

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/410/2018

Date of Reserve:21.01.2019

Date of Order: 04.02.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

Smt.Jhuma Mohanty, aged about 43 years,W/o. Prakash Kishore Mohanty, at present working as UDC, Debts Recovery Tribunal, Cuttack – permanent resident of At/PO-Jhangirmangala, PS-badambadi, Dist-Cuttack-753 009, Odisha.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
T.K.Choudhury
S.K.Mohanty
Smt.J.pradhan

-VERSUS-

Union of India represented through:

1. The Secretary, Ministry of Finance, Economic Affairs, Room No.67-B, New Delhi-110 001.
2. Chairperson, Debt Recovery Appellate Tribunal, 9, Old Post Office Street, 7th Floor, Kolkata-700 001.
3. Registrar, Debt Recovery Appellate Tribunal, 9 Old Post Office Street, 7th Floor, Kolkata-700 001.
4. Presiding Officer, Debt Recovery Tribunal, C/71,C.D.A., Sector-7, Dist-Cuttack-753 014.
5. Registrar, Debt Recovery Tribunal, C/71,C.D.A., Sector-7, Dist-Cuttack-753 014.
6. Registrar, Debt Recovery Tribunal-III, L.I.C. Building, Park Street, Jawaharlal Nehru Road, Kolkata.

...Respondents

By the Advocate(s)-Mr.A.K.Mohapatra

ORDER

PER MR.SWARUP KUMAR MISHRA, MEMBER(J):

Applicant is presently working as UDC in Debts Recovery Tribunal under the administrative control of Respondent No.5. Her grievance is directed against the order dated 31.07.2018 by virtue of which she has been

transferred and relieved of her duties on the After-noon of the same day with a direction to join in the new place of posting, i.e., Debts Recovery Tribunal, Kolkata on or before 10.08.2018. On receipt of the orders of transfer, the applicant submitted a representation on the very same day on 31.07.2018 to the Chairperson, Debts Recovery Appellate Tribunal (Res.No.2) with a prayer to consider her case for retention at Cuttack. Since there was no response, the applicant moved this Tribunal in this O.A. praying for the reliefs as follows:

- i) To quash the order of transfer dated 41.07.2018 (so far as this applicant is concerned) under Ann.A/3.
- ii) And to direct the Respondents to allow the applicant to continue under Respondent No.5.

2. Shorn of unnecessary details, it would suffice to note that the applicant had initially joined as LDC in the Office of the Director, Central Institute of Freshwater Aquaculture (CIFA), Bhubaneswar in the year 1995. In pursuance of notification issued by the Ministry of Finance, she came on deputation to Debts Recovery Tribunal, Cuttack in the year 2001 and subsequently, absorbed in the year 2002. While working as U.D.C., vide order dated 31.07.2018 she has been transferred and relieved with a direction to join D.R.T., Kolkata on or before 10.08.2018.

3. Grievance of the applicant is that the transfer policy dated 9.7.2018 does not contain the provisions debarring transfer during mid academic session so also the retention of both wife and husband in the same place of posting and as such, the same is not in conformity with the transfer policy as formulated by the Department of Personnel & Training. Secondly, it has been pointed out that the post of UDC as held by the applicant does not borne in zonal cadre and as such, her transfer to Kolkata is not permissible. Besides, it has been contended that since the date of transfer and the date of relief

synchronizes on a particular date, i.e., 31.07.2018, elements of bias, arbitrariness and colourable exercise of powers are writ large.

4. Per contra, respondents have filed their counter. According to respondents, in exercise of powers conferred under Rule-7 & 8 of the Rules of 2018 transfer policy dated 9.7.2018 has been formulated by the competent authorities and therefore, it cannot be said that the transfer policy is not in consistent with the rules. It has been pointed out that the child of the applicant is only 4 years and as per Government School norms he/she cannot be admitted to any School being less than 5+. Therefore, the ground of transfer during mid academic session is out of place. It has been submitted that vide order dated 31.7.2018, the competent authority, i.e., Chairperson, Debts Recovery Appellate Tribunal (DRAT), Kolkata issued the order of transfer following the DRAT, Kolkata and DRTs, Hyderabad, Guwahati, Kolkata Visakhapatnam, Siliguri and Cuttack Recruitment Rules, 2018 and at no point of time, there has been arbitrariness or discrimination and/or mala fide intention involved in the orders of transfer. Applicant's reliever Shri Dipankar Chatterjee, UDC has already joined on 8.8.2018. It is the contention of the respondents that an employee has to undergo transfer if he/she has completed 07 years of service in one DRT and since the applicant herein has completed 07 years in DRT, Cuttack as UDC she has rightly been transferred. According to respondents, this is a chain rotational transfer by which 18 UDCs have been transferred and relieved on 31.07.2018 and most of them have already joined at their respective transferred place.

5. This matter came up for admission on 6.8.2018 when this Tribunal while directing the learned counsel appearing for the respondents to obtain instructions, as an interim measure, directed that "*if the applicant has not been*

relieved, then the status quo shall continue". Thereafter, vide order 8.8.2018 this Tribunal while admitting the O.A. and directed notice to the respondents for filing counter-reply. Further, the Tribunal stayed the operation of the order dated 41.07.2018 in so far as transfer of the applicant to DRT, Kolkata is concerned and this interim order is in force as on date.

6. We have heard the learned counsels for both the sides and perused the records. We have also gone through the rejoinder filed by the applicant and the additional affidavits. During the course of hearing, learned counsel for the applicant by drawing our attention to orders dated 01.01.2019 in O.A.Nos. 021/747/2018, 021/748/2018, 021/749/2018 and 021/750/2018 submitted that the transfer orders issued under similar circumstances in respect of the applicants therein have been quashed by the CAT, Hyderabad Bench and therefore, similar orders may be passed in the instant O.A.

7. We have perused the decision in the above mentioned Original Applications. In the fitness of things, the relevant paragraphs of the aforesaid order are quoted hereunder:

"18. In the order of transfer, Respondent No.2 was so unreasonable that straightaway he incorporated a clause relieving all the employees mentioned therein. The relevant clause reads as under:

"The above mentioned Assistants stand relieved w.e.f. 31.07.2018 (AN) and directed to report to DRAT, Kolkata/DRTs to which they have been transferred within the stipulated period mentioned against their names for orders. No formal relieving order is required to be issued".

19. It needs to be noted that the transfer policy was communicated on 30th, the order of transfer passed on 31st and the deemed relief from duties is incorporated therein. Almost an emergency like situation is brought about.

20. There may be a scope to infer that the policy and orders of transfer were issued in a hurried manner and the language employed in the clause contained therein are not so happily

worded. However, it turns out to be otherwise, if one taking into the account the language employed by Respondent No.2 in his communication to the applicants or the language employed in the counter affidavit by the respondent in Contempt Petition. For all practical purpose, he defied the interim order passed by this Tribunal in a very objectionable language in the written communication. The whole exercise reflects an unfortunate set of affairs. It is not known whether the Hon'ble Chairman of the DRAT and the superior officials in the Ministry of Finance were aware of the high handed attitude being exhibited by the Registrar in the entire episode.

21. We, therefore, allow the OAs and set aside the impugned order of transfer, insofar as it concerns the applicants. The applicants shall be continued in the same place where they were working and shall be paid emoluments without any deduction or cut. We make it clear that it shall be open to the respondents to take further steps in the matter after deciding the question as to whether the employees of the respective DRT need to be given an option in the light of unification of the cadres and by applying policy guidelines framed by DoPT."

8. Perusal of the above orders makes it conspicuous that in tune with the orders of transfer of the applicants therein before the CAT Hyderabad Bench the applicant herein has been transferred and relieved and we are satisfied that the facts of this O.A. are quite the same and similar to the facts of the OAs before the CAT, Hyderabad Bench. In view of this, we are not inclined to make a departure from the view already taken by the CAT, Hyderabad Bench under similar facts and circumstances of the case and applying the *ratio decidendi* in the said OAs, we quash and set aside the order dated 31.7.2017 in so far as transfer of the applicant to DRT-3 Kolkata is concerned. The respondents shall allow the applicant to resume her duties at DRT, Cuttack forthwith with liberty to take steps as per the order dated 1.1.2019 of CAT, Hyderabad Bench.

9. With the above observation and direction, this O.A. is allowed. No costs.

(SWARUP KUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)

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