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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 20/02/2008

O.A. No.94/2007

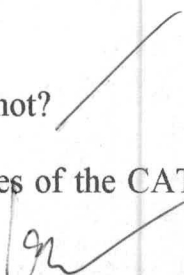
Smt.Bhumika ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not? ✓
2. Whether it be circulated to all the Benches of the CAT or not?


(DR.K.B.S.RAJAN)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 20/02/2008

PRESENT:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)

In the Matter of

O.A. No.94/2007

Smt.Bhumika ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

For Applicant: : M/s.B.S.Tripathy, M.K.Rath, J.Pati, Counsel.

For Respondents: M/s.S.K.Ojha, A.K.Sahoo, S.K.Nayak
Counsel.

ORDER

Per DR.K.B.S.RAJAN, MEMBER(J):

Transfer on administrative ground is a recognized feature, based on the sound principle of ensuring discipline in the organization. A word of caution is of course to be administered that while exercising this power of transfer, there shall be no element of *mala fide*, or *favoritism* and the exercise should also not be one accentuated by arbitrariness.

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2. With the above principle as the under current, this case has to be viewed.

3. The applicant, functioning as safaiwala, has been a compassionate appointee and posted under the Chief Health Inspector, South Eastern Railway Hospital, Rourkela. Sometimes in 2003 she was arrested on certain criminal case and remained in custody. This led to her having been placed under deemed suspension, which was, however, revoked later on. The criminal case ended in acquittal, vide order dated 06-05-2005. The respondents, have issued the impugned Annexure A-1 order dated 27-10-2006 , transferring the applicant from Rourkela to Dongaposi under the Chief Health Inspector. Representation against the same, vide Annexure A-2 to A-4 did not yield any response from the respondents. Hence this O.A.

4. Respondents have contested the OA. According to them, the applicant's transfer is on administrative grounds. Some complaints were stated to have been received from public representatives, alleging her involvement in harbouring some inter-state dacoits. Her son was also alleged to have been dealing with illegal arms. Inquiry is stated to have been

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conducted by the respondents and the G.M.S.E. Railway had passed an order of transfer.

5. In her rejoinder, the applicant had annexed certain documents, purported to be related to her medical treatment.

6. Counsel for the applicant had argued that the applicant, an illy paid female employee, belonging to Reserved community is being unnecessarily harassed on the alleged ground of her involvement in illegal activities, while the criminal court had acquitted her.


7. Counsel for the respondents submits that the transfer is on administrative ground and within the same Division and hence, there is no illegality in the order impugned.

8. Arguments were heard and documents perused. The applicant's alleged involvement in criminal activities had been thoroughly analyzed in the competent criminal court of law and she had been acquitted. This happened in 2005. There is no reference as to the date of complaints from public representatives and also there is no reference to the date of inquiry stated to have been conducted. If these pertained to the period when the criminal case was under trial, then one can

safely hold that the trial before the criminal court is more authentic and scientific and report by the inquiry officer may sink into oblivion before such trial. If it were posterior to the acquittal, then the respondents always have powers to proceed against the applicant under the relevant disciplinary rules. In the absence of documents to substantiate the contention of the respondents that inquiry had been conducted and it had been found that the applicant had been harbouring inter-state dacoits, a serious allegation against the applicant, it would be inappropriate to accept the contention.

9. The applicant is holding only a lower post. Her performance could be watched and if she is residing in Railway Quarter, authorities could well conduct surprise checks to ensure whether the applicant is involving in any undesirable activities as the one alleged against her and if so, formal disciplinary action could well be taken. The powers of the General Manager, S.E. Railways/other authorities are not curtailed in this regard. Normally, transfer of the low paid employees is not resorted to.

10. Counsel for the respondents had also submitted that the applicant has been continuously in Rourkela since 1991 and



as such she could be transferred. While such a transfer after a reasonable period of stay in one station is not unjustified, it is to be equally applied to all and the applicant cannot be singled out.

11. In view of the above, the **OA is allowed**. Impugned order dated 27-10-2006 is hereby quashed and set aside. The applicant shall be allowed to continue in the same place as she had been prior to issue of the impugned order. As the order is over one year old, on her joining, if the applicant submits application for leave, leave to the extent available in her leave account be sanctioned and the balance would be treated as extraordinary leave without pay and allowances. This period shall not be considered as break in service. The applicant shall present herself before the Sr. Divisional Personnel Officer, Chakradharpur, within ten days from the date of communication of this order, with a certified copy of this order, in which event, the Senior Divisional Personnel Officer shall issue necessary orders to the authorities concerned to permit the applicant to perform her duties. On joining the duties, the applicant, within a period of fifteen days shall prefer her leave application for the period from the date she has not been attending the office till



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she presents herself before the Sr. Divisional Officer,
Chakradharpur. No cost.


(DR.K.B.S.RAJAN)
MEMBER(J)

KNM/PS.

