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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.260/00344 of 2014  
Cuttack, this the ~~7<sup>th</sup>~~ day of November, 2014

P. Rajamma

.....

.....

Applicant

-Versus-

Union of India & Others

..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? No
2. Whether it be referred to PB for circulation? No

  
(R.C. MISRA)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

Original Application No.260/00344 of 2014  
Cuttack, this the 7<sup>th</sup> day of November, 2014

CORAM  
HON'BLE MR. R.C. MISRA, MEMBER (A)

P. Rajamma,  
aged about 45 years,  
Widow of P. Nookaih,  
At-Jadapudi, P.O.-Kanchili,  
Dist.-Srikakulam, Andhrapradesh,  
at present working as a Senior Chowkidar  
under SSE (Works)/E.Co.Rly.,  
Talcher, Dist-Angul, Odisha

...Applicant

(Advocate: M/s. N.R. Routray, J. Pradhan, T.K. Choudhy, S.K. Mohanty)

VERSUS

Union of India Represented through

1. The General Manager,  
East Coast Railway,  
E.Co.R Sadan, Chandrasekharapur,  
Bhubaneswar, Dist. Khurda.
2. Senior Divisional Personnel Officer,  
East Coast Railway,  
Khurda Road Division,  
At/P.O.-Jatni, Dist. Khurda.
3. Senior DEN, Co-ordn,  
East Coast Railway,  
Khurda Road Division,  
At/P.O.-Jatni, Dist. Khurda.
4. Senior Personnel Officer, Con.,  
Co-ordn., East Coast Railway,  
Rail Vihar, Chandrasekharapur,  
Bhubaneswar, Dist. Khurda.
5. Smt. Sebati Bewa,  
Multi Purpose Khalasi,  
under Senior Section Engineer (Works)/E.Co.Rly.,  
At/P.O.-Talcher, Dist-Angul.

(Advocate: Dr. C.R. Mishra)

... Respondents

**ORDER**

**R.C. MISRA, MEMBER (A)**

The applicant in this O.A. is working as Senior Chowkidar under SSE (Works), E.Co. Rly., Talcher and has approached this Tribunal with a prayer for quashing the order of transfer dated 19.12.2013 in so far as the applicant is concerned and the order of rejection dated 04.04.2014 rejecting her prayer vide Annexure-A/2 and Annexure-A/5, respectively. The other prayer of the applicant is to direct the Respondents to permit her to continue in the open line.

2. The facts of the case are that the applicant got an appointment in the South Eastern Railway in the year 2000 on compassionate ground being posted as a Chowkidar at Talcher in the scale of Rs.2550-3200/- after her husband, P. Nookaih expired. She was also later on promoted as Senior Chowkidar and continued to work at Talcher. On 19.12.2013, Respondent No.2, i.e., Senior Divisional Personal Officer, East Coast Railway, Khurda Road Division, passed an order transferring the applicant and others from the open line to the construction organization with a stipulation that the lien of the concerned staff will be maintained in the parent cadre in the Khurda Road Division. Applicant being aggrieved by this order made a representation for cancellation of her transfer inter alia on the ground that the order of transfer from open line to construction organization as well as the fixation of lien in Khurda Road Division had been issued without her option, and that she being a Group 'D' employee her transfer from open line to construction organization was not permissible. Although her application was made on 01.03.2014, no steps were taken by the authorities to reconsider her case and therefore, she filed O.A. No.260/00344/14. This O.A. was disposed of by the Tribunal vide order dated 21.03.2014 in which Respondent No.2 was directed to consider the representation within a period of one month from the date of receipt of a copy of the order and communicate the result thereof to the

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applicant in a well reasoned order. In compliance of the orders of this Tribunal, Respondent No.2 disposed of the representations vide their order dated 04.04.2014 rejecting the prayer for cancellation of transfer. It was mentioned in the order dated 04.04.2014 that the transfer order has been passed on "one to one basis" against the 13 construction staff who have already reported to open line in the Khurda Road Division. The applicant was the junior most and therefore, her name was proposed for transfer by the controlling authorities on the basis of which, order of transfer has been issued.

3. Applicant has challenged the rejection order dated 04.04.2014 on the ground that the same is very much against the guidelines of the Railway Board and since the applicant is from Group 'D', she should not have been subjected to transfer from the open line to the construction organization. Besides, her option in this matter was never sought by the authorities.

4. On the other hand, respondents have filed their counter affidavit in which they have mentioned that the construction organization in the Railways does not have its own permanent cadre and therefore, the staffs from the open line are deputed to the construction organization in the interest of the administration based upon the requirements of the various projects. There being a requirement of staff in the construction organization, a request was made for deputing staff from the open line at Khurda Road Division to the construction organization immediately, against the staff which were repatriated to the open line. It was, therefore, considered administratively to depute 14 members of staff to depute against the persons who had been repatriated to the open line. Accordingly, orders were issued transferring four numbers of staff including the present



applicant to the construction organization, but the applicant did not join. In fact she approached this Tribunal with her grievances.

5. It is the case of the Respondents that, representation dated 01.03.2014 has been considered and disposed of in compliance with the orders of the Tribunal and her request was not acceded to. The transfer order was based on the ground of bottom seniority and the applicant being the junior most staff was transferred to the construction organization. It is the further case of the Respondents that the transfer of the applicant is not a normal transfer. It is a transfer in the interest of the administration and is not a permanent transfer for which no option was called for from the applicant. On these grounds, Respondents have submitted that there is no reason for interference of the Tribunal with the order of transfer.

6. The applicant has also filed a rejoinder, in which the main points raised are that; if there was requirement of staff urgently, there was no need to repatriate the staff to the open line. Further, this being a matter of deputation from the open line to the construction organization, it was mandatory to call for option of the applicant. The order of deputation cannot be made on the principles of bottom seniority. In the rejoinder, the applicant has further pointed out that the Respondents have admitted that the transfer of the applicant is not a normal transfer, which otherwise means that the order of transfer is a punitive one without any initiation of disciplinary proceedings and as such, order of transfer is not sustainable.

7. I have heard Shri N.R. Routray, learned counsel for the applicant and Dr. C.R. Mishra, learned panel counsel for the Railways in extenso. It appears that the transfer of an employee from the open line to the construction organization is done on the basis of the deputation by the Railway Authorities since there are no

permanent employees in the construction organization. In a case of deputation, normally an option is to be called for. In the present case, the applicant has been transferred only on the basis of the fact that she stands at the bottom most seniority. The facts of the case reveal that the applicant had earlier approached this Tribunal and under direction of the Tribunal her representation was disposed of by the Sr. Divisional Personnel Officer on 04.04.2014. In the order dated 04.04.2014, the Respondents-Authorities have dealt with this matter in a very mechanical manner in which the order of transfer has been defended on the grounds that this has been done under the policy of the rotation and that the transfer to construction organization is tenure based and not a permanent one and this is the reason why no option was called for from the staff for such transfer. The applicant has been intimated that under such circumstance, she was required to report to Sr. Personnel Officer, Construction, Bhubaneswar for further posting in the organization. Accordingly, her representation dated 01.03.2014 has been disposed of.

8. The applicant in her representation dated 01.03.2014 had submitted that she is a widow having two sons and daughter who are reading in the School and the present transfer will affect their education. It was also submitted that she was suffering from various ailments and the present transfer will affect her treatment. It is also an admitted fact that the applicant got her appointment on compassionate consideration. None of these prayers made in the representation has been considered in the speaking order dated 04.04.2014 while disposing of the representation. Therefore, the direction of the Tribunal has been <sup>given</sup> <sub>to</sub> go by in letter and spirit. The authorities concerned have to keep in mind that the present

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applicant is a widow appointed on compassionate grounds and the submissions made by her deserve a fair consideration in the hands of the authorities.

9. The Hon'ble Apex Court in the case of Union of India and Others Vrs. S.L. Abas as well as in the case of M/s Shilpi Bose Vrs. the State of Bihar and Others have laid down the law that the transfer orders passed by the authorities in public interest and in administrative reasons should not be interfered with by the Courts and Tribunals unless orders so made violate any statutory Rules or on the ground of malafide. It is further laid down that that a Government servant holding a transferable job has no vested right to hold the post in one place.

10. It is evident that the Tribunal shall not function as an appellate authority over the transfer orders passed by various authorities. The exigency of service or the administrative interest is of paramount consideration in making orders of transfer. The arguments advanced by the counsel for both sides have given rise to the following considerations.

11. Firstly, it is admitted by the Respondents that since the construction organization does not have its own permanent staff, staffs are deputed from the open line to the construction organization based upon the requirements. If that is so, this Transfer order should be treated as an order of deputation and in case of deputation, option of the concerned employee is normally called for. Therefore, it is not understood why in the order dated 04.04.2014, it has been mentioned by the Senior Divisional Personnel Officer that transfer to construction organization is tenure based and not on permanent basis and therefore, no option was called from the staff for such transfer.



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12. Secondly, applicant who is a widow having been appointed on compassionate ground had made out certain points in her representation which were not at all considered in the order dated 04.04.2014. Therefore, the impugned order of rejection is deficient on the basis of the two considerations that have been mentioned above. Since, the rejection order dated 04.04.2014 is not based upon a fair consideration of the representation made by the applicant, this order is hereby quashed and in effect the order of transfer in respect of the applicant dated 19.12.2013 is also quashed.

13. With this observation and direction this O.A. is allowed to the extent indicated above.

  
(R.C. MISRA)  
MEMBER (A)

K.B.