

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 514 of 1991

Cuttack this the 1st day of ^{Decmber} November, 1995

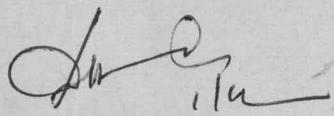
Sajeda Afreen Khan ... Applicant(s)

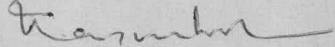
Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No


(D.P. HIREMATH)
VICE-CHAIRMAN


(N. SAHU)
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 514 of 1991

Cuttack this the 1st day of November, 1995COURT:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR. H. SAHU, MEMBER (ADMINISTRATIVE)
(P.T.N.A BENCH)

...

Sajeda Afreen Khan
 W/o. Md. Mumtaz, Advocate
 Dalaipara, Sambalpur (Orissa)
 At present working as L.D.C.
 in the Office of Postmaster
 General, Sambalpur

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Applicant

By the Advocate: Mr. S. S. Rao

Versus

1. Union of India represented by Secretary, Posts & Telegraphs Department, New Delhi
2. Chief Postmaster General, Orissa Circle, Bhubaneswar, Dist: Puri
3. Postmaster General Raipur Region, Raipur Madhya Pradesh
4. Postmaster General, At/PO/P.S. & Dist: Sambalpur

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Respondents

By the Advocate: Mr. A. K. Mishra,
Standing Counsel (Central)

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ORDER

MR. N. SAHU, MEMBER (ADMINISTRATIVE): This application is filed on 14th December, 1991, claiming the following reliefs.

Amur

(i) to declare that the posting of the applicant as L.D.C. that too as Junior most in the cadre in the Orissa Circle said to be under Rule 38 of the Posts and Telegraphs Manual, Volume-IV is illegal and quash orders as per Annexures-3 and 5;

(ii) to consider her case for the post of UDC in Regional Office, Sambalpur (Orissa Circle) wherein fact such posts are lying vacant;

(iii) alternatively to give a direction to dispose of the representation of the petitioner as per Annexures-7 to 9; and

(iv) pass any other order or further orders as this Hon'ble Tribunal deems fit and proper in the circumstances of the case;

2. Initially appointed as Postal Assistant after training by order dated 26.12.1979, the applicant appeared in the U.D.C. Examination held on 28.9.1985, and after being declared successful, she was appointed as U.D. Clerk by order dated 30.4.1986 in the pay scale of Rs.330 - 560/- in the Office of the Director, Postal Services, Raipur. After her marriage, she made a request for transfer to Sambalpur by an application dated 18.6.1986. As this involved a transfer from Madhya Pradesh Circle to Orissa Circle, it was initially negatived, but it was stipulated that her request shall be considered if she was willing to be transferred as L.D.C. It was also stipulated that she has to apply for her reversion first. Due to pressing need as a married lady, she gave her consent in writing to be reverted from U.D.C. as

Ans

L.D.C. for the purpose of transfer. The applicant was asked to give a declaration that she would abide by the Rule-38 of P & T Manual Vol.IV and that she would not claim repatriation to her present unit. The transfer was effected after securing a further undertaking from her that she would not claim T.A. and that she would be ranked junior to all officials in the cadre of L.D.C. as also to those who are approved for appointment as L.D.C. She also declared that she would not claim any benefit of seniority and she would have no claim for confirmation in the cadre of U.D.C. This is confirmed by the letter dated 19.10.1987 vide Annexure-6. She was transferred and posted as L.D.C. at Sambalpur by order dated 3.11.1987. On 14.12.1987, she sent an application to the Postmaster General, Orissa Circle, Bhubaneswar stating that a number of posts were lying vacant at that time and that she might be considered for promotion as U.D.C. She identified seven such posts lying vacant. On 7.9.1990 she gave an application to the Postmaster General, Sambalpur Region indicating therein that two posts of U.D. Clerks were also lying vacant at that time. She submits that the respondents had taken an unfair advantage of her need for transfer to Sambalpur pursuant to her marriage. She also submits that she had qualified and had sufficient experience, her case for transfer as U.D.C. was not considered. According to the applicant,

on an interpretation of Rule-38(2), she should have been ranked as juniormost UDC and there was no need to seek her reversion as L.D.C. She alleged vindictive attitude of the respondents and stated that her representations ~~were~~ were not answered.

3. The respondents have reiterated the fact that the applicant had agreed for reversion to the L.D.C. cadre for the purpose of transfer. Accordingly, her transfer to Orissa Circle in L.D.C. cadre was accepted and she joined as L.D.C. on 10.10.1987 and posted on 21.10.1987.

4. There are two questions that are involved here. One is the question of limitation. The applicant should have challenged the order of the Director, Postal Services in No. SM.6/11/92 dated 26.3.1987 which dealt with transfer under Rule-38. It was stipulated in this order that her transfer to Orissa Circle as U.D.C. has not been agreed to and that her transfer as L.D.C. would be considered if she first consented to her reversion. The cause of action arose against this Order dated 26.3.1987. There was not even a representation to the P.M.G. or any superior authority for remedying this grievance. The applicant simply accepted this order and acted on the same. This application has been filed four years and nine months ^{later} ~~latter~~. It is now settled by the Supreme Court Judgment in S.S.Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10 that the period

of limitation for any application under the Act is governed by Section 21 of the Administrative Tribunals Act. This is not a case where the impugned order is declared honest to seek a relaxation from the limitation provisions which is also a debatable proposition. Obviously, therefore, this is barred by limitation.

5. The question posed in this application is whether when the applicant applied there were posts of U.D.C. vacant in Sambalpur region and if so whether Rule 38 was properly applied. It was urged at the time of hearing that when a request for transfer is made, the candidate seeking transfer shall go down to the bottom-most of that cadre. It is urged that in this case, the applicant should have been placed as U.D.C. in the bottom of the cadre provided there was a vacant post of U.D.C. at the relevant time. But if there was ^{no} _{vacancy} of a UDC's post and there was vacancy only ^{of} _{L.D.C's} posts was not the Authority justified to direct the applicant to seek reversion as LDC and then seek a transfer as LDC? That apart by Annexure-9, she sought certain clarifications which she claimed were not answered. We direct that the Postmaster General to whom the representation dated 16.10.1990 is addressed shall dispose of the same within six weeks from the date of receipt of a copy of this order.

6. With these ^{directions} remarks the application is dismissed
~~disposed of
in limine~~. No costs.

D.P.
(D.P. HIREMATH) *1/12/95*
VICE-CHAIRMAN

N. SAHU
(N. SAHU) *1/12/95*
MEMBER (ADMINISTRATIVE)

BKSahoo.