

CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH
KOLKATA

LIBRARY

Original Application No.1437 of 2013.

Present : Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member
Hon'ble Ms Jaya Das Gupta, Administrative Member

Smt Madhuri Das

.....Applicants

-Vs -

Union of India & ors. (Eastern Railway)

.....Respondents

For the petitioner : Mr J.R.Das, Counsel

For the respondents : Mr S.K. Bhattacharyya, Counsel

Date of Hearing : 06.05.2016.

Date of Order : 13.05.2016

ORDER

JUSTICE V. C. GUPTA, JM:

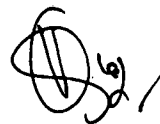
The applicant Smt Madhuri Das filed this O.A under Section 19 of the Administrative Tribunals Act, 1985 seeking relief to quash the order dated 30.05.2013 issued by the Deputy Director (Admn.) Eastern Railway along with letters dated 31.5.2013 and 3.6.2013, seeking further direction against the respondents to release her pay and allowances for the period 21.3.2008 to 3.12.2008 in terms of the order of Hon'ble High Court dated 24.02.2009. The applicant also sought quashing of letter dated 23.07.2013 issued by the Sr. Audit Officer. She also claimed that she may be allowed to join and function as Senior Auditor, Kolkata.

2. To decide this O.A it is necessary to bring the history of the case on record. The applicant was appointed as Clerk under the Principal Director of Audit, Eastern Railway on 06.12.1994. During service she married one Arijhit Das on 26.2.2006. Thereafter, she applied for transfer to Kolkata as her husband was working in the Government of West



Bengal in Finance (Audit) Department at Writers Building, Kolkata and because the applicant was posted at Chittaranjan. After marriage she became pregnant so she sought for a transfer to Kolkata. When her request was not considered she filed O.A.999/2006 seeking her transfer to Kolkata. During the pendency of this application she was accommodated at Kolkata and as such the O.A was withdrawn. The applicant was again transferred by an order dated 20.3.2008 from Kolkata to Chittaranjan under Senior Audit Officer(Admn.). She claimed that as per Rule 11 of FR SR of clause VII it is provided that the Central Government spouse working in any State Government the Central Govt. servant may apply to the competent authority and the competent authority may post the said officer to the station or if there is no post in that station to the State where the other spouse is posted. The applicant on this ground challenged the order of transfer by filing O.A.291/2008, which was disposed of by the Tribunal on 27.3.2008 and the Tribunal gave liberty to the applicant to file a comprehensive representation with direction to the respondents to decide the same within a time schedule with further liberty to the applicant to join at CLW/Chittaranjan. After that she made a representations on 8.4.2008 and 11.4.2008. The respondent authority before considering her request issued a letter dated 23.4.2008 stating therein that the applications of leave has not been granted and she will now be treated as an unauthorised absentee from duty. She has already been ordered to join Chittaranjan. The Senior Audit Officer issued a letter dated 09.05.2008 directing the applicant to join first at Chittaranjan so her representation could be considered.

3. Thereafter, the applicant filed another application being O.A.492/2008 before this Tribunal. The Tribunal passed order to maintain status quo vide order dated 14.08.2008. The said O.A was allowed by quashing the release order of the applicant and allowing her to continue at Kolkata. Aggrieved by the same the Railway authorities challenged the order of the Tribunal dated 14.08.2008 in WPCT No.252/2008. The



Hon'ble High Court vide its order dated 24.2.2009 set aside the order of the Tribunal, the operative portion of which is extracted herein below :

"The application thus succeeds.

The order of the Tribunal impugned in this writ petition is set aside.

The authority volunteered to withhold the order of transfer till the son attains the age of two years. We request the administration to withhold the order of transfer for a further period of six months meaning thereby the order of transfer impugned in the Tribunal Application being dated March 20 2008 be kept in abeyance till June 8, 2009 when the child would celebrate his second birthday.

The respondent must join Calcutta office at once. Her leave may, however, be regularized as special leave with pay on her joining.

W.P.C.T. No. 252 of 2008 is disposed of without any order as to costs.

Urgent Xerox certified copy would be given to the parties, if applied for."

4. Aggrieved by the aforesaid order the applicant preferred an SLP(C) NO.11217 of 2009 and vide order dated 12.5.2009 the Hon'ble Apex Court directed to maintain status quo in respect of the posting of applicant. However, the SLP was finally disposed of in terms of the following order :

"Heard Mr. Kalyan Banerjee, learned senior counsel for the petitioner. Our attention has been drawn to the two Office Memoranda, one dated 12.6.1997, issued by the Government of India, Ministry of Personnel, Public Grievances, Department of Personnel & Training, New Delhi and the other also issued by the Government of India dated 03.04.1986.

We are not inclined to exercise our jurisdiction under Article 136 of the Constitution. However, we observe that if petitioner makes a representation to the competent authority for her posting at the place of posting of her husband, who is the employee of the State Government, the concerned authorities shall consider the representation of the petitioner in accord with the above two Office Memoranda.

Special Leave Petition stands disposed of.

Obviously, on disposal of Special Leave Petition, interim order dated May 12, 2009 passed by this Court does not survive and it is clarified that the interim order shall not operate from today."

5. The Apex Court while deciding the SLP directed the petitioner to make a representation to the competent authority for her posting at the place of posting of her husband. The authorities further directed to consider the representation of the applicant in accordance with the two office memoranda, mentioned in the earlier paragraph. Thereafter, the applicant submitted a representation on 11.03.2013 before the Principal Director of Audit, Eastern Railway seeking a posting at Kolkata. The Senior

Audit Officer (Admn) vide his letter dated 25.3.2013 informed the applicant that submission of representation directly to HOD and seeking reply within 7 days is a misconduct. However, it was informed to the applicant that the office will examine the content of the court orders for implementation of the same. Thereafter the applicant filed another O.A bearing No.198/2013 again for the transfer order dated 20.03.2008 and non consideration of her prayer for posting at Kolkata. The said O.A was disposed of vide order dated 01.04.2013 with a direction to the respondent to examine the claim of the applicant in the light of the direction given by the Hon'ble Apex Court and the mandates of the OM dated 30.09.2009 and to pass a reasoned and speaking order and till such time status quo shall be maintained. The respondent authority by its order dated 30.5.2013 informed the applicant that there is no vacancy available at Kolkata. During the pendency of this litigation the applicant was promoted to the post of Sr. Auditor vide order dated 04.04.2011. By order dated 31.5.2013 the applicant was directed to join at Chittaranjan and only thereafter she joined at Chittaranjan on 04.06.2013 as is evident from the record which the applicant has placed.

6. During the pendency of this application the applicant was again transferred to Kolkata. Hence it has been contended by the learned counsel for the applicant that the applicant do not want to press the application, so far as the quashing of the order and rejecting the representation against the order for transfer. However, the applicant restricted her claim so far as the payment of salary for the period of alleged absence of which she did not join after the transfer order passed on 20.3.2008.

7. Heard the learned counsel for the parties and perused the record. Learned counsel for the applicant vehemently argued that as the Hon'ble High Court by its order dated 24.2.2009 directed the respondents that her leave may however be regularised as a special leave with pay on her joining at Kolkata. In pursuance of the order passed by Hon'ble High Court and on that score it has been contended that the impugned order

passed by the authorities concerned dated 23.7.2013 asking for application for leave for regularisation of her absence is liable to be quashed. The letter dated 23.7.2013 is extracted herein below :


"To
Smt. Madhuri Das, Sr.Ar
O/o the Pr. Director of Audit
Chittaranjan Locomotive Works
Chittaranjan.

Reg:-Leave Salary during the period of absence

With reference to your appeal dated 12.03.2013 for payment of salary for the period of absent from 21.03.2008 to 03.12.2008, it is stated that our Hd. Qrs. Office has advised us to regularize the absence by sanctioning leave admissible to you. Accordingly, you are requested to submit leave application for regularization of absent for the period from 21.03.2008 to 03.12.2008 and from 08.12.2008 to 24.02.2009. The arrangement for payment of leave salary will be made on sanctioning of leave for absence."

8. In the reply the learned counsel for the respondents would submit that as per leave rules for regularisation of absence in the service of an employee, he is required to move an application on the basis of which order of regularisation of his absence may be passed.

9. Learned counsel for the applicant would submit that in view of the order of Calcutta High Court, no application is required. On the contrary, learned counsel for the respondents pointed out that before regularisation of the absence of an employee unless an application is made by the employee for the purpose, authorities would not be competent to pass any order in view of the CCS(Leave) Rules. Therefore, it was incumbent upon the applicant to move an appropriate application for asking regularisation of her absence from duty. He further contended that against the order of the Hon'ble High Court SLP has been filed by the applicant being aggrieved with the order and the Hon'ble Supreme Court decided the matter by giving liberty to the applicant to move a representation, so the order of the High Court stand merged in the order passed by the Hon'ble Apex Court.



10. We have considered the rival submissions of the parties. It is true that the Calcutta High Court by allowing the Writ Petition granted the benefit of stay for six months more on the basis of concession given by the Railway authorities considering the age of child of the applicant and the Hon'ble High Court allowed the applicant to join at Kolkata and extended the period of stay till 8.6.2009 keeping the order of transfer in abeyance and directed that in case she joins in pursuance of the order of Calcutta High Court, her absence may be regularised. But in this case the applicant instead of obeying the order of the Hon'ble High Court, being dissatisfied with order of High Court challenged the same and preferred SLP. The SLP has been disposed of by an order. Therefore, we find force in the submission of the learned counsel for the respondents that for making the regularisation of absence of the applicant, the applicant should move an appropriate application asking for regularisation of her absence, which was accrued due to non joining in spite of the order of transfer.

11. Therefore, we are of the view that application lacks merit and liable to be dismissed.

12. No interference is warranted in the directions given to the applicant by letter dated 23.07.2013.

O.A is accordingly dismissed. There will be no order as to costs.

(Jaya Das Gupta)
Administrative Member

(Justice V.C. Gupta)
Judicial Member