

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/372/2018

Hyderabad, this the 24th day of January, 2020



***Hon'ble Mr. Ashish Kalia, Member (Judl.)*
*Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

D. Kalpana Nayak, (TN 1998)
W/o. Sri Mahender Kumar Rathod,
Aged 42 years, Occ: IPS, Currently serving as
Inspector General of Police, Economic Offences Wing-II,
(Financial Institution), Chennai.

... Applicant

(By Advocate Sri Y. Srinivasa Murthy)

Vs.

1. Union of India, Rep. by its Secretary,
Department of Personnel & Training (DOPT),
North Block, New Delhi – 110 001.
2. The Secretary, Government of India,
Ministry of Home Affairs, New Delhi.
3. The State of Telangana,
Rep. by the Chief Secretary,
3rd Floor, Samatha Block,
Telangana Secretariat, Hyderabad – 500 022,
Telangana.
4. The State of Tamil Nadu,
Represented by the Chief Secretary,
Chennai.

... Respondents

(By Advocates: Mr. V. Vinod Kumar, Sr. CGSC
Mr. P. Raveender Reddy, SC for State of Telangana)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed impugning the Memorandum dated 17.01.2018 of the Ministry of Home Affairs in regard to the period of over-stay by the applicant in the State of Telangana on inter-State deputation.



3. Brief facts of the case are that the Central Government, with the concurrence of the States of Andhra Pradesh and Tamil Nadu allowed Inter-State cadre deputation from Tamil Nadu to Andhra Pradesh for a period of 5 years vide letter dated 21.10.2010 of the Ministry of Home Affairs. The applicant joined the State of Andhra Pradesh on 14.01.2011. The deputation period ended on 13.01.2016. After being relieved by the State of Telangana on 20.05.2017, the applicant reported to her parent cadre. In October 2017, the applicant was served with an Endorsement dt. 24.10.2017 by the office of the Director General of Police, Tamil Nadu, Chennai enclosing a copy of the letter dated 29.10.2017 wherein there was a reference to the servicing of the show cause notice about the overstay of the applicant in the State of Telangana. Applicant claims that though there was no show cause notice served on the applicant, a letter dated 08.11.2017 in the form of an explanation was submitted through proper channel, which, it appears, has been forwarded to the Ministry of Home Affairs. In February 2018, the applicant received the impugned Memo dated 17.01.2018 treating the period of her overstay in Telangana on inter-state deputation for the period between 14.01.2016 to 19.05.2017 as not to be counted for any increment due during the said period with cumulative effect and that the excess payment made to her for the said period shall be recovered. Besides, adverse notice shall be taken against her at the time of her empanelment. Aggrieved over the said show cause notice, the OA has been filed.



4. The contentions of the applicant are that the 2nd respondent has failed to appreciate the explanation submitted by the applicant in the correct perspective. Besides, an All India Service officer who is posted on Inter Cadre Deputation or otherwise to a particular State cannot on his/ her own volition move away from the post he/ she holds at the relevant point of time until orders are received enabling the officer to get relieved from the post held. Applicant got relieved on 20.05.2017. Applicant also contends that she was not served with any notice except the letter dated 29.10.2017 and in response thereto, a reply was submitted on 08.11.2017 detailing the reasons for overstay. Applicant affirms that she could not get relieved as she was not relieved from the State Government and she could not report earlier to the date of relieving. Such overstay on inter cadre deputation of officers who served in Jharkhand, Chattisgarh, etc. were considered favourably by the respondents and the same relief could have been extended to the applicant, who also served the State of Telangana in similar circumstances. Applicant asserts that her services all along has been unblemished till date. Therefore, any action taken in consequence to the show cause would adversely effect her future career.

5(I) The 2nd respondent Ministry of Home Affairs filed a reply statement contending that inter-cadre deputation of Indian Police Services officers are governed by Rule 6(1) of the India Police Service (Cadre) Rules, 1954. Further, after the period of deputation is over, it is the responsibility of the officer to get relieved on the last date of his/her deputation, if any officer does not handover charge at the end of the approved period of deputation, he/she will be immediately liable to disciplinary action and break in service for the period beyond the approved date. In case, where an officer has completed 5 years of



inter cadre deputation, adverse notice is taken, at the time of empanelment and promotion of the officer. In the context of the above rules, the deputation of 5 years of the applicant came to an end on 13.01.2016, but she continued on inter cadre deputation up till 20.05.2017. The 2nd respondent brought the issue to the notice of the State of Tamil Nadu initially in respect of the applicant, who was in the State of Telangana on inter cadre deputation. The Government of India took up with the State of Telangana on 28.06.2016, who in turn issued GO Rt. No. 1524, dated 06.07.2016 with a direction to the Director General of Police, Telangana to take necessary action for relieving of the officers duly making necessary internal arrangement to the post. However, after issue of the G.O. referred to, the State of Telangana vide letter dt. 27.09.2016 moved a proposal for extending the tenure of inter cadre deputation of the applicant for further period of two years on grounds of shortage of officers in the State. The proposal was turned down by the 2nd respondent and the same was communicated to the State of Telangana on 24.03.2017. The respondents assert that the proposal for extension was initiated by the State of Telangana consequent to representations of the applicant and it was not initiated suo motu by the State Government. The applicant was asked to explain for the overstay vide Memo. dated 19.09.2016, within 15 days. The reply to the same was given on 08.11.2017 after the applicant joined the parent cadre. The applicant claiming that she has not received the show cause notice is not correct since the State Govt. of Telangana vide letter dated 08.09.2017 forwarded a copy of the Police Department letter dt. 22.08.2017 wherein it was intimated that the show cause notice was served on the applicant on 03.10.2016. Besides, the request for extension was made by the applicant only after expiry of the approved tenure i.e. on 03.08.2016, whereas her tenure ended on 13.01.2016. Taking adverse notice of the overstay, show cause notice was issued for violating the inter cadre deputation guidelines and

therefore, the action of the respondents is in accordance with rules and valid in the eye of law.



II. The 3rd respondent i.e. the State of Telangana also filed reply statement wherein it was stated that the then State of Andhra Pradesh was bifurcated w.e.f. 02.06.2014. The Government of Andhra Pradesh vide G.O. Ms. No. 2346, dated 01.06.2014 allowed continuation of the services of the applicant along with four others in the State of Telangana up to 30.06.2014. The applicant in her representation dated 03.06.2014 requested for her continuation on inter cadre deputation in the State of Telangana. The deputation period ended on 13.01.2016. Subsequent to bifurcation of composite State of Andhra Pradesh, there was severe shortage of officers in all cadres which had a telling effect on the functioning of the administration. The available officers were utilized and they were assigned multiple tasks by clubbing the duties of two or three posts to enable the Government to run the administration. The Government of Telangana vide GO Rt. No. 1524, dated 06.07.2016 issued orders relieving the applicant from Telangana to join her parent cadre after the deputation period of 5 years, but she could not be relieved immediately due to paucity of the officers consequent to bifurcation of the State of Andhra Pradesh. The applicant represented to extend her deputation for further period of two years on 03.08.2016 in pursuance of the consolidated guidelines for All India Services, issued by DOPT vide letter dated 28.11.2007 and 27.06.2016, wherein it is stated that the borrowing organization, if they wish to retain the officer beyond 5 years, they may extend the tenure of deputation up to a period, not exceeding 7 years at a stretch, with the approval of the borrowing Ministry/ Department concerned. On the recommendations of the Head of the Department, under whom the applicant was working, in the letter dated 16.08.2016, a proposal was mooted to the Government of India for

extending the tenure of period of the applicant for a period of 2 years, vide letter of the Government of Telangana dt. 27.09.2016, for reasons of acute shortage of officers in the State of Telangana and also taking into consideration the personal problems of the applicant. In the meanwhile, the Government of India issued show cause notice on 19.09.2016 which was served on the applicant on 03.10.2016. However, the proposal for extension was not agreed to by the Government of India on 10.10.2016. On the repeated requests of the Head of the Department, the Government of India was again addressed by the Government of Telangana for extension of deputation tenure of the applicant as a special case, on 22.02.2017. When it was not agreed to by the Government of India, vide letter dated 24.03.2017, the Head of Department was ordered to take action to relieve the applicant vide G.O.Ms. No. 1524, dated 06.07.2016. Accordingly, the applicant was relieved w.e.f. 20.05.2017. The applicant was granted 60 days EL w.e.f. 21.05.2017 to 19.07.2017 by the HoD vide proceedings dt. 20.05.2017, in accordance with Para 16(2) of the Officer Memorandum dt. 30.03.2010 of the MHA. The Government of India was accordingly informed on 01.07.2017. However, the applicant reported for duty in her parent cadre on 20.07.2017 and the unavailled leave was credited to her account.

The 3rd respondent also states that there were only 99 officers in position against the requirement of 139. To overcome the shortage of officers, the Government of India was also addressed to consider deputation of willing officers to work in the newly formed State of Telangana. The Government of Telangana could not relieve the applicant immediately after completion of her deputation period on 13.01.2016 as she was holding additional charge of IGP (Coordination) in addition to her regular posting as IGP (Law & Order) i/c. DIG (Admn.), Telangana, Hyderabad. Therefore, in view of the extraordinary



circumstances prevailing after bifurcation of the erstwhile State of Andhra Pradesh, it was not possible to relieve the applicant immediately on completion of deputation tenure.



6. Heard both the counsel and perused the pleadings on record.

7(I) It is not disputed that the applicant was granted inter-cadre deputation to the then composite State of Andhra Pradesh on 14.01.2011 for a period of 5 years and post bifurcation of the State of Andhra Pradesh, the applicant continued in the State of Telangana. The deputation period came to an end on 13.01.2016. The 2nd respondent i.e. the Ministry of Home Affairs states that, Rule 6(1) of the Indian Police Service (Cadre) Rules, 1954, provides that a cadre officer, may with the concurrence of the State Government concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a Company, Association, or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government. According to the 2nd respondent, enabling provisions regarding inter cadre deputation have been issued by the DOPT vide OM dt. 08.11.2004, as per which, on completion of deputation period, the applicant should have got herself relieved on her own and if she were not to get herself relieved, she is liable for disciplinary action and break in service for the period beyond the approved date. Even adverse notice would be taken at the time of empanelment and promotion of the officers for staying beyond the deputation period.

II. The 2nd respondent asserts that since there is violation of inter cadre deputation, it is appropriate to take adverse notice for such overstay beyond the period of deputation. Accordingly, a show cause notice was issued to the

applicant vide letter dt. 19.09.2016, which, the applicant claims, has not been received. However, the 2nd respondent affirmed that the State Government has reported that the show cause notice was served on the applicant on 03.10.2016. Hence, the contention of the applicant that the show cause notice was not served on her is incorrect. Nevertheless, a reply was given by her to the show cause notice on 08.11.2017 after she joined her parent cadre. Consequent to the reply given by her, the impugned order has been issued proposing not to count the period of over stay for granting any increment with cumulative effect and the excess payment made for the period of overstay, shall be recovered and also adverse notice would be taken against the applicant at the time of her empanelment.

III. The 3rd respondent, who actually utilized the services of the applicant on inter- cadre deputation i.e. the Government of Telangana, in their reply statement, have categorically stated that the services of the applicant had to be necessarily used beyond the period of deputation in view of acute shortage of officers consequent to the bifurcation of the then composite State of Andhra Pradesh. The response of the 3rd respondent synopsises the need to retain the officer, as under:

“16. Therefore, in view of the extraordinary circumstances prevailing after the bifurcation of erstwhile AP and formation of Telangana, it was not possible to relieve the officer immediately on completion of her deputation tenure and GOI was addressed to grant extension of deputation of the MoS, taking into consideration the administrative exigencies and law & order scenario, and also the fact that the MoS was holding multiple crucial charges and were also familiar with the local situation. The MoS was not relieved pending correspondence with the Government. However, in compliance with directions of GOI on 24.03.2017, the MoS was relieved from Telangana State on 20.5.2017 and she reported in her parent cadre.

17. It is finally submitted that not relieving and not repatriating the MoS to her parent cadre on completion of her deputation tenure of 5 years is neither disobedience of orders of GoI nor for anything against the MoS, but was purely on administrative exigency and urgent requirement of officers coupled with public interest. The fact was conveyed to GoI by Government of Telangana in DO letter No. 399/Spl.B/A3/2015, dt. 06.11.2017 requesting to condone the delay in relieving her as the same was occasioned by the administrative decision of the Government of Telangana.”



Thus, as can be seen from the above, the Government of Telangana in view of exigency of the situation in which it was placed, due to bifurcation of the State of Andhra Pradesh, had to necessarily retain the officers, who were on inter cadre deputation, beyond their tenure of deputation, in public interest. The State of Telangana clearly admitted that it could not relieve the applicant immediately on completion of the applicant's tenure due to acute shortage of officers. It is also not out of place to state that the DOPT has given relaxation of eligibility for inter cadre deputation in the States of Jharkhand, vide order dt. 02.02.2010. The important aspect in the said letter is that, due to shortage of officers, the Govt. of India has taken such a view.

IV. In the case of the applicant, the composite State of Andhra Pradesh being bifurcated, there was a necessity of officers to man the State in public interest. The HoD was repeatedly representing and the Government of Telangana has also taken with the Government of India for extending the deputation of the applicant. This being so, the Government of India could have considered the extension of extension of inter-cadre deputation of the applicant in the interest of public service and as a special case. The 2nd respondent claimed that the proposal for extension of tenure mooted by the Government of Telangana was in view of the representation of the applicant for extension of tenure and per se it was not a proposal by the State Government on its own volition. True to certain extent, but at the same time, the State of Telangana has repeatedly requested for extension of deputation of the applicant for administrative reasons in public interest and they admitted in the reply statement that they could not relieve the official due to acute shortage of officers. The Tribunal does appreciate the plight of the Government of Telangana in that the turbulence created, when the State of Andhra Pradesh was bifurcated, required large number of officers to be in position for maintaining public order and equitable governance.



V. The applicant was in the service of Government of Telangana by the time she completed the tenure of deputation. It is not the case of respondents that the applicant has committed any act, which can be construed as misconduct for imposing the liability proposed in the impugned show cause notice. If it were to be an act of misconduct, or any act of gross indiscipline, then the Tribunal would not have come to the rescue of the applicant. Applicant's continuance was mostly due to administrative compulsions.



VI. The facts of the case, thus clearly establish that though the applicant had personal reasons, but the most dominant cause for her overstay beyond the period of deputation was because the Government of Telangana needed the services of some officers who were on inter cadre deputation, including the applicant consequent to formation of the State of Telangana from out of the composite state of Andhra Pradesh. Purely, it was in the interest of public service and therefore, the impugned Memorandum dt. 17.01.2018 issued by the 2nd respondent does not appear to be fair. Moreover, there is a precedent where, in respect of the State of Jharkhand some relaxation in eligibility was extended due to shortage of officers and in public interest. Law expects equal treatment when elements of public interest come into play. In the State of Telangana, there was shortage of officers and public interest demanded that the officers had to be retained which the Government of Telangana resorted to. This, in fact, is a fit case, where the 2nd respondent could have taken the view that the services of the applicant were imminently required in the State of Telangana, rather than the State of Tamil Nadu, at the time of bifurcation of the State, given the complex dimensions of the intense agitation prior to the State bifurcation and thereafter too. It is also not out of place to adduce that the applicant has put in an unblemished service over the years.

VII. Keeping the above in view, in order to uphold justice, the impugned Memorandum dt. 17.01.2018 is set aside and the interim order passed by this Tribunal is made absolute.

The OA is accordingly allowed. No order as to costs.



(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER (JUDL.)

/evr/