of one year he would be transferred back to his present place of posting i.e. Jabalpur.

4.1 As per communication dated 11.08.2003 (Annexure R/1), four office bearers of the union can be exempted for rotational transfer for two years. Shri Maravi is the Secretary of the Employees Provident Fund Staff Union, Jabalpur Unit. His turn for rotational transfer fell due in December 2016 and August 2017 respectively but he sought exemption for a period of two years and now he would be due for transfer in August 2018 or till formation of the new body which ever is earlier.

5. Learned counsel for the applicant in the rejoinder has attached a document i.e. Annexure RJ/1 through which he submitted that no immunity can be granted to Shri Maravi as he is liable to be transfer like the applicants. However, it is seen that no reference is given of the document from where that one page has been extracted from.

6. In additional submissions in the rejoinder they have added few names who have never been transferred to Gwalior. The unsigned document has been attached as Annexure RJ/2.

7. Since Annexure RJ/1 and RJ/2 are additional documents, which are unsigned/unreferenced and were not referred to in the Original Application, no cognizance is being taken for these.

8. We have heard the learned counsel for both the parties and perused the documents annexed therewith.

9. During the course of arguments it was brought out that there is no written transfer policy and it is only on the basis of internal arrangement that these rotational transfers take place. Learned counsel for the applicant relied upon the judgment in the matters of **Bannari Amman Sugars Ltd. Vs. Commercial Tax Officer and others**, dated 22nd November, 2004 as per which it is stated as under:-

“A person may have a 'legitimate expectation' of being treated in a certain way by an administrative authority even

though he has no legal right in private law to receive such treatment. The expectation may arise either from a representation or promise made by the authority, including an implied representation, or from consistent past practice. The doctrine of legitimate expectation has an important place in the developing law of judicial review. It is, however, not necessary to explore the doctrine in this case, it is enough merely to note that a legitimate expectation can provide a sufficient interest to enable one who cannot point to the existence of a substantive right to obtain the leave of the court to apply for judicial review. It is generally agreed that 'legitimate expectation' gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation to be confined mostly to right to a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightway from the administrative authorities as no crystallized right as such involved. The protection of such legitimate expectation does not require the fulfillment of the expectation where an overriding public interest requires otherwise. In other words, where a person's legitimate expectation is not fulfilled by taking a particular decision then decision maker should justify the denial of such expectation by showing some overriding public interest. (See *Union of India and Others. v. Hindustan Development Corporation and Others*, AIR (1994) SC 998).”

10. It is seen that all the personnel are being given rotational transfers. The only exemption is being made in office bearers of the union, and that also only for the period of two years. Shri Roop Singh Maravi is covered in that exemption. The respondents have also made averments that he has is also due for transfer in August 2018, which is not very far away.

11. Learned counsel for the applicant questioned the manner in which Annexure R/1 is being interpreted. However, learned

counsel for the respondents submitted that these guidelines about two years relaxation to office bearers of Union/Federations have always been implemented in the same manner.

12. In view of the above, we find no reasons to interfere with the transfer orders. Accordingly, the Original Application is dismissed being devoid of any merit. No costs.

(Ramesh Singh Thakur)

Judicial Member

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(Navin Tandon)

Administrative Member