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3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 259/04
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E.P/M.A No.

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SECTION OFFICER (Judl.)

14/11

FORM No. 4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET.

✓ Org. App/Misc. Petn/Cont. Petn/Rev. Appl. 259/04

In O.A.

Name of the Applicant(s) B.R. Choudhury,

Name of the Respondent(s) Wol 2 Ans.

Advocate for the Applicant Mr. N. Choudhury, M. Chanda

Counsel for the Railway/C.G.S.C. S. Ghosh

Cgrsc.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

10.11.2004

Heard Mr. N. Choudhury, learned Advocate for the applicant.

Issue notices to respondents, returnable on 23.11.2004.

Application is in form
is filed/3. F. F. R. No. 10/-
deposited vide IPO/ED
No. 209.135074
Dated 3.11.04

Dy. Registrar

bb

Vice-Chairman

23.11.2004

Heard Mr. M. Chanda, learned counsel for the applicant.

List on 28.11.2004 for admission.

Notice & order
sent to D/section
for issuing to
resp. No. 1 to
4, by regd. A/D
post.

mb
29.11.2004

Member (A)

Heard Mr. M. Chanda, learned counsel for the applicant as well as Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

The applicant has prayed that in view of her daughter's examination, she may be relieved only after 31.3.04 or ~~xxx~~ the end of the academic season- whichever is earlier.

contd.

29.11.2004

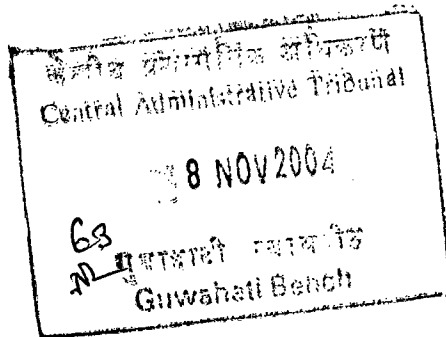
Respondents are hereby directed to keep the applicant's release order in abeyance till 31.3.2005 or end of the daughter's examination ~~season~~ whichever is earlier.

Application is allowed to the extent indicated above. No order as to costs.

10/12/04
Member

bb

2/12/04
Copy of the order has been sent to the office for issuing the time to the L/Advocates for the parties.
H!



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:
GUWAHATI

(An Application under section 19 of the Administrative
Tribunals Act 1995)

OA No. 257/04

BETWEEN

Bharati Roy Choudhury Applicant

-And-

The Union of India & others Respondents

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Date: 8.11.04

Filed by

Sigithshosh
Advocate

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:
GUWAHATI
(An Application under section 19 of the Administrative
Tribunals Act 1985)

OA No. 257/04

BETWEEN

Bharati Roy Choudhury
C/o Late Ashutosh Roy Choudhury
RangIrkhari, PO- Silchar-5
Dist- Cachar (Assam).
.....Applicant

-And-

1. The Union of India
Represented by the Secretary to the Govt.
of India, Ministry of Defence, New Delhi.
2. The Controller of Defence Accounts
Udayan Vihar, Narengi, Guwahati-781171
3. Assistant Controller of Defence
Accounts (Admn)
Udayan Vihar, Narengi, Guwahati-781171
4. Local Audit Officer (A)
Masimpur Cantt. P.O. Arunachal
Dist-Cachar (Assam)
.....Respondents

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made:

Bharati Roy Choudhury

2

6

This application is made against the confidential letter NO.AN/IA/25-L-VIII dt. 2/9/2004 (not furnished to the applicant) directing re-issuance of transfer Office Order No. 46 dated 28.4.2004 in violation of the order dated 26.7.2004 passed by this Hon'ble tribunal in O.A.No.155/2004 and consequent unilateral order dated 2.9.2004 passed by the respondent No. 4 relieving the applicant while she is on medical leave although the respondents were directed by this Hon'ble court vide aforesaid order to consider the request of the applicant for cancellation of her transfer order with utmost sympathy.

2. Jurisdiction of the Tribunal

The applicant declares that the subject matter of this application is well within jurisdiction of this Hon'ble Tribunal.

3. Limitation

The applicant further declares that this application is filed within the Limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. Facts of the Case:

4.1 That the applicant is a citizen of India and a permanent resident of Assam.

4.2 That the applicant was initially appointed as peon in the office of the respondent no.2 and thereafter she came out successful in the selection for promotion to the post of LDC however, to which cadre she is yet to be elevated. While working in the office of the Respondent no.2 at Guwahati she married one Shri Arjun Singh Chouhan who was also working in the same office. Out of their wedlock two daughters were born. The elder one Shri Priya Roy Choudhury is reading in Degree Part-II in Cachar College at Silchar.

4.3 That your applicant states that the husband of the applicant soon after her marriage started torturing on her both physically and mentally for which the applicant had to file a divorce proceeding before the appropriate court and the same was eventually decreed in favour of the applicant. Thereafter the former

Bharati Roy Choudhury

husband of the applicant started harassing her in the office premises itself. Finding no other alternative your applicant approached the respondent no.2 for her transfer to Silchar, i.e., her hometown and the authority was kind enough to allow her prayer in consideration of the grave circumstances. Since then the applicant has been working at Silchar and her daughters are also prosecuting their studies there. But she was surprised to receive an order-dated 28.4.2004 whereby she was sought to be transferred to Guwahati again although said Arjun Singh is still working at Guwahati in the same office and the circumstances under which the authorities were pleased to transfer the applicant to Silchar still continue to exist. Moreover, applicant has undergone surgery on 27.2.04 and therefore, it was very difficult for her to shift to any other place. The elder daughter of the applicant is studying in the Degree course at Silchar and another daughter studying in HS final year at the same place. Their final examination is going to be held in March, 2005 and there is no scope on the part of applicant to transfer her daughter from Assam University to Gauhati University as the impugned transfer order has been issued on 28.4.2004 during the middle of the academic session in violation of norms and guideline of the Union of India.

4.4 That it is categorically submitted that the proposed transferred order was issued on 28.4.2004 without there being any administrative exigency and/or public interest. After issuance of the transfer order applicant submitted an application on 6th May 2004 before the respondent no.3 seeking personal intervention for redressal of her grievances but till date no order has yet been passed on the same. Thereafter your applicant submitted another representation on 11.5.2004 before the respondent no.3 praying for deferment of the transfer order at least for 6 months on the ground of health condition and also on the ground of daughters education as impugned transfer order was issued during the middle of the academic session but respondents did not pass any order.

Bharati Roy Chowdhury

Copies of impugned order dated 28.4.2004, seeking personal interview letter dated 6.5.2004 and representation dated 12.5.2004 are annexed hereto and are marked as Annexure-1, 2 and 3 respectively.

4.5 That it is stated that under the aforesaid circumstances the applicant approached this Hon'ble Tribunal through O.A.No.155/2004 whereupon this Hon'ble Tribunal was pleased to direct the respondents---- **" to consider the request of the applicant with sympathy for the problems explained by her that is fair, just and equitable and a reply shall be given to her representation within one month from the date of receipt of copy of this order. Status quo shall be maintained till completion of the above exercise."**

Copy of the order-dated 26.7.2004 is annexed hereto and is marked as Annexure 4.

4.6. That your applicant states that accordingly she submitted a representation on 30.7.2004 annexing a copy of the original application filed before this Hon'ble tribunal and copy of the order passed therein. But till date her representation has neither been considered nor she has been served with any reply as was directed by this Hon'ble tribunal. Rather she has been surprised to receive a copy of the letter issued by the respondent no.4 on 3.11.2004 under speed post while she is on medical leave. The said letter indicates that pursuant to a confidential communication dated 3.9.2004 issued by the respondent No.1 the applicant has been relieved on 2.11.2004 on the basis of the earlier order dated 25.4.2004 impugned in the earlier OA. The applicant has not been served with any copy of the letter-dated 2.9.2004 also.

A copy of the representation dated 30.7.2004 and letter addressed to respondent no.2 are annexed hereto and are marked as Annexures- 5 and 6 respectively.

4.7 That your applicant states that the respondents have not complied with the order of this Hon'ble Tribunal. The daughters of the applicant are still in mid session, as the academic session shall end on 31.3.2005 only and as such the situation existing as on

Bharati Roy choudhury

26.7.2004 at the time of passing of the order by this Hon'ble tribunal still persists. Moreover the respondents have not considered the representation of this Hon'ble tribunal as yet in violation of the direction of this Hon'ble Tribunal.

4.6 That this application is made bonafide and in the interest of justice.

5. GROUNDS FOR RELIEF (S) WITH LEGAL PROVISION:

5.1 For that the impugned action of the respondents being in gross violation of the order of this Hon'ble tribunal the same is liable to be interfered with.

5.2 For that, shifting of the family more particularly shifting of the Children's at this stage is difficult and the same will cause irreparable loss and injury to the education of the children.

5.3 For that the applicant has been transferred under the impugned order dated 28.4.2004 while the two daughter of applicant are going to appear in H.S. final year examination and B.Sc. final examination respectively at Silchar Under the Assam University and applicant being a lady it is not possible for her to shifting the family at Guwahati.

5.4 For that the circumstances, which necessitated the respondents to transfer the applicant at Silchar being still in existence and the respondents being aware of it the impugned order posting the applicant at Guwahati, again should not have been passed.

5.5 For that the applicant has no hesitation to carry out the transfer except the Guwahati as her divorced husband working at Guwahati office but praying for deferment of the said posting order till the academic session is over.

5.6 For that as no option has been invited, no opportunity is provided notifying the vacancy position and no effort is made to consider the choice posting by calling options as required under the Rule/Transfer policy and as such the impugned order is liable to be set aside and quashed.

Bharati Roy Choudhury

5.7 For that the impugned transfer and posting order has been issued in total violation of the professed norms without recording any reasons for departure from the set norms as required under the rule.

5.8 For that it is obligatory on the part of the respondents to consider the welfare of the children of the Government Employee and for smooth continuation of the education of the children of the applicant.

6. Details of Remedies Exhausted.

That your applicant states that she has no other alternative and efficacious remedy that to file this application.

7. Matter not previously filed or pending with any other court/Tribunal.

That applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made, before any court of any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Reliefs sought for:

Under the facts and circumstances of the case the applicant prays that the impugned confidential letter dated 2.9.2004, letter dated 2.11.2004 and order dated 28.4.2004 be set aside and quashed and the respondents be directed to allow the applicant to, continue in her present place of posting till the final examinations, of her daughters are over and/or may pass such further or other order or orders as this Hon'ble Tribunal may deem fit and proper.

9. Interim relief sought for:

During pendency of this application, the respondents may be directed to stay impugned transfer order dated 28.4.2004 and all actions of the respondents consequent to the said order and to maintain status quo as regard to the service of the applicant.

10. That this application is filed through advocate.

11. Particulars of the IPO

Bharati Roy Choudhury

- 8
- 4
- (i) IPO No.....204-135074
(ii) Date of Issue:.....7-11-04.
(iii) Issued from: G.P.O. Guwahati.
(iv) Payable at: G.P.O. Guwahati.
12. List of enclosures:

As stated in the Index.

VERIFICATION

Bharati Roy Choudhury C/o Late Ashutosh Roy Choudhury
Rangirkhari, PO- Silchar-5 Dist- Cachar do hereby verify that the
statements made in paragraphs 1 to 4 and 6 to 12 are true to my
knowledge and those made in paragraph 5 are true to my legal
advice and I have not suppressed any material fact.

And I sign this verification on this the 8th day of November
2004 at Guwahati.

Bharati Roy Choudhury

Office of the Controller of Defence Accounts
Udayan Vihar, Narangi, Guwahati - 781 171

Part II OO No: 46

Dated: 28/4/2004

Subject: Transfer: DAD Estt.

The following transfers are ordered.

S/No	Name, Grade & A/C No	Office from which transferred	Office where posted	Date of relief	Remarks
1	2	3	4	5	6
1	Smt. B R Choudhury, Peon 8334080	LAO (A) Silchar	MO CDA Guwahati	7/5/2004	With TA & JT
2	Smt. Indira Sarkar, Peon, NYA 8337482	LAO (A) Silchar	MO CDA Guwahati	7/5/2004	With TA & JT
3	Shri Khargeswar Deka, Farash, 8335408	MO CDA Guwahati	LAO (A) Silchar	7/5/2004	With TA & JT

Note: -

1) Proper handing/taking over may be carried out in prescribed format before relief of the individuals and confirmation should be sent to AN/I Section of MO Guwahati.

2) Date of relief to be adhered to strictly and should not be deferred on account of representation or otherwise.

Authority: ON No: AN/IA/25/L-VII, dated 15/4/2004File No: AN/IA/25/L-VI

Sd/-xxx
(Pankaj Hazarika)
ACDA (Admin)

Distribution: -

- | | | | |
|-----|--|-----|--|
| 1) | The C.G.D.A., West Block - V,
R. K. Puram, New Delhi-110066 | ... | for information |
| 2) | The PCDA (P) Allahabad | ... | for information |
| 3) | The JCDA (Fund) Meerut | ... | for information |
| 4) | The LAO (A) Silchar | ... | 3 copies, 1 copy for each of the individuals at S/No:1 & 2 |
| 5) | The GE Silchar | ... | Advance of TA/DA is authorised for S/No:1&2 from his Cash Assignment of GE Silchar |
| 6) | The AAO GE Silchar | ... | for information |
| 7) | The O i/c,
AN/IV Section (Local) | ... | 2 copies, 1 copy for each of the individuals at S/No: 3 |
| 8) | The O i/c,
AN/IB, AN/II (Gp.-I), AN/II (Gp.-II)
& AN/III Section (All Local) | ... | for information |
| 9) | Hindi Cell | ... | for Hindi version |
| 10) | PC File | | |
| 11) | O.O File | | |

(S. Nath)

True copy
Sujitkumar
Advocate

To

The C.D.A.,
(AN/IA Sec.)
Udayan Vihar, Narangi,
Guwahati- 781 171

(Through Proper Channel)

Subject :- Request for seeking personal interview with the Hon'ble C.D.A.

Respected Sir,

With due honour and humble submission, I am to state that vide your Part-II O.O. No.46 dt.28-04-04, I have been posted to the office of the C.D.A. Guwahati and is to be relieved on 07-05-2004.

In view of the difficulties being faced by me in the day to day life and in being posted out from this station, I am intending to express my grievances to the Hon'ble C.D.A. in person.

As such, I may kindly be permitted to see the C.D.A. in person and oblige.

Thanking you, in anticipation, Sir.

Yours faithfully,

Bharati Roy Choudhury

Dated, at Silchar
The 6th May' 2004.

Ms. Bharati Roy Choudhury
R/Clk
A/C No.8334080

True copy
Digitized by
Achowala



To,

The C.D.A.
Guwahati.

~~Through proper channel~~

Subject: Prayer for deferment for 6 month.

Respected Sir,

With due respect and humble submission I beg to state that I have been posted out to C.D.A. Guwahati vide Pt-II Office Order No 46 DT. 28-04-04.

That Sir, due to following unavailable circumstances I am not in a position to leave my present station i.e. Silchar.

That Sir, I have got operated for Gold Bladder stone and as per attending physician I had to take rest for some time. With this view I have already taken personnel interview with honorable C.D.A. but my request has not been acceded to due to some administrative reasons. More over both of my daughter are studying in U.S. final year and B.Sc.

In view, of the forgoing facts I have no other alternative but approach your good self to be kind enough to give me for 6 months deferment, so as to enable to recovery health and completion of daughters studies for the act of which I shall remain ever grateful to your and obliged.

Thanking you Sir in anticipation.

Dated: 11/5/2004

Yours faithfully,

Bharati Roy Chowdhury

(Bharati Roy Chowdhury)
Record Clerk, A/C No: 8334080

True copy
Srijitkesh
Adhikari

ORDER SHEET

Org. App./Misc Petn/Cont. Petn/Rev. Appl. 15.5/04

Name of the Applicant(s) In O.A. Smt. Bharati Roy Choudhury -

Name of the Respondent(s) Union of India -

Advocate for the Applicant Mr. M. Chanda, Mr. G. N. Chakraborty

Counsel for the Railway/CGSC Mr. S. Nait, G.C.C.

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

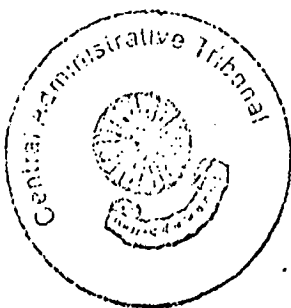
26.7.04

Present : The Hon'ble Shri K.V. Brahladan,
Administrative Member.

The applicant is working as LDC in the office of the LAO(A), Silchar who has been transferred to the office of the Controller of Defence Accounts, Guwahati vide order dated 28.4.2004, Annexure-1. The applicant has stated about her difficulties likely to be caused due to her transfer from Silchar to Guwahati as her elder daughter is studying Degree Course at Silchar and younger daughter is studying in HS final year at the same place. She has therefore prayed that the transfer order may be deferred till completion of the academic year. She has also represented her case to the Controller of Defence Accounts Guwahati on 11.5.2004 vide Annexure-3.

Heard Sri M. Chanda, learned counsel for the applicant and Sri A. Deb Roy, learned Sr.C.G.S.C for the respondents at length.

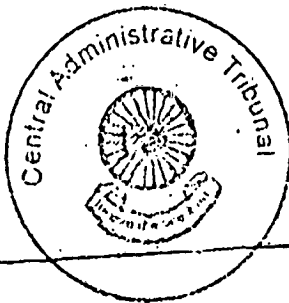
Considering the facts and circumstances of the case, the respondents are directed to consider the request of the applicant with utmost sympathy for the problems explained by her.



True copy
Sipthash
Advocate

that is fair, just and equitable
 26.7.04 and a reasonable reply/shall be given
 to her representation within one month
 from the date of receipt copy of this
 order. Status quo shall be maintained
 till completion of the above exercise.

O.A. is accordingly disposed of.
 No order as to costs.



Sd/MEMBER(ADM)

Memo No. 1249

Dtd 16.8.04

Copy for information and necessary action.

1) Bharati Roy Choudhury, c/o Late
 Ashutosh Roy Choudhury, Rangitkari,
 P.O. Silchar-5, Dist. Cachar.

2) Mr. A. Deb Roy, Sr. C.G.S.C, C.A.T.,
 Guwahati Bench.

Section Officer(3),
 11/8

To
The Controller of Defence Accounts
Udayan Vihar, Narangi, Guwahati-781171

Dated 30th July 2004

Ref:- OA 155/04 (Bharati Roy Choudhury -Vs- U.O.I.& ors)

Sir,

Please find enclosed herewith a copy of the original application filed before the Central Administrative Tribunal, Guwahati along with order dated 26.7.04 reference to the cited above.

Kindly acknowledge receipt of the same for your kind perusal.

Thanking you,

Yours faithfully

Bharati Roy Choudhury
(Bharati Roy Choudhury)

*True copy
Sigitkash
Acharya*

Annexure-6

Speed Post

No. LA/SLC/D.E.SH-VLI
O/o the LAC(A) Silchar
Dated 2.11.2004

To
The CDA (AN/I)
Udayan Vihar, Narangi, Guwahati- 78817

Sub:- Transfer: DADE SH : Smt. BR Choudhury
Peon, A/C No.8334080

Ref: Your Part II O.O. No. 46 dated 25/4/2004, (ii) Fax No.
92842-23 dt. 21/5/04 & (iii) Confdl. letter no. AN/ 1A/25-L-
VIII dt. 2/9/2004

In pursuance of your order vide part- II O.O No. 46 dt. 28.4.04 your confdl. letter No. cited above Smt. B. R. Choudhury pt. Peon, A/C No. 8334080 has been relieved of her duties from this office on 2.11.04 (AN) with the direction to report for duty in your office.

In this connection it is intimated that requisition for advance of TA/DA & one month pay advance submitted by Smt. B.R. Choudhury to GE Silchar for drawl from CA of GE Silchar. Smt. B.R. Choudhury has advised to go to GE's office to receive the advance from CA of G.E. Silchar but she has been absenting herself from duty w.e.f. 30.10.04 (AN) without receiving the advance from CA of GE Silchar.

As such, Smt. B.R. Choudhury pt. peon has been relieved at her present home address as per your above orders & telephonic instruction from the LAO (CA) Silchar, who is on leave.

The following leave stands to her credit up to 31.12.04.

EL-40 days CL- Nil RH- 1 day

Sd/- Illigible
LAO(A) Silchar

Copy by Speed post

1. The CDA (AN/II) Udayan Vihar, Narangi- 71
2. The CDA (AN/II) Udayan Vihar, Narangi- 71 For information
3. Smt. Bharati Roy Choudhury, Pl. Peon :For compliance please
C/O Late Ashutosh Roy Choudhury
K.C.Road (East) PO- Rangirkhari
Silchar-5, Dist- Cachar (Assam)

Sd/- illegible
For LAO (A) Silchar