

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

O.A./XXX. No.2152 of 1994 Decided on: *26/1/96*

Smt. Sukhwinder OhriApplicant(s)

(By Shri B. S. Maine) Advocate)

Versus

U.O.T. & AnotherRespondent(s)

(By Shri Rajesh) Advocate)

CORAM:

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE SHRI

1. Whether to be referred to the Reporter or not?
2. Whether to be circulated to the other Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 2152 of 1994

New Delhi this the 26th day of January, 1996

(Signature)

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Smt. Sukhwinder Ohri
Sr. Clerk (Bills),
D.R.M. Office,
Northern Railway,
State Entry Road,
New Delhi.

..Applicant

By Advocate Shri B.S. Mainee

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi. Respondents

By Advocate Shri Rajesh

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

The applicant employed as a clerk in the Northern Railway under respondent No.2 is aggrieved by the impugned order of the respondents vide Annexure A-1 transferring the applicant to the Mechanical Branch in the same capacity under CWS/Bhiwani on administrative grounds. The applicant alleges that the above order of transfer was issued by way of punishment. The order of transfer does not give the reason for choosing the applicant suddenly and arbitrarily and transferring her to another

cadre. She also alleges that the impugned order refers to certain confidential letter about which she had not been given any information nor was she given any opportunity of hearing. The applicant submits that she was allotted Railway Quarter by the respondents and in the month of August, 1994, she was required by the Vigilance Branch to explain how the Railway quarter was allotted in her favour and the applicant had given statement explaining the circumstances. The applicant alleges that despite the fact that there has been no misconduct on her part, she has been penalised by the impugned transfer order, which is not in the exigencies of service, but is an instance of colourable exercise of power on extraneous grounds and the order has been made in a mala fide manner. She has, therefore, prayed that the impugned order be quashed and set aside.

2. The respondents have averred that the applicant had manoeuvred to obtain an out of turn allotment of a Railway quarter by fraudulent means and hence the competent authority had decided to conduct an enquiry into the matter. The respondents further submit that the applicant's involvement in the case was prima facie apparent and it was decided by the competent authority to transfer the applicant to Mechanical Department under CWS/Bhiwani in the administrative and public interest in order to pave way for a fair and thorough investigation in the matter and, therefore, the transfer of the applicant was otherwise in the interest of justice since her presence was most

likely to affect the investigation.

3. I have heard the learned counsel for the parties and have perused the records.

4. From the submissions made by the respondents it is fairly evident that the impugned order was necessitated on account of investigation instituted by the respondents into the allegation that the applicant had obtained the out of turn allotment of her quarter by fraudulent means. The learned counsel for the respondents strenuously argued that the Tribunal should not normally interfere with the orders of transfer and should not sit as a court of appeal to go into the reasons for transfer and such other matters as there is a *prima facie* involvement of the applicant in the fraudulent allotment of the quarter in her favour. The respondents are justified in taking such action as may be deemed necessary to have the applicant moved out so that the investigation could go on and it is in this context, the impugned transfer order of the applicant has been made. The learned counsel for the respondents, however, was directed to produce the relevant files leading to the transfer of the applicant. The learned counsel, however, could not produce the entire background papers in this regard and explained his inability and stated that the concerned record had not been made available to him by the respondents.

5. I have given careful consideration to the issues involved. It is fairly obvious from the averments made by the respondents that the impugned

order has made in order that the applicant vacates her quarter as she is transferred out of Delhi to Bhiwani. If the respondents' contention is that the applicant is involved in a fraudulent allotment of the accommodation, the appropriate course for them would be to institute such proceedings for misconduct on her part. The respondents cannot take recourse to the instrument of transfer. Even if it is felt that the applicant is likely to hamper investigation, it is not necessary for them to transfer her from the parent cadre outside Delhi. In the light of this, I am of the considered view that the impugned transfer order has been made in an arbitrary manner and cannot be sustained. The learned counsel for the applicant produced before me an order passed in O.A. No. 2565 of 1994 on a similar matter where also it was held that it was not open to the respondents to use instrument of transfer to secure the vacant possession of the premises of the applicants in that case and transfer order was held to be punitive in character and was made for mala fide reasons and amounted to colourable exercise of power In such cases, the Tribunal is fully competent to interfere where the transfer order is done in a mala fide manner.

6. In the light of the above, the application is allowed and the impugned order dated 20.10.94 of the respondents is quashed and set aside. It is, however, open to the respondents to proceed against the applicant for any misconduct in connection with the alleged fraudulent allotment of accommodation, in accordance with law/ relevant rules/instructions, if so advised. There shall be no

.5.

order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

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Signature

RKS