

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00665-00691/2017

DATED THIS THE 09TH DAY OF MAY, 2018

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

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. Shri Jagannath,
S/o Babu Poojary,
Aged about 57 years,
1-174, Hosamane,
Near Bandasale House,
(D.K) Mangaluru – 575 017.

2. Smt Shobha Shetty,
W/o Balakrishna K.A.,
Aged about 52 years,
Shri Nidhi, Badaga Yekkar,
Yekkar Village & PO,
Mangaluru – 574 509

3. Smt Sujatha Suvarna,
W/o Hari K.V.,
Aged about 55 years,
301, Kiran Apartment,
Marnamikatta,
Mangaluru – 575 002.

4. Shri Sheik Mohammed Mustaq,
S/o Sheik Mohammed Ismail,
Aged about 56 years,
17-14-1131/24-1, Taj Homes,
Melinamogaru, Kankanady,
PO, Mangaluru 575 002.

5. Shri Chandrashekar D.M
S/o Machayya D.B,
Aged about 55 years,
Qtrs. No. 108, Block 14,
Bhavishyanidhi Enclave,
Vamanjoor, PO,
Mangaluru – 575 028.

6. Shri Naveen Kumar U S,
S/o U. Shankar,
Aged about 54 years,
2-7-471/2, Sri Durga,
VII Cross, Bejai Kapikad,
Mangaluru – 575 004.

7. Shri Jagannath (Jr)
S/o Para Mestry,
Aged about 58 years,
Vivekanand, Illrd Cross,
Near NSAM PU College,
Nanthoor Padavu,
Mangaluru – 575 005.

8. Shri Sunil Kumar K,
S/o Ganapathi Rao K,
Aged about 52 years,
2-10-771/18,
Chaithanya Nilaya,
Bhajana Mandir Road,
Nodu, Bejai,
Mangaluru – 575004.

9. Shri Joachim Cutinha,
S/o Thomas Cutinha,
Aged about 53 years,
Rejoice, Maria Hill Road,
Simon Lane, Kankanady PO,
Mangaluru – 575 002.

10. Smt Vani R Baralaya,
W/o B. Radhakrishna Baralaya,
Aged about 52 years,
Bollar House, Bekur PO,
Kasargod – 671322.

11. Shri K Noor Ahmeed,
S/o B Bababaig Saheb,
Aged about 55 years,
Seema Cottage,
Santhosh Nagar, IInd Cross,
Kuthar, Munnoor,
Mangaluru – 575 017.

12. Smt. Ashalatha K,
W/o Narsimha Devadiga,
Aged about 55 years,
1-99/2, Ashadeep,
Maroli, Amrithnagar,
Mangaluru – 575 005.

13. Shri Dayananda K,
S/o Vasudeva K,
Aged about 54 years,
8-132-4, Ananthashree,
Soujanya Lane, Mekedagudda,
Mangaluru – 575 005.

14. Smt. Laura N Lobo,
D/o, Jochim Lobo,
Aged about 54 years,
J.J. Rodrigues Compound,
Attavara Babu Gudda,
Mangaluru – 575 001.

15. Smt. Jayalaxmi B,
W/o Nithin Kumar V,
Aged about 52 years,
Janani, Katte Garden,
Chethan Nagar, Kumpala,
Mangaluru – 575 022.

16. Shri Tharanath Shetty K,
S/o Narayana K,
Aged about 53 years,
603, Datta Palace,
Near Central Ware House,
Kodialbail, Mangaluru 575 003.

17. Shri T.K. Ravindara,
S/o Ramakrishna Rao,
Aged about 48 years,
5-151/12, Panchajanya,
Gokul Diary Road,
Mangaluru – 575 006.

18. Smt Shabari S. Amin,
W/o H. Sudhakar Amin,
Aged about 53 years,
Behind KMC Hospital,
Attavara, Mangaluru – 575 001.

19. Smt Malathi K,
W/o Devadas Shetty,
Aged about 53 years,
301, Praveen Apartments,
II cross, Kodialguthu,
Mangaluru – 575 003.

20. Smt Teela,
W/o Narayana Naik M,
Aged about 52 years,
Jayashree Nilaya,
Jyothi Nagar, Ist Cross,
P.O. Kudupu,
Mangaluru – 575 028.

21. Shri Dinesh
S/o Padmanabha H.P,
Aged about 52 years,
8-132/5, Padmalatha,
Niagara Hills, Sowjanya Road,
Bikarnakatta,
Mangaluru – 575005.

22. Smt Ravikala A,
W/o Tharanath S,
Aged about 58 years,
25-18-1151/2,
7th Cross Road, Souterpete,
Kankanady,
Mangaluru – 575 002.

23. Shri Madhava Salian
S/o Poovaya Poojary M.B,
Aged about 53 years,
Qtrs No. 102,
Bhavishyanidhi Enclave,
Vamanjoor,
Mangaluru – 575 028.

24. Smt Latha N Shet,
W/o Nagappa P Shet,
Aged about 52 years,
8-13/53, MIG MA-2,
KHB Colony, Near Rama Shakthi Mission,
Mangaluru – 575016.

25. Smt. Clementia Crasta,
W/o Alex Crasta,
Aged about 55 years,
Souza Layout,
Darbe, Puttur – 574202.

26. Smt Vijayalakshmi,
W/o Praveen Pai,
Aged about 52 years,
2-103/39, Kamakshi Kripa,
Gurunagar, Maryhill,
Mangaluru – 575 008.

27. Shri B.B. Venugopal,
S/o B. Babu,
Aged about 49 years,
Sri Vignesh Nilaya,
Hejamady Kodi,
Mangaluru – 574 154

.....Applicants

(By Advocate M/s Paanchajanya & Associates)

Vs.

1. Central Provident Fund Commissioner,
Bhavishyanidhi Bhavan,
No. 14, Bhikaji Cama Place,
New Delhi – 110 066.

2. The Additional Provident Fund Commissioner,
Officer of the Addl Central Commissioner
(Zonal office, Karnataka and Goa State)
'Kaveri' Bhavishyanidhi Enclave,
HMT Main Road Jalahalli (Opp HMT Cinema)
Bangalore – 13.

3. Regional Provident Fund Commissioner-1,
Bhavishyanidhi Bhavan,
Highlands, Silva Road,
Mangalore – 575 002

....Respondents

(By Shri Pundikai Ishwar Bhat, Counsel for Respondent No. 1&2)

ORDER

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicants aggrieved by their transfer have filed the present OA seeking the following relief:

To issue a writ of certiorari by quashing the impugned order bearing No. 37/2017-18, passed by the Respondent No. 2 dated 09.11.2017 at Annexure-A4 as the same is unjust arbitrary and contrary to the law laid down by the Hon'ble Supreme Court and the DOPT Directions.

2. The applicants submits that they were working as Social Security Assistants at the Regional Office, Mangalore under the respondents. The respondents took up organizational and cadre restructuring of 21 zones and 135 regional offices vide office order dated 27.01.2017 (Annexure-A1). Under the said order 27 posts of SSAs were treated as excess/surplus in the Regional Office, Mangalore. Though the Employees Provident Fund Staff Union made a detailed representation regarding workload and shortage of staff at Mangalore Regional Office, the respondents vide office order dated 09.11.2017 issued an order of transfer in the guise of relocation of excess/surplus staff from Regional Office, Mangalore (Annexure-A4). According to the applicants the steps outlined for identifying surplus staff and their transfer vide order dated 01.04.1989 and 26.03.2002 (Annexure-A5 and A6) were not followed while issuing the impugned transfer order. Moreover the very issue of transfer was earlier subject matter before this Tribunal which have gone even upto the Hon'ble Apex Court (Annexure-A8 series). When regular transfer policy was not finalized, the transfer order is unjustified and liable to be set aside.

3. The applicants further mentioned that the DoPT spelled out details regarding identification of the surplus staff and their relocation by preparation of a list of junior most person by following the reverse orders of seniority which is also violated in the present case. When the issue was earlier agitated in the Tribunal, the Tribunal held that there is need to frame a transfer policy which has not been done. The Hon'ble Apex Court also held that the respondents are at liberty to make transfer as per the policy and hence transferring the applicants without a transfer policy is also unjustified. They also mentioned that about 20 posts of SSAs are likely to be available through retirement/promotion etc., and the respondents should have kept this fact in mind while treating the applicants as excess. Moreover some of the applicants are due to get promotion to the next higher grade soon which also have not been considered. Therefore they prayed for granting the relief as sought for.

4. The respondents in their reply statement submits that there is a common seniority for all the Social Security Assistants working in the EPFO offices of Karnataka State. Based on the workload of every EPFO office, the staff sanction have been reworked by the office and communicated vide OM dated 27.01.2017. They have indicated the sanctioned post of SSAs in various Regional Office and in-position in all the 9 Regional Office to highlight the fact that only in Mangalore office there were 27 excess SSAs vis-à-vis the sanctioned strength. Therefore they submit that it necessitated the administration to relocate the excess staff to the offices whose functioning is affected due to shortage of staff. They mentioned that in the light of the order

passed by the Tribunal in the order dated 07.06.2010 followed by the order of the Hon'ble High Court dated 15.09.2011 the relocation of excess/surplus staff have been decided following yardsticks :

- i. The senior most SSAs of RO Mangalore with reference to in station seniority of RO Mangalore has been considered for re-location
- ii. The names of SSAs who are retiring with one year are not considered for relocation
- iii. The senior most SSAs are relocated to the farthest office.
- iv. The relocation is ordered within the offices of Karnataka (other than Bengaluru) and Goa zone.

5. The respondents in their reply further submitted that the applicants have wrongly projected that many post of SSA, MTS & DPA have been abolished by quoting the all India figures. In fact the organization re-assessed the requirement of staff, very scientifically taking into consideration of workload, introduction of advanced technology, simplification of work procedure etc. Thereby, wherever there is more work, the sanctioned posts are increased and where there is less work the sanctioned posts are reduced proportionately to the workload. In view of the implementation of Cadre Restructuring, the State of Karnataka have got additional sanction of EO/AO/SS/SSA as detailed here under:

Name of the Posts	Sanction prior to Cadre Restructuring	Sanctioned after Cadre Restructuring	No. of posts additionally sanctioned.
EO/AO	147	278	131
SS	213	244	31

SSA	1117	1131	14
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The respondent referred to the copy of the quarterly Establishment Returns of sanctioned strength in position and vacancy position as on 31.12.2016 placed at Annexure-R2 and mentioned that the Staff Union, Mangalore have wrongly projected that there is a huge workload which is incorrect and misleading. The per capita output of SSA/SSSA have been fixed at 20 in central office whereas the per capita output of Regional Office, Mangalore is just 9. They also mentioned that as per the appointment conditions the employees are liable for transfer anywhere in Karnataka. There are 27 surplus SSAs in Regional Office, Mangalore as per the sanctioned strength and hence they had to be redeployed to other offices whose functioning was affected due to inadequate staff. The policy for transfer for Group C and Group D are guided by Rule 11 of the Employees Provident Fund (Officers and Employees Conditions of Services) Regulations, 2008 and the same is strictly followed while making the transfer. They have also mentioned that the contention of the applicants that some of the applicants are due for promotion and this fact has also not been taken into consideration is also not correct. The next promotion of the applicants is to the post of Section Supervisor. As of now there are 35 Section Supervisors of Regional Office, Mangalore who have been transferred to various offices and are requesting to come back to Regional Office, Mangalore and thus the contention of the applicants in this aspect is also wrong and does not merit any consideration.

6. The applicants have filed a rejoinder in which again they referred to the earlier court cases and said that though the Tribunal had directed to frame a transfer policy, the Hon'ble High Court of Karnataka held that there is already rule framed for transfer and hence it quashed the direction to frame policy. However when the SLP was preferred the Hon'ble Apex Court held that the respondents are at liberty to make transfer as per policy. Since there is no transfer policy, the transfer undertaken suffer from infirmities. Most of the other points mentioned in the rejoinder are practically reiteration of the facts already mentioned in the OA. They have also mentioned that 13 applicants are in the zone of consideration for promotion in the next higher grade and 3 of the existing staff of the Regional Office at Mangalore are due to retire in the next 3 months. There are 7 members who are seniors to the applicants who have been retained at Mangalore.

7. The respondents have submitted a further affidavit saying that out of 27 applicants who have been transferred out of Regional Office only the names of 2 persons from Regional Office, Mangalore have been considered by the department and they are eligible to be promoted for the post of Section Supervisor against the vacancies accrued upto March, 2018. Therefore the submission of the applicants that 13 persons are likely to get promotion is completely untrue. It says that some of the persons who are likely to be retired soon and within a period of one year have not been transferred. They have also provided a in-station seniority of all the SSAs in Regional Office, Mangalore to substantiate their contention.

8. The applicants have also submitted a further affidavit in which they contend that though the respondents produced the list of in-station seniority but the case of the applicants is that the junior-most should have been transferred. Though 3 senior persons are retiring shortly, few more senior persons have been left out from the list.

9. We have heard the learned counsel for both sides. The learned counsel for the applicants while referring to the contention made in the OA as well as the rejoinder placed emphasis on the fact that a transfer policy has not been framed. The work load in the office at Mangalore is quite high and does not warrant transfer of existing staff as had been contended by the Union and the transfer has not been made in an objective manner. He also mentioned that there are likely to be more vacancies arising in Mangalore due to retirement, promotion etc., and if that fact had been taken into consideration the number of surplus staff would have been reduced considerably as more vacancies are likely to arise in Mangalore and the assessment of surplus staff would have been different. Therefore he contended that the present transfer order is completely unjustified and should be set aside.

10. The learned counsel for the respondents on the other hand mentioned that the sanctioned strength and the existing in-house staff have been clearly indicated after proper assessment in the cadre restructuring. Out of 9 Regional Offices only in Mangalore there are 27 surplus staff and hence they need to be shifted to other places where there are more vacancies. Hence the transfer has been carried out based on the assessment made on the requirement of

staff at other stations. He also mentioned that there is prevailing rule applicable to transfer and which have been followed while undertaking transfer. He also referred in detail about the in-house seniority list and said that the senior-most have been transferred out except those who are due to retire within a year and says that there is no arbitrariness in the entire transfer order. Therefore he submitted that the respondents be allowed to carry out the transfer order.

11. We have carefully considered the facts of the case and submissions made by either side. From the records and submissions it is clearly evident that based on the cadre restructuring an office order was issued on 27.01.2017. The Regional Office Mangalore in Karnataka had 27 surplus staff vis-à-vis sanctioned strength whereas the other 8 Regional Offices in Karnataka had shown vacancies. The applicants have made several references to the representation made by the Union regarding the workload in Mangalore requiring more staff. We do not consider it as relevant. If based on the assessment, the staff strength have been determined by the respondent organization and it is noted that there are surplus vacancies at Mangalore Regional Office, while having shortages elsewhere, the respondents are well within the right to relocate the excess/surplus staff to other offices where there are shortages. It is well within the right of the respondents to decide deployment of the available manpower and this cannot be dictated by the Employees Union or the applicants. The respondents have also provided a complete list of in-station seniority list of the SSAs of Regional Office

Mangalore and on careful examination of the same, we do not find that any irregularity in transferring out the persons who have longer in station seniority. Some of the seniors who have been retained seems to be retiring within a year. The applicants also did not point out any specific case of arbitrariness except for mentioning in general terms. Moreover whether more vacancies are likely to be created in Mangalore office on account of retirement, promotion etc, as contended by the applicants or not, this cannot be cited as the ground for reducing the number of excess staff and as already mentioned. It is also possible that similar situation will prevail in other Regional Offices. Hence it is up to the respondents to decide the deployment of the staff based on the workload in different offices.

12. Reference has been made to earlier court orders. It is true that earlier the Tribunal in OA No. 562/2009 had directed the respondents to frame a transfer policy within 3 months. However when the matter was agitated before the Hon'ble High Court of Karnataka in Writ Petition No. 22514/2010 the Hon'ble High Court had held that rules have been framed by the authorities in regard to transfer of its employees and hence the direction issued by the Tribunal to frame a policy on the question of transfer does not arise at all. Hence they quashed the direction of Tribunal to frame a transfer policy. The Hon'ble High Court had held that the petitioner therein, i.e., the respondent organization can issue an order of transfer if it is needed in the interest of public administration from seniors to juniors and not from juniors to seniors. When the matter had been taken to the Hon'ble Apex Court, the Hon'ble Apex

Court held that they do not see any reason to interfere and mentioned that the petitioner will be at liberty to make transfer as per policy. This observation of the Hon'ble Apex Court has been cited by the applicants to say that a transfer policy need to be framed. The fact remains that the Hon'ble Apex Court did not find any reason to intervene in the order of the Hon'ble High Court and hence that should be the guiding principle. The Hon'ble High Court had clearly held that rules have been already framed by the authorities for transfer and hence the question of framing a fresh policy does not arise.

13. In a number of cases it has been held by the Hon'ble Apex Court that the transfer is an incident of service and employee has no right to select his own postings and the court should not interfere in the transfer orders unless it is in violation of any mandatory statutory rules or on the ground of malafide. It is quite clear that in the present case that there have been excess/surplus staff in the Mangalore Regional Office and hence the respondents have transferred the surplus staff to other offices which have shortages and require excess staff to cope with their workload. On going through the entire transfer order we do not find anything irregular or unjustified which would warrant any interference by this Tribunal. Hence we hold that the contention made by the applicants do not merit any consideration and hence the OA being devoid of merit stands dismissed. The interim order stands vacated. No order as to costs.

(PRASANNA KUMAR PRADHAN)
SURESH)

MEMBER (A)

(DR. K.B.

MEMBER (J)

/ksk/

Annexures referred to by the applicants in OA No. 170/00665-00691/2017

Annexure A1 Copy of the order dated 27.01.2017
Annexure A2 Copy of the representation dated 24.04.2017
Annexure A3 Copy of the communication dated 11.09.2017
Annexure A4 Copy of the impugned order dated 09.11.2017
Annexure A5 Copy of the DOPT Order dated 01.04.1989
Annexure A6 Copy of the DOPT Order dated 26.03.2002
Annexure A7 Copy of the Chapter 2 of the General Office procedure
Annexure A8 series Copies of the court orders
Annexure A9 series Copies of the office orders
Annexure A10 Copy of the proceedings of the minutes at EPF Federation
Annexure A11 series Copies of the applications under RTI
Annexure A12 Copy of the order dated 23.10.2017
Annexure A13 Copy of the order dated 26.10.2017

Annexures referred in Reply Statement

Annexure R1 Copy of the letter dated 13.01.2017
Annexure R2 Copy of the quarterly establishment return
Annexure R3 Copy of the letter dated 23.11.2017
Annexure R4 Copy of the communication by Addl C.P.F.C.
Annexure R5 Copy of reply letter dated 28.11.2017

Annexures referred in Rejoinder

Annexure R1 Copy of the letter dated 17.11.2014 of the Regional P.F. Commissioner
Annexure R2 Copy of the letter dated 31.01.2018 of the CPIO, Regional office, Kalaburgi
Annexure R3 Copy of the letter dated 11.09.2017 of the Regional P.F. Commissioner, Regional Office, Mangaluru
Annexure R4 Copy of the letter dated 22.12.2017 of the Regional P.F. Commissioner, Regional Office, Bengaluru-I
Annexure R5 Copy of the station seniority list of SSAs of RO, Mangaluru
