

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 109/2019

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Susmita Mohanty, aged about 58 years, W/o Biswanath Sahoo, at present working as Regional Director in Dattopanth Tengadi National Board for Workers Education & Development, Regional Directorate, Panposh Road, Rourkela – 769004, Odisha.

.....Applicant

VERSUS

1. Union of India represented by Secretary, Government of India, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg, New Delhi – 110001.
2. Chairman, Dattopanth Tengadi National Board for Workers Education & Development, 7/10 Room No. 21-22, Jaam Nagar House, New Delhi – 110001.
3. Director, Dattopanth Tengadi National Board for Workers Education & Development, North Ambazari Road, Nagpur – 440033.
4. Regional Director In-charge, Dattopanth Tengadi National Board for Workers Education & Development, Regional Directorate, Panposh Road, Rourkela – 769004, Odisha.
5. Deputy Director (HQS/IC Development), Dattopanth Tengadi National Board for Workers Education & Development, North Ambazari Road, Nagpur – 440033.
6. Dy. Superintendent of Vigilance, Deogarh Unit, At/PO/Dist – Deogarh.

.....Respondents

For the applicant : Mr.S.B.Jena, counsel

For the respondents: Mr.A.Pradhan, counsel
Mr.J.Pal, counsel

Heard & reserved on : 1.7.2019

Order on : 18.7.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant is aggrieved by the Transfer order dated 4.2.2019 (Annexure-A/2) by which he was transferred to Mumbai. He submitted a representation dated 5.2.2019 (A/3) for reconsideration his transfer mainly on the ground that she was on the verge of retirement and she was posted in Rourkela on request on 5.11.2018. The OA has been filed with an interim prayer to stay the operation of the transfer order. Following reliefs are sought by the applicant as stated in para 8 of the OA:-

"Under the circumstances it is humbly prayed therefore that the Hon'ble Tribunal may graciously be pleased to quash the order of transfer No.A-20011/136/99/PF/(15th Batch)/46, dated 4th February, 2019 under Annexure A/2;

And further be pleased to pass any other order/orders as this Hon'ble Tribunal may think fit and proper;

And allow this Original Application with Cost.

2. When the OA was considered, vide order dated 8.2.2019, the respondents were directed not to fill up the post at which the applicant was posted at Rourkela and a short reply was to be filed by the respondents, which was filed stating that vide letter dated 4.1.2019 (Annexure-R/1), it was advised by the Vigilance Department to transfer the applicant from Bhubaneswar. It was further stated in the short reply that the applicant was transferred in pursuance to the advisory of the Vigilance Department advising to shift the applicant from Rourkela to any other place except Bhubaneswar. The letter at Annexure-R/1 was signed by the D.S.P. Vigilance, Deogarh. Then the applicant filed the MA No. 179/2019 stating that the letter at Annexure-R/1 of the Vigilance Department based on which she was transferred out of Rourkela after two months of being posted there, was a fraudulent letter and it was not genuine. In MA No. 180/2019, the applicant prayed for impleading the D.S.P. Vigilance as a party. After hearing the parties, vide order dated 5.3.2019, the Tribunal allowed the MA No. 180/2019 impleading D.S.P. Vigilance as a party as respondent no. 6 and the applicant was to be allowed to continue at Rourkela.

3. The respondents filed the MA No. 243/19 to modify the order dated 5.3.2019 stating that the applicant has been transferred on administrative ground on advice of the Vigilance Department vide letter at Annexure-R/1, which is being alleged to be fraudulent by the applicant. It is stated that there is a vigilance case against the applicant at Deogarh unit since 2016, which is under investigation and the respondents have requested the D.S.P. Vigilance to inform about genuineness of the letter at Annexure-R/1. For these reasons, the order dated 5.3.2019 to the extent that the applicant should not continue as DDO at Rourkela. The applicant also filed the MA No. 232/19 stating that the order dated 5.3.2019 of the Tribunal has not been implemented.

4. On 25.3.2019, Mr. J. Pal, learned counsel appearing for the respondent no. 6 stated that the letter dated 4.1.2019 (R/1) was not a genuine letter and it was not issued by the respondent no.6. In the light of the submission, the respondents were directed to take appropriate decision in respect of assigning the power of DDO as per law. When the matter was finally heard on 1.7.2019, Mr. J. Pal filed an affidavit stating that the respondent no. 6 (D.S.P. Vigilance) has not issued the letter dated 4.1.2019 which is proved to be a fake letter, based on which the applicant was transferred from Rourkela to Mumbai.

5. Mr. S.B. Jena, learned counsel for the applicant was heard. He submitted that the affidavit filed by the respondent no. 6 clearly proves the submission of the applicant that she was transferred on the basis of a non-genuine letter/advisory and hence, the impugned transfer order is not sustainable.

6. Mr. A. Pradhan, learned counsel for the respondent no. 1-5 was also heard. He stated that in view of the affidavit of the respondent no. 6, he does not have any further submissions in the matter. He further submitted that the respondents have complied the order dated 25.3.2019 regarding delegation of the DDO power.

7. We have considered submissions by the rival parties and also perused the record before us. The applicant had filed the MA No. 25.2.2019 stating that she apprehended the genuineness of the letter dated 4.1.2019 and a copy of the MA was served on the respondents. In spite of the submissions of the applicant, no appreciable step seems to have been taken by the respondents to quickly verify the genuineness of the letter at Annexure-R/1 except for writing a letter dated 5.3.2019 to the S.P. Vigilance, Sambalpur instead of directly contacting the respondent no. 6 who was supposed to have signed the letter dated 4.1.2019 and the applicant was transferred relying on this letter dated 4.1.2019 (R/1). No further step was taken by the respondent no. 1-5 even after the submission of the counsel for the respondent no. 6 on 25.3.2019 that the letter dated 4.1.2019 was not a genuine letter.

8. In view of the factual circumstances as discussed above, we take note of the fact that the applicant has been transferred after about two months of her posting at Rourkela, on the basis of a letter dated 4.1.2019 (R/1), supposed to have been received from the respondent No. 6 and this letter turned out to be fake and no corrective action was initiated by the respondent no. 1-5 even after knowing the truth about the letter dated 4.1.2019. Hence, we are of the view that facts in this OA clearly show that the impugned transfer order dated 4.2.2019 (Annexure-A/2) is malafide based on wrong facts and hence, it is not sustainable under law. Accordingly, the impugned order dated 4.2.2019 (Annexure-A/2 to the OA) is set aside and quashed. As a result, the OA is allowed. No cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)