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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 231 OF 1996
Cuttack this the 11th day of December, 1996

Gitanjali Behera ... Applicant(s)

Versus

Director, A.R.C. & 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 Tribunal or not ? No.

(N. SAHU) 11.12.96
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH

ORIGINAL APPLICATION NO. 231 OF 1996
Cuttack this the day of December, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

...

Gitanjali Behera, aged about
37 years, W/o. Late Mandardhar
Behera, At: 37/B, Charbatia,
Cuttack - at present
L.D. Assistant on promotion,
Aviation Research Centre,
Doom Dooma, Assam

...

APPLICANT

BY THE ADVOCATE

...

M/S. A.K. RAO
S.K. RATH
S.C. DASH
P.K. SENDH

-VERSUS-

1. Director, Aviation Research Centre,
Government of India, New Delhi
2. Director General of Security
(Cabinet Secretariat) Aviation
Research Centre, Block-V (East)
R.K. Puram, New Delhi-110066
3. Deputy Director, Aviation Research
Centre, Doom Dooma, 786151,
Dist: Tinsukia (Assam)
4. Rekha Choudhury, U.D.C., A.R.C. Charbatia
P.O/P.S. Choudhury, Dist: Cuttack-
at present A.R.C. Doom Dooma, 'D' Area
P.O. Sakreting, Dist: Tinsukia (Assam)

...

RESPONDENTS

BY THE ADVOCATE

...

MR. ASHOK MOHANTY
SR. STANDING COUNSEL
(CENTRAL)

O R D E R

MR.N. SAHU, MEMBER (ADMN) : The applicant is a Scheduled Caste candidate appointed as L.D.C. on compassionate ground in A.R.C., Charbatia, on 4.3.1985. The compassionate appointment was given because her husband, a Central Government employee, died in the year 1983 at Leh in a high altitude place leaving behind her and two minor children. She was transferred from Charbatia to Doom Dooma by an order dated 4.5.1994. At the time her children studied in Class-X and VIII. She claims that Doom Dooma climate did not suit her and her bronchial asthma and Rh.Arthritis ^{got} aggravated. She represented to the Deputy Director on 9.6.1995 for transfer back to Charbatia. By Annexure-2, she was informed on 10.7.1995 that her transfer could be taken up after she completed her tenure in Doom Dooma. By Annexure-3, four months thereafter, by an order dated 15.12.1995, the applicant was transferred from A.R.C., Doom Dooma, to A.R.C., Charbatia. That was an order conferring on the applicant a promotion to the rank of U.D.C. in officiating capacity from the date she joined. Two other officials working at Doom Dooma are covered by the same transfer, viz. Smt. Rekha Choudhury and Shri Anup Ray. These two other LDCs were transferred to New Delhi. In para-2 of the above order, it is directed that "if they failed to join the promotion

post within a month, it will be presumed that they are not interested in the promotion and the promotion will automatically be treated as cancelled." The applicant wanted to be relieved during the 1st week of January, 1996, because her due date of joining was 14.1.1996 in accordance with Annexure-3. She was not relieved and consequently she could not join. By Annexure-5, dated 2.2.1996, she has been informed of her reallocation by the competent authority to SSB Directorate on promotion. In the meanwhile, Respondent No.4, Smt. Rekha Choudhury, who was transferred to New Delhi earlier has been retransferred to Charbatia. Smt. Choudhury, it is stated in para 4.8 belongs to Assam and her husband and children are staying at Assam. The applicant in anticipation of her posting at Charbatia, had taken leave and joined her children. She represented to the Director, ARC, New Delhi (Respondent No.1).

2. In the counter-affidavit, it is submitted that out of 23 months of posting at Doom Dooma, the applicant availed 13 months of leave. She stayed for 9 years at Charbatia before she was considered for transfer to Doom Dooma and even at the later station she worked for 9 months out of 22 months. She had not fulfilled the requirement of continuous three years tenure. On the ground that there was an

adverse entry in the year 1993-94 for late attendance at Charbatia, the Respondents thought it would be administratively incorrect to post her back to the same place.

3. Learned counsel for the applicant Shri A.K.Rao urged that the short question for consideration is whether the Respondents are entitled to go back on the orders made vide Annexure-3 and post Respondent 4 at Charbatia when she was specifically posted at New Delhi. The applicant is a Scheduled Caste candidate who was conferred an appointment on compassionate grounds. She made a representation for a posting back to Charbatia. It was this representation which was considered and she was given a posting at Charbatia. Shri Rao also pointed out that there was no special occasion to favour Smt. Rekha Choudhury whose husband is working at Assam. The short point made by Shri Rao is that if completion of tenure at Doom Dooma is the only point on which she was reallocated, then she should have been posted at Doom Dooma by cancelling her earlier order to Charbatia, but instead, she was pulled out of Doom Dooma and transferred to another very distant region, viz. at Gopeshpur in Chamolia area and subsequently Divisional Headquarters SSB Ranikhet. By an affidavit, dated 29.10.1996, she averred

that she had been a chronic bronchites patient and the climate at Doom Dooma did not suit her health. She further averred that under the orders at Annexure-3, she was to join at Charbatia on 14.1.1996. She applied for relief on 5.1.1996 and as the matter was delayed, she left for Charbatia before 14.1.1996. It was at Charbatia by a letter dated 2.2.1996 she was informed that her posting to that place was cancelled and Smt. Rekha Choudhury was relieved from Doom Dooma on 2.2.1996. She further stated that there were two vacancies of UDC at Charbatia at that time and one post was filled by Shri G.C. Nayak from New Delhi in July, 1996. Shri Nayak, it is averred, did not complete his tenure at New Delhi. She averred that from 1st May, 1996, two posts of UDC were vacant and the applicant was posted in U.P. Division maliciously without posting her to Charbatia where two vacancies arose on 1.5.1996 during the pendency of this Application.

4. I have carefully considered the submissions made in the pleadings and the arguments at length advanced by Shri A.K. Rao and Shri Ashok Mohanty, learned Senior Standing Counsel. It is true, transfer is an incident of service. No one has a vested right to stay at a particular place and claim posting to a particular place. In the normal circumstances,

Answer

the Courts do not interfere with a transfer order as long as such a transfer order is done bonafide in the public interest and within the frame work of the guidelines. In the present case, the Respondents, in my view, have not given any acceptable reason as to why they have so suddenly changed their mind and cancelled the applicant's posting to Charbatia and then thrown her off to a distant place at U.P. Chamoli. The facts are that the applicant is a LDC belonging to Scheduled Caste being appointed on compassionate ground in token of services of her husband to the Government. She has two school going minor children. After 9 years of service at Charbatia she was transferred from Doom Dooma. She worked there by now for 27 months. I do not disbelieve the claims of her physical suffering, because there are four different medical certificates given by three different independent doctors. They are at Annexure-7 series to the Original Application. The counter-affidavit simply insinuated about this, but nothing more was done. This widow working at Doom Dooma, her children studying at Charbatia, made a prayer for her transfer. It was considered and she was promoted and retransferred to Charbatia. She was directed to join there within a month. The reasons stated in the counter-affidavit are not at all convincing. Because her representation

was under consideration and as no new facts have surfaced compelling cancellation of the first transfer there was no reason why the Respondents have committed a volte face and cancelled the order transferring her to Charbatia. This Tribunal stayed the petitioner's transfer to U.P. by an order dated 22.5.1996 and directed the Respondents to consider and dispose of the applicant's representation dated 23.2.1996. At that time two posts of UDC were available at Charbatia. Her representation was rejected.

5. In **B.Vareeda Rao vs. State of Karnataka** 1984(4) SC 131, the Supreme Court held that "though in superior and more responsible posts, retention beyond a particular period should be avoided." Group C and D employees stood on a different footing. This treatment meted out to the applicant is an unfair administrative act. While it is true that an employee has no right in the matter of transfer so also it is equally true that an employer cannot act arbitrarily or in a whim. Even with regard to routine administrative matters, every public authority will do well to keep in mind the observations of the Hon'ble Supreme Court in **S.G.Jayasinghani vs. Union of India (AIR 1967 SC Page 1427)** which are extracted as under :

" In a system governed by rule of law, discretion when conferred upon

executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles ... If a decision is taken without any principle or without any rule, it is unpredictable and such a decision is the antithesis of a decision taken ~~in accordance with~~ the rule of law."

6. All the transfers are ^{now} ~~done~~ in public interest. I do not see what public interest is involved in cancelling the order of transfer back to Charbatia. The Railway administration has conferred some special rights on S.C./S.T. With regard to SC/ST persons there is prohibitory as well as mandatory directions. The employees belonging to SC/ST should be transferred very rarely and for strong reasons. There is a provision that there should not be general transfers and they should be transferred to their native places (THE C.A.T. JODHPUR BENCH OF THE TRIBUNAL IN O.A. NO.532/92 (615 Swamy's Case Law Digest 1993). By transferring the applicant from Doom Dooma to Charbatia, they have only helped fulfilling the guidelines of the Government.

7. In this particular case, unfortunately as I see, the Respondents have not been fair. Every administrative action should be objective, reasonable and honest. If it were a case of mere transfer, this Tribunal would not be inclined to

interfere with it. But here in the peculiar facts and circumstances of this case, and in the absence of any valid explanation, this sudden cancellation of the transfer of the applicant to Charbatia and transferring her again to a distant place like Chamoli without wanting to accommodate her when two vacancies were available appears to me to be arbitrary and unfair. An L.D.C. is not indispensable. It is not the case of the Respondents that her services are so urgently required for some sensitive, specialized job at Chamoli that her transfer to Chamoli subserves the larger interests of the organisation. The Respondents were fair and compassionate in transferring her to Charbatia. Sudden cancellation has not been explained. I, therefore, allow this Application, quash Annexures-5 and 9, the orders of transfer to Divisional Headquarters SSB Ranikhet and direct the Respondents 1 - 3 to restore and implement that part of Annexure-3 which transfers the applicant from A.R.C., Doom Dooma to A.R.C., Charbatia. There may be a need for making adjustments in accommodating the applicant at Charbatia. immediately. For this reason the Respondents are allowed a period of six weeks to implement this order. The Original Application is allowed. No costs.

N. SAHU
(N. SAHU)
MEMBER (ADMINISTRATIVE) 11/12/86