



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3579 of 2019

Orders reserved on : 09.10.2020

Orders pronounced on : 04.12.2020

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)
Hon'ble Mr. R.N. Singh, Member (J)**

Gandharva Rathore, age-29, Group -A
26, Officers Campus Extension,
Sirsi Road, Khatipura
Jaipur-302012
Sub Divisional Officer

...Applicants

(By Advocate: Shri Mayank Jain)

VERSUS

1. Union of India
Through the Secretary
Ministry of Personnel, Public Grievances & Pensions,
Department of Personnel & Training
North Block, New Delhi-110001.

2. State of West Bengal
Through the Chief Secretary,
Government West Bengal,
Nabanna Building, 325, Sharat Chandra Road,
Hawrah, Kolkata – 711102

3. Department of Personnel and Training
Through the Secretary, North Block,
Central Secretariat, New Delhi-110001.

...Respondents

(By Advocates: Shri Kumar Onkareshwar for R-1 and
Ms. Madhumita Bhattacharjee for R-2)

ORDER



Hon'ble Mr. R.N. Singh, Member (J):

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 on being aggrieved by refusal of Govt. of West Bengal, Respondent No.2, to issue a 'No Objection Certificate' needed for cadre change on her request on the grounds of marriage.

2. The applicant herein is an IAS Officer of 2016 Batch and was allocated to the West Bengal cadre of the service. She got married to Shri Anurag Chander, an IAS Officer of 2016 Batch of Himachal Pradesh cadre on 31.10.2017. In view of her marriage, the applicant made a representation dated 7.11.2017 (Annexure A-6) to the Respondent No.2 seeking change of her cadre on the grounds of marriage from West Bengal cadre to Himachal Pradesh cadre under Rule 5 (2) of the Indian Administrative Service (Cadre) Rules, 1954 (hereinafter referred to as 'the Rules of 1954') and to issue a 'No Objection Certificate' in this regard. On the same date, she also preferred a representation (Annexure A-7) to the Respondent Nos.1 and 3 seeking change of cadre from West Bengal to Himachal Pradesh on the grounds of her marriage. Therein in the said representation, the applicant has mentioned that her husband Shri Anurag Chander, IAS of 2016 Batch (Himachal Pradesh) is a permanent resident of State of



Himachal Pradesh and his grandfather is a 92 years old Army War Veteran and his father is also a retired Naval Officer. His brother is in the Merchant Navy and mostly stays abroad. Therefore, it is difficult for her husband to shift out of his home State to West Bengal.

3. The Rule 5 (2) of the Rules of 1954 provides that the Central Government with the concurrence of the State Government concerned, may transfer a cadre officer from one cadre to another. The respondent No.1 has further issued a policy decision in respect of Change of Cadre of All India Service Officers vide Office Memorandum No.13017/16/2003-AIS(I) dated 8.11.2004 (Annexure A-14) and the relevant portion thereof may be reproduced as under:-

“(i) Inter-cadre transfer shall continue to be permitted for members of All India Service officers on marriage to another member of an All India Service, where the officer or officers concerned have sought a change.

Inter-cadre transfer shall also be permitted on grounds of extreme hardship in the rarest of cases.

(ii) Inter-cadre transfer shall not be permitted to the home State of the officer.

(iii) In cases of inter-cadre transfer on grounds of marriage, efforts should be made in the first instance to ensure that the cadre of one officer accepts his or her spouse.

(iv) Only in instances where both States have refused to accept the other spouse will the officers be considered for transfer by the Government of India to a third cadre subject to the consent of the Cadres concerned for such transfer.

(v) Inter-cadre transfer shall not be permitted to All India Service officers on marriage to an officer



serving in a Central Service/State Service/Public Sector Undertaking/any other Organization.”

4. The Govt. of Himachal Pradesh vide their letter dated 23.11.2017 (Annexure A-10) has conveyed their 'No Objection' to the Respondent Nos.1 and 3 regarding inter-cadre transfer of the applicant from West Bengal cadre to Himachal Pradesh cadre on the ground of applicant's marriage. In spite of subsequent representation from the applicant and her meeting with the Senior Officers of Respondent No.2, no decision was taken by the Respondent No.2 on the aforesaid request of the applicant. In these facts and circumstances, the applicant has approached this Tribunal by way of the present OA.

5. Pursuant to notice from this Tribunal, the Respondents No.1 and 2 have filed reply affidavit.

6. In the reply filed on behalf of the respondent No.1, the facts noted hereinabove have not been disputed. It is contended on behalf of the Respondent No.1 therein in their reply that vide letter dated 10.11.2017, consent/comments of the concerned States, i.e. State of West Bengal – Respondent No.2 and that of State of Himachal Pradesh in the matter on the basis of Rule 5 (2) of the Rules of 1954 was sought. In response thereof, the State of Himachal Pradesh vide their letter dated 23.11.2017 conveyed their 'No Objection' for transfer of the applicant to Himachal Pradesh cadre on the ground of her marriage with Shri Anurag Chander, IAS (HP : 2016). The



Respondent No.2 was also reminded by the Respondent No.1 vide their letters dated 28.9.2017, 06.02.2018, 13.02.2018 and 28.03.2018 for offering their comments/concurrence to the request of the applicant. However, the Respondent NO.2 vide their letter dated 6.2.2020 (Annexure R1) informed about their inability to give their concurrence for cadre transfer of the applicant from West Bengal to Himachal Pradesh due to an acute shortage of IAS Officers in the State cadre viz-a-viz sanctioned strength. The Respondent No.2 in their said communication dated 6.2.2020 further informed that the State Govt. of West Bengal will accord necessary NOC for change of cadre if the applicant's husband applies for cadre transfer from Himachal Pradesh to West Bengal. In para 12.1 of the reply of Respondent No.1, it is contended that the cadre allocation for All India Service Officers (IAS/IPS/IFoS) falls within the jurisdiction of the Central Government as per the provisions of the Rules of 1954. Cadre allocation is an incidence of service and the spirit of these Rules is to keep married couple in one place. It is also noted therein that request of the applicant cannot be processed without the concurrence of her parent cadre.

7. In the counter reply filed on behalf of the Respondent No.2, the facts as noted hereinabove have not been disputed. However, it is stated therein in the reply that the Govt. of West Bengal after due consideration of the applicant's representation dated 7.11.2017 has regretted



their inability to give consent for her transfer from West Bengal cadre to Himachal Pradesh cadre on account of an acute shortage of IAS officers and the Respondent No.2 will accord necessary 'NOC' for cadre change from Himachal Pradesh to West Bengal to her husband – Shri Anurag Chander, IAS (HP:2016), if he applies for cadre transfer to West Bengal. The Respondent No.2 has issued the letter dated 6.2.2020 in this regard.

8. Learned counsel for the applicant has argued that the spirit of Rules and subsequent policy decision of the competent authority, i.e., Respondent No.1 is to keep the married couple at one place. It is also argued that the reasons for refusing the consent by the Respondent No.2 is contrary to the provisions of the Rules of 1954 as well as binding instructions of 2004 referred to hereinabove as well as the law settled on the subject by this Tribunal in catena of orders/judgments upheld by the Hon'ble High Court of Delhi. Learned counsel for the applicant has placed reliance upon the judgment of this Bench of the Tribunal dated 29.10.2010 in OA No218/2010 titled ***Dr. Adarsh Singh vs. Union of India and others***. In the said case, the applicant was an IAS Officer of 2007 Batch of Manipur – Tripura joint cadre of the service. He married to Ms. Sheetal Verma, who was also an IAS officer of same Batch of Uttar Pradesh cadre, on 30.12.2008. On the ground of marriage, the applicant therein in the said OA sought change of cadre from Manipur – Tripura joint cadre to



Uttar Pradesh cadre. The Govt. of Uttar Pradesh gave 'No Objection' for the cadre change to the State of Tripura on 13.3.2009. However, Govt. of Tripura required him to continue in Tripura and asked his wife to apply for the change of cadre to Tripura. After considering the Rules of 1954 and the policy decision referred to hereinabove of Respondent No.1 as well as Order/Judgment dated 29.4.2010 of Guwahati Bench of this Tribunal in OA No.2/2010 titled **Shashank Mishra vs. Union of India and others**, the Tribunal allowed the said OA. In para 4 of the said Order/Judgment dated 29.4.2010 this Tribunal held as under:-

"4. xxxx xxxx xxxx

Another corollary issue which would require determination is whether the State concerned could impose a condition which is not circumscribed in the policy governing the field. In our considered view cumulative reading of policy for change of cadre read along with IAS (Cadre) Rules, 1954 do not leave any scope or field for the State Govt. to introduce a condition as prescribed vide impugned communication. Rules as well as Policy did not give liberty to the State requiring an All India Officer, who has applied for change of cadre, to either suggest or insist upon his/her spouse to apply for a cadre change to said State. If such a situation is allowed to happen, it would give an arbitrary, illegal & unjustified power to a State to deny such consent on pick & choose policy for no cogent reasons. On the issue as regards shortage of officers in the States of Manipur and Tripura, the Bench observed as follows:

1. The basic plank of objection as we understand for opposing the relief as prayed by the applicant is that: there is shortage of IAS officers and many of cadre posts are remaining unmanned. In our considered opinion, when the policy makers in their wisdom provided for change of cadre on the ground of marriage to an officer of All India Service, any attempt on the part of State Government to whittle down the same on the specious plea of shortage of IAS officers and many posts remaining unmanned



etc. would be contrary to the avowed object of said policy framed by the competent authority. The aforesaid policy is erected on the edifice of sociological norms which are based on the Biblical dictum: *What god hath joined together man cannot caste asunder*. Conformably with this dictum cognition is accorded to this policy, by the issuance of O.M.s on the subject, irrespective of the class and group to which the govt. servant belongs to.

The question of shortage of IAS officers and many cadre posts remaining unmanned, first of all would have been foreseen by the maker of said policy and in any case such issue is in the realm of cadre management of the particular cadre, and there are many ways prescribed under the concerned regulations to cater such needs & the manner in which such eventualities should be addressed. When the particular concerned State has not been vigilant to address such aspects of cadre management, its negative consequences cannot be thrust upon the officer who had no role to play in the said aspect of cadre management. We cannot overlook another significant aspect of the matter namely that no objection has been granted by another segment of the Joint Cadre as well as State of Madhya Pradesh, where he has sought cadre change. On the face of aforementioned facts as well as the legal provisions as discussed above, the impugned communication of the State of Tripura clearly seems to be an exhibition of utter defiance of the avowed policy of the Central Government. There is no virtually no cogent & legal reason assigned by the State. Rather the Respondents Nos. 2 & 4 have innovated novel method to undermine not only the humane aspects but also negated the mandate of the policy on the said subject. Law is well settled that failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question & the decision or conclusion arrived at. {see: (2003) 4 SCC 364, *Chairman & M.D. United Commercial Bank & Ors. v. P.C.Kakkar*}. So called justification provided is no just and valid reasons. In our considered opinion no proper or just reasons have been assigned & therefore the mandate of law as laid down in *P.C.Kakkar* (supra) have been violated with impunity. We are in respectful agreement with the view taken by the Guwahati Bench in OA No.2/2010. We may only add that OM dated 30.9.2009 further strengthens the case of the applicant. The guidelines contained in the memorandum aforesaid have come about after taking into consideration the need of posting of husband and wife who are in same Central service, at the same station."

The Tribunal in para 5 held as under:-



“5. Before parting with this order, we may only say that once, change of cadre is permissible and it is open to either of the spouse, it is but natural that the application for change of cadre would come from the spouse who may not be very happy with the allocation of his/her cadre and/or where the allocation of the other spouse may be in a better State, but once, it is permissible for either of the spouse to make a request for change of cadre irrespective of favourable, more favourable or still more favourable State, no distinction can be made on that count.”

9. Learned counsel for the applicant has also placed reliance on the Order/Judgment dated 6.11.2019 in OA No.3863/2018, titled **Smt. Bhavna Gupta, IPS vs. Union of India and others**, of coordinate Bench consisting of one of us {Hon’ble Shri A.K. Bishnoi, Member (A)}. In the said case, the issue has been identical. The precise fact in that case is that an IPS officer of 2014 Batch of West Bengal cadre on marriage to an IAS Officer of 2017 Batch of Chandigarh cadre made a representation to the Respondent No.2, i.e., State of West Bengal seeking ‘No Objection’ for cadre change. Similar application was made to State of Chattisgarh. The State of Chattisgarh issued ‘No Objection’ certificate. However, in spite of lapse of more than two years of submission of representation, no order was passed by the State of West Bengal. In their counter reply, the same respondent, i.e., State of West Bengal, had taken a defence of acute shortage of IPS officers in their State and request of change of cadre made by the applicant therein would result in serious administrative problems.

After considering the aforesaid Rules of 1954, the Tribunal held in para 6 of the said Order/judgment as under:-



"6. The question as to whether the request made by an officer for cadre transfer can be rejected by citing the reasons of shortage of officers was dealt with by Guwahati Bench of this Tribunal in OA Nos.2/2010 and 120/2010 through separate orders dated 29.04.2010 and 02.08.2010, and OA No.218/2010 decided through order dated 29.10.2010 by Principal Bench of this Tribunal. It was mentioned that the grounds such as the shortage of staff cannot constitute the basis to reject the request made by an officer for cadre transfer on the ground of marriage. In the policy framed in the year 2009, the importance to be given to the convenience of the woman officers was reiterated. This was taken note of and the plea of State Government therein that the officers can seek for transfer of the other spouse to the cadre of that State was also not accepted. Though specific directions were issued in those two OAs directing the issuance of letters of "No Objection", we do not propose to do that. The matter has to be left with the State Government, even by requiring them to keep in view the purport of the policy guidelines as well as the law laid down by this Tribunal."

The said Order/Judgment dated 6.11.2019 was challenged before the Hon'ble High Court of Delhi in Writ Petition (Civil) No.13444/19. The Hon'ble High Court of Delhi disposed of the said Writ Petition vide Order/Judgment dated 3.2.2020 with directions to relieve the petitioner therein (applicant in the said OA No.3863/2018) within two weeks from the date of receipt of a copy of the said Order. In the said Order/Judgment dated 3.2.2020, the Hon'ble High Court of Delhi has considered the provisions of Rule 5 (2) of the Rules of 1954 as well as the policy of 2004 of change of cadre of All India Service officers as well as subsequent policy of the year 2009. In para 11, the Hon'ble High Court of Delhi has noted as under:-



“11. Reading of the above-cited Government Policy leaves no room for doubt that the same would apply to the petitioner. The petitioner waited patiently for two years after making her first representation to the State of West Bengal; and only after having received no response did she approach the Tribunal. The Tribunal granted six weeks time to the State of West Bengal to consider the petitioner’s representation; however no response has yet been received to that representation.”

10. When the matter came up for final hearing, it was found that the issue raised in the present OA is identical to that in the aforesaid OA 218/2010 and also in OA 3863/2018 and that judgments of this Tribunal have attained finality. In view thereof, the time was granted to the learned counsel appearing for the Respondent No.2 to take fresh instructions as to whether the Respondent No.2 may re-visit its decision in the matter. However, no specific instructions could be received by the learned counsel appearing for the Respondent No.2.

11. In view of the aforesaid facts, the issue arises as to whether the request made by an All India Service officer for cadre transfer on the ground of marriage can be rejected by citing the reasons of shortage of officers or it is open for concerned State cadre to require such officer to ask his/her spouse to seek cadre transfer. Both the issues are no more *res integra* in view of the aforesaid judgments of this Tribunal in Dr. Adarsh Singh (supra) and further Order/Judgment dated 6.11.2019 in *Smt. Bhavna Gupta's case* (supra) which has been affirmed by the Hon'ble High Court of Delhi vide Order/Judgment dated 3.2.2020.



12. Ordinarily, we would have remitted the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 and take a fresh decision in the matter, however, in view of the fact that in spite of the issue already settled in a number of cases, the Respondent No.2 has failed and neglected to follow the Order/Judgment of this Tribunal upheld by the Hon'ble High Court of Delhi (supra) and they have taken the same defence as taken by them in previous litigations referred to hereinabove, we are of the considered view that no useful purpose would be served by remitting the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 in the matter.

13. In view of the aforesaid, the present OA is allowed with direction to the Respondent No.2 to issue 'No Objection Certificate'/consent for cadre transfer of the applicant from State of West Bengal to State of Himachal Pradesh on the ground of her marriage to Shri Anurag Chander, IAS (HP:2016) as expeditiously as possible and in any case within four weeks' of receipt of a copy of this Order.

14. The OA is disposed of in above terms. However, in the facts and circumstances, there shall be no order as to costs.

(R.N. Singh)
Member (J)

(A.K. Bishnoi)
Member (A)

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