

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI .**

O.A.437/2014

Dated this Wednesday the 24th day of October, 2018.

**Coram : Dr.Bhagwan Sahai, Member (A)
Shri R.N. Singh, Member (J).**

Shri Manoj Subhash Sonawane,
Social Security Assistant,
Employees Provident
Fund Organization,
Sub Regional Office, Nasik,
Maharashtra-422 007.
R/o. Flat No.22, Mandale Park,
Near Bhagwati Gas Agency,
Rane Nagar, Nasik-9. .. Applicant.

(By Advocate Shri Vicky Nagrani).

Versus

1. Union of India, through
the Secretary,
Ministry of Labour & Employment,
Shram Shakti Bhawan, Rafi Marg,
New Delhi - 110001.
2. The Regional Provident Fund
Commissioner-II,
P-11, Bhavishya Nidhi Bhavan,
MIDC, Satpur,
Nasik - 422 007.
3. The Employees Provident Fund
Organization,
Sub Regional Office,
Bhavishya Nidhi Bhavan,
MIDC, Satpur,
Nasik - 422 007.
4. Regional Office-Mumbai-III,
Kandivali, Bhavishya Nidhi Bhavan,
Sector-3, Charkop Market,
Kandivali (W),
Mumbai - 400 067. .. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 19.09.2018
Order delivered on : 24.10.2018

O R D E R

Per : Dr.Bhagwan Sahai, Member (A) .

Shri Manoj Subhash Sonawane, applicant in
this O.A. seeks quashing and aside of -

1(a) . order of his compulsory retirement dated
23.04.2013;

1(b) . direction to the respondents to pass a
reasoned order on his representation;

1(c) . direction to the respondents to consider
him for re-transfer to his previous office i.e. Sub
Regional Office, Nasik, and

1(d) . award cost of this application to him.

2. Facts of the case stated in brief:

2(a) . The applicant while working as UDC
(Pension) in office of Assistant Provident Fund
Commissioner, Sub Regional Office, Nasik received
these notes/memoranda/letters from the Assistant
Provident Fund Commissioner -

(i) on 12.08.2004 for not attending his work
regularly with proper care and diligence resulting
in delay in preparation of Bank Reconciliation
Statements (BRS); -

(ii) on 06.10.2004 for not attending 160
letters/correspondence received from pensioners and

banks;

(iii) 13.01.2005 for explaining why previous notes and memos issued to him about his negligence in work had not been replied;

(iv) 23.08.2005 to explain the unreplied memos and notices issued to him earlier and to explain why disciplinary proceedings should not be initiated against him.

(v) on 22.12.2004 note/memorandum from Shri C.D. Ugale, Section Supervisor (Pension) for not attending to Dak/correspondence from the banks and pensioners; and

(vi) on 09.02.2005 again for non-handing over of certain demand drafts which were to be deposited with bank and asking him to hand over the demand drafts on that date;

2 (b) . He also received notes / memos from Shri R.V. Shinde, Assistant Provident Fund Commissioner, Nasik -

(i) on 16.01.2017 for relieving him from his post on that day and directing him to report on the next day at Regional Office, Nagpur; and

(ii) on 23.07.2007 a letter from Shri Y.R. Parkhi, Assistant Provident Fund Commissioner, Nasik directing him to forward his leave application from 11.07.2007 to 10.09.2007 to the Regional Office,

Nagpur.

2(c). When the applicant submitted a certificate of being medically unfit to the Regional Provident Fund Commissioner, Nagpur, the latter wrote to Civil Surgeon, Civil Hospital, Nasik on 05.09.2007 for conducting medical examination of the applicant and for opine thereon. Thereafter the applicant seems to have sought cancellation of his transfer from Nasik to Nagpur because of hospitalization of his mother and thereafter death of his father.

2(d). On 01.01.2008 he was issued a show cause notice by the Regional Provident Fund Commissioner-II, Nasik because of his habitual absence from office and negligence in performing of duty, and asking him to explain as to why disciplinary proceedings should not be initiated against him.

2(e). The applicant joined at the Nagpur Office on 16.01.2008, as per the transfer order of 17.07.2007. Then on 13.02.2008 a Memorandum was issued to the applicant proposing inquiry against him for misconduct and providing him time for submission of his written statement of defence, etc. The applicant also obtained a re-commendatory letter from President of Maharashtra Youth Congress addressed to the Hon'ble Union Minister of Labour & Employment which came to be forwarded to the

Regional Provident Commissioner, Nasik.

2(f). The applicant again applied to the Union Minister for his transfer back to Nasik. Then on 04.02.2010 the applicant was transferred from Nagpur and posted to District Office, Ahmednagar.

2(g). On appointment of Presenting Officer and Inquiry Officer, the departmental inquiry was conducted on 06.06.2011 at Sub-Regional Office, Nasik. During the inquiry the applicant unconditionally accepted all the charges framed against him and made a statement of confession stating that he confessed fully and unconditionally all the charges against him and this statement was not made by him under any duress and he promised to fulfil his duty fully honestly and with dedication in future.

2(h). Thereafter the order of compulsory retirement of the applicant was issued on 07.08.2012. The applicant requested on 31.08.2012 to Additional Central Provident Fund Commissioner to reconsider the order of his compulsory retirement by considering his grievance sympathetically. A similar request was also submitted to the Regional Provident Fund Commissioner-II, Nasik.

2(i). The Appellate Authority rejected the appeal of the applicant on 20.02.2013 finding it devoid of

merit. Hence the present O.A.

3. Contention of the parties:

The applicant in the rejoinder has stated that -

3(a). he was charged for negligence of duty but it had happened as he was suffering from family and domestic circumstances beyond his capacity to suffer. His father was not keeping well and then his mother was under mental shock and not keeping well. There was theft in his house on 14.07.2007. His wife was also not keeping well. Hoping for lenient view and imposition of minor penalty, he accepted the charges levelled against him and promised to perform his duties honestly in future. In spite of his written promise of performing his duties honestly and with dedication, the respondent authority did not consider it sympathetically;

3(b). based on this, the applicant and his counsel claim that his transfer from Nasik to Nagpur and subsequent departmental inquiry were based on malafide.

The respondents and their counsel have submitted that -

3(c). due to repeated failure of the applicant in performing his duty, he was issued several notes and memoranda but he never replied to them. The failure

of the applicant in performing his duties is unbecoming of an employee of EPFO and thus he violated CCS (Conduct) Rules, 1964;

3(d). the applicant remained on leave without intimation to his office and prior sanction, because of which he was treated as dies-non for 32 days;

3(e). when he was posted in Damages Cell at SRO Nasik, he did not dispose of a single file under his charge.

3(f). the punishment has been awarded to the applicant based on conclusions of the departmental inquiry during which the applicant himself confessed and admitted to all the charges levelled against him;

3(g). the order of compulsory retirement is, therefore, fully justified and because of the same reason his appeal was also dismissed. The principles of natural justice have been fully complied with in this case, hence his O.A. has no merit; and

3(h). the respondents' counsel has also attempted to benefit from the case law of Hon. Supreme Court in **Civil Appeal No.213/1962 decided on 19.10.1962 - State of Orissa and others Vs. Bidyabhushan Mohapatra (AIR 1963 SC 779)**, in which it was held that the High Court had no jurisdiction to direct

review of the penalty order of dismissal from service of a public servant passed by the competent authority, when the conditions of the constitutional protection had been complied with.

4. Analysis and conclusions:

We have perused the application memo, rejoinder filed by the applicant, reply and sur-rejoinder of the respondents and the arguments advanced by the counsel on both the sides.

4 (a) . On consideration of all the above material facts on record, it gets clearly established that the applicant has been a habitual absentee, even after treatment of period of 32 days as dies-non. The respondents had issued repeated memos/notes of caution/warning to him to improve his performance, but they seem to have been of no avail. Sickness of his mother was claimed by the applicant in September, 2012 i.e. only after his transfer from Nasik to Nagpur office in July, 2012. He joined at the place of his new posting on transfer at Nagpur only in January, 2013 i.e. after seven months of the order.

4 (b) . The departmental proceedings against him have been conducted by the respondents properly and we do not find any infirmity in them.

4 (c) . From all these facts we conclude that the

O.A. is totally devoid of merits and is only a wasteful litigation carried on by the applicant. He has not made out any justifiable cause for interference with the decision of respondents authorities to retire him compulsorily from service in public interest.

5. Decision:

The O.A.437/2014 is dismissed with cost of Rs.100/- to be paid by the applicant to Respondent No.3 within one month of receipt of certified copy of this order.

(R.N. Singh)
Member (J)

(Dr.Bhagwan Sahai)
Member (A) .

H.