

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 730 of 2019

Present: Hon'ble Mr. Pradeep Kumar, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Smt. Dipti Mayee Sahu, aged about 44 years, W/o-
Om Prakash Patra, R/o Flat No. D-103, First Floor,
DHPL Sahoo Residency, Gadakana, Bhubaneswar –
751017, Dist Khorda, presently working as Group
B, Asst. Audit Officer at Indian Audit and Accounts
Department, Office of the Principal Director of Audit,
East Coast Railway, Rail Sadan, 3rd Floor, North
Block, Bhubaneswar – 751017, Dist-Khorda.

.....Applicant.

VERSUS

1. Principal Director of Audit, East Coast Railway,
Samant Vihar, Chandrasekhpur, Bhubaneswar –
751017, Dist - Khorda.

2. Director of Audit, East Coast Railway, Samant Vihar, Chadrasekharpur, Bhubaneswar – 751017, Dist – Khorda.

3. Comptroller and Auditor General (CAG) of India, At Pocket – 9, Deen Dayal, Upadhyा Marg, New Delhi – 110124.

4. Union of India, represented through its General Manager, Department of Audit & Accounts, Rail Bhawan, Rafi Marg, New Delhi, India, Pin – 110001.

.....Respondents.

For the applicant : Mr. P. Varma, Advocate.

For the respondents: Mr. V. Narasingh, Advocate.

Heard & reserved on : 15.01.2021 Order on :25.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

(i) To quash the transfer order dtd. 08.11.2019 passed by the Director of Audit, East Coast Railway, Bhubaneswar

vide Annexure A/1 in respect of the applicant in the interest of justice.

(ii) *The respondents are directed to consider the representation dated 12.11.2019 of the applicant within the stipulated time and permit the applicant to join in her post at Head Quarters, Bhubaneswar.*

2. The case of the applicant as inter alia averred in OA is that she had joined as clerk in the CAG at NF Railways on 09.08.2000 at Gauhati. Thereafter, she was transferred under mutual exchange of party from Gauhati to Bhubaneswar and joined the office of the Principal Director of Audit in the East Coast Railways on 9th November 2009. The applicant was promoted to the post of Asst. Audit Officer on 01.08.2013. The applicant then received transfer order dated 08.11.2019 (Annexure A/1) wherein the applicant was transferred from Bhubaneswar to Vishakhapatnam which has been impugned in this OA.

3. The applicant submitted that she has two minor children aged ten years and five years old and also she has to look

after her ailing mother in law. The applicant further submitted that her husband is working as Chief Reservation Supervisor in Bhubaneswar, East Coast Railway and that according to DoPT memorandum dated 30th September 2009 (Annexure A/4) wife and husband should be posted in same station. The applicant had submitted a representation dated 12.11.2019 to Respondent No. 1.

4. The respondents in their counter inter alia averred that the applicant was transferred as per the service conditions of the Central Govt. employees and in the exigencies of public service and administrative convenience. It was further submitted that the applicant was relieved from her duties with effect from 12.11.2019 (AN) but the applicant applied for half-day casual leave citing urgent work on 12.11.2019 before the relieving order could be handed over to the applicant. Therefore the relieving order was sent through speed post at her residential address on 13.11.2019 which the applicant refused to accept. The order was also sent through email on 13.11.2019 to her personal email and official email.

The order was then again sent through special messenger on 15.11.2019 but the applicant refused to accept. The respondents submitted that on 14.11.2019 they received a communication from the applicant regarding self-sickness from 13.11.2019 along with a representation addressed to Pr. Director of Audit which was considered and the competent authority requested her to join the new place of posting at Vishakhapatnam on administrative ground which the applicant has not done so far. The applicant again on 07.12.2019 submitted an application to Pr. Director of Audit which was disposed off by a well reasoned and speaking order dated 13.12.2019 (Annexure R/6). The respondents also submitted that the DoPT memorandum is not applicable to the applicant since the applicant and her husband are working in different central services and Clause 4 (iv) of the memorandum dated 30.09.2009 (Annexure R/8) is only applicable and as per that para “in absence of any vacancy in the cadre in the nearest station of Bhubaneswar, the spouse of the applicant may apply to his appropriate cadre controlling authority for posting

him to the station (i.e. Visakhapatnam) where the applicant is posted.

5. In the rejoinder the applicant submitted that she had felt ill and was consulting doctors and was not present at home and did not meet the postman or any special messenger so there was no question of her refusing the letter and that she did not receive any email. The applicant submitted that respondents were aware of her leave on 2nd half of 12.11.2019 but relieved her with a deliberate and malafide intent to harass her and the disposal of her representation was done without application of mind. The applicant further submitted that other persons similarly placed namely Ch. Rajkumar who is posted at Headquarters since 2008 has been transferred to another section in Bhubaneswar whereas the applicant was transferred to Visakhapatnam and that two new posts were created in Khurda division but two junior officers to the applicant were accommodated at those posts.

6. It is ascertained that the applicant was transferred from Guwahati to Bhubaneswar and thereafter since

01.08.2010 she is continuing to be posted at Bhubaneswar in the office of the respondents. She has been transferred to Vishakapatnam. It is submitted by learned counsel for the applicant that the spouse ground has been taken by the applicant and so also the ground that she has got two small children out of whom one is aged 5 years and the other child is aged about 10 years. It is ascertained that the husband of the applicant is also serving in the railway department at Bhubaneswar.

7. Hon'ble High Court of Allahabad in **Dr. Krishna Chandra**

Dubey Son Of ... vs Union Of India has held that:

"20. The transfer order may cause great hardship as an employee would be forced to have a second establishment at a far distant place, education of his children may be adversely affected, may not be able to manage his affairs and to look after his family. This aspect was also considered by the Apex Court in State of M.P. v. S.S. Kaurav, wherein it has been held that it is not permissible for the Court to go into the relative hardship of the employee. It is for the administration to consider the facts of a given case and mitigate the real hardship in the interest of good and efficient administration."

8. In Gobardhan Lal (supra), the Apex Court held as under:-

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate authorities over such orders, which could assess

the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

9. After carefully going through the record and hearing learned counsel for the both sides, This tribunal is not satisfied that the respondents by issuing transfer order has violated any rules, regulations or circulars. The respondents are not bound to allow any particular employee to continue at any particular place solely on the ground of posting of spouse and regarding family problem. They have to strike a balance between the administrative exigencies and the personal difficulty of the employee as is, expected from a model employer. They have exercised their discretion in this regard and the applicant has been transferred to Vishakhapatnam in the interest of public service. The scope of representation, if any, be submitted by

the husband in order to accommodate him at Vishakhapatnam can be explored by the respondents if the same is permissible in accordance with rules and regulations, since as a model employer it would be proper on their part to see that the husband and wife are posted at preferable at the same station.

10. Since there is no scope for interference made out in this case, therefore, the OA is disposed of with above observation. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

(csk)