

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**



Hearing by Video Conferencing

O.A. No. 060/0081/2020

Order pronounced on: 13.10.2020
Order Reserved on: 18.09.2020

**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MRS. AJANTA DAYALAN, MEMBER(A)**

1. Ajit Balaji Joshi son of Sh. Balaji Shrinivas Joshi, aged 41 years, presently posted as Commissioner, Excise & Taxation, State of Haryana, R/o H. No. 192, Sect 7, Chandigarh.
2. Gauri Parasher Joshi wife of Sh. Ajit Balaji Joshi aged 38 years, presently posted as Deputy Director, La Bahadur Shastri National Academy of Administration, Mussoorie, Government of India.

...Applicants

By Advocate: Mr. Pankaj Jain

Versus

1. Union of India through the Secretary to Government of India, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi – 110 003.
2. State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Sector 1, Chandigarh.
3. State of Punjab through its Chief Secretary, Punjab Civil Secretariat, Sector 1, Chandigarh.
4. State of Odisha through its Chief Secretary, Government of Odisha, Odisha Civil Secretariat, Bhubaneswar.

... Respondents

By Advocates: Mr. Sanjay Goyal for respondent No. 1
None for respondent No. 2
Mr. Rakesh Verma for respondent No. 3
Mr. Saswat Patnaik for respondent No. 4



O R D E R

AJANTA DAYALAN, MEMBER (A):

1. This OA has been filed by the applicants Ajit Balaji Joshi and Gauri Parasher Joshi, seeking quashing of order dated 01.05.2019 (Annexure A-1) rejecting the claim of the applicants for changing of the cadre of applicant No. 2 to Haryana or to change cadre of both the applicants to Punjab on the ground of marriage. They have also sought quashing of order dated 15.01.2018 (Annexure A-24) rejecting the memorial filed by the applicants. Quashing of order dated 11.12.2013 (Annexure A-20) is also sought on the ground that the case of the applicants has been treated as per modified policy which is not applicable to the applicants.
2. In order to appreciate the case as well as the arguments put forward by the applicants, it is essential to go into the sequence of events in some detail. These are therefore elaborated at some length in the following paragraphs.
3. Basic facts of the case are largely undisputed. Applicant No. 1 Ajit Balaji Joshi was directly appointed as an IAS officer with year of allotment as 2003. He belongs to the State of Maharashtra and was allotted Haryana Cadre. Applicant No. 2 Gauri Parasher Joshi was directly appointed as an IAS officer with year of allotment as 2009. She belongs to State of Haryana and was allotted Odisha Cadre.



4. The applicants got married on 28.06.2010. Immediately thereafter, on 29.06.2010 (Annexure A-2), applicant No. 2 made a request for change of cadre on the ground of marriage to the cadre of her husband. The representation was submitted to Chief Secretary, Government of Odisha. Inter-alia, it was stated therein that though she had never lived, studied or worked in Haryana, somehow, in the UPSC form, she has mentioned Haryana as her Home State. Considering her request, the Government of Odisha issued No Objection Certificate vide letter dated 27.07.2010 (Annexure A-3). Simultaneously, the applicants also requested respondent No. 1 i.e. Union of India, that in case it is not feasible to transfer applicant No. 2 to Haryana Cadre, they may be transferred to a third Cadre, i.e. the State of Punjab. Accordingly, respondent No. 3 i.e. the State of Punjab expressed its consent for inter-Cadre transfer of both the applicants vide letter dated 26.10.2010 (Annexure A-4). On this basis, the applicants submitted a joint representation dated 27.10.2010 (Annexure A-5) for change of their Cadre to State of Punjab. Meanwhile, the State of Odisha forwarded the case of applicant No. 2 for change of her Cadre to Haryana. According to the applicants, the Union Government, without considering earlier precedent where a lady officer was adjusted in her Home Cadre on ground of marriage, rejected the request vide order dated 29.11.2010 (Annexure A-7).



5. The applicants made a joint representation on 10.03.2011 (Annexure A-8) to respondent No. 1 i.e. Secretary, DoPT, Government of India for Cadre change on ground of marriage to the third Cadre i.e. the State of Punjab. It was inter-alia stated therein that applicant No. 1 had already worked in Haryana and had gained lot of experience which would be useful in the State of Punjab, laws and administrative practices in the two States being more or less identical. As the request of applicant No. 2 for transfer to Haryana was rejected, both the applicants requested Government of Odisha to grant NOC for transfer to Punjab Cadre. Government of Odisha vide letter dated 11.03.2011 (Annexure A-9) gave its No Objection to Government of India for cadre change of applicant No. 2 to Punjab or any other cadre. Government of Haryana on request of applicant No. 1 also accorded No Objection Certificate for change of his Cadre to any other cadre vide letter dated 21.03.2011 (Annexure A-10). Government of Punjab had already given its consent for accepting the two officers vide their letter dated 26.10.2010 (Annexure A-4).
6. Thus, according to the applicants, the three State Governments of Haryana, Punjab and Odisha had given No Objection to the applicants for their inter-State transfer to the State of Punjab by March, 2011. The only option left before DoPT after this was transfer of the applicants to the third Cadre i.e. State of Punjab. However, in gross violation of Rule 5(2) of the All India Service



(Cadre) Rules, 1954, DoPT wrote letter dated 01.04.2011 (Annexure A-11) to Government of Odisha to fulfil the requirement of guidelines dated 08.11.2004 and advised applicant No. 1 to apply for his transfer to Odisha. DoPT again wrote a D.O. letter dated 18.04.2011 (Annexure A-12) to State of Odisha to give its views regarding acceptance of applicant No. 1 to Odisha Cadre. On 02.06.2011 (Annexure A-13), Government of Odisha wrote that it is not willing to accept applicant No. 1 in Odisha Cadre.

7. The applicants again submitted a representation dated 03.06.2011 for consideration of their request for transfer to Punjab Cadre. Chief Minister of Haryana also wrote a D.O. letter dated 29.06.2011 (Annexure A-14) to the Prime Minister of India to consider their request favourably.
8. DoPT again wrote a D.O. letter dated 01.07.2011 (Annexure A-15) stating that no reasons have been indicated by Government of Odisha for declining to accept applicant No. 1 and asking them to reconsider in view of shortfall against authorized strength in the State Government. The applicants have alleged that this shows malafide of the then Secretary DoPT to influence the Odisha Government to withdraw No Objection Certificate given to the applicants. They have also alleged that this was in gross violation of the rules prevailing at that time. The applicants have also quoted precedents of transfer of Ms. Isha, and Ms. Sharandeep Kaur, both of IAS 2009 batch, where no



objection of similar nature was raised by the then Secretary, DoPT. The applicants have quoted file notings in this regard in their effort to establish biased and arbitrary approach of the then Secretary, DoPT. They have alleged that the notings as reproduced in OA are in violation of DoPT's own policy and contrary to precedents made by the same Secretary, DoPT. Secretary, DoPT wrote another D.O. letter to State of Odisha to reconsider and adjust applicant No. 1. Simultaneously, a fax message was also sent to Government of Odisha. Government of Odisha changed its stand and vide letter dated 11.07.2011 (Annexure A-16) conveyed their acceptance of applicant No. 1 to Odisha Cadre. They also indicated that their earlier decision to not accept him was because of his persistent unwillingness to join Odisha Cadre.

9. Again, the applicants have quoted the file notings from Government of Odisha in an effort to establish the undue influence of Union Government forcing Odisha Government to change its decision.
10. Vide letter dated 19.07.2011, the DoPT advised applicant No. 1 to apply for inter-Cadre transfer to Odisha. However, meanwhile, Government of Odisha again changed its mind and conveyed vide letter dated 18.08.2012 reiterating their stand earlier taken, stating that they have no objection to cadre change of applicants to Punjab or any other cadre. Applicant No. 1



again requested DoPT to consider their case for transfer to Punjab.

11. The applicants have alleged malafide and biased and prejudiced approach of the Secretary, DoPT stating that the D.O. letter dated 01.07.2011 from Additional Secretary, DoPT was sent by fax to Odisha Government on 08.07.2011. However, this has been dealt with by Assistant and Section Officer of Odisha Government on 07.07.2011, i.e. a day before when it was signed and faxed from New Delhi. It is stated by applicants that Secretary, DoPT prepared the draft to be signed by Additional Secretary, DoPT on 07.07.2011 and sent this draft by fax to Chief Secretary, Odisha stating that signed letter would follow by fax. The Odisha Government Under Secretary and Additional Secretary processed the case on 8th July. The same was approved on 11th July (9th and 10th being holidays) and was sent to DoPT on the same date. After having been received in DoPT, the same was dealt with at six different levels on the same date and all of them have dated their notings on 11.07.2011. However, the Secretary, DoPT has recorded her subsequent note to the Minister on 08.07.2011 i.e. three days before the other officials and officers recorded their notes. The applicants have alleged that this fact itself shows mischief being created by the then Secretary, DoPT.

12. Thereafter, a representation was again made by applicant No. 2 highlighting the discriminatory treatment meted out to the



applicants. The applicants have alleged that no action was taken on their representation. Rather, the case of the applicants was considered as per policy modified in 2013 and State of Haryana and Odisha were asked to send option of the applicants to choose out of State Cadres of Nagaland, West Bengal and Jharkhand where they could be posted together (Annexure A-20 dated 11.12.2013).

13. As no fruitful action was taken on their repeated representations, the applicants finally made a representation to the President of India on 29.06.2016 (Annexure A-22). Reminder was also given on 2.10.2017 (Annexure A-23). However, these representations were withheld by DoPT vide order dated 15.01.2018 (Annexure A-24) having been received after 90 days from the date of passing of the order which is the time period permitted under All India Services (Discipline and Appeal) Rules, 1969 for submission of such memorials.
14. The applicants have also submitted that they have a young daughter of less than four years who is suffering from Atopic Dermatitis (Eczema) which involves emergencies when child has to be rushed to specialized medical care. She is under treatment in PGI Chandigarh and their medical opinion is on record at Annexure A-25.
15. The applicants have finally stated that due to rejection of their memorial to President on 15.01.2018, the applicants approached this Tribunal vide OA No. 142 of 2019. This was disposed of



vide order dated 02.04.2019 with a specific direction to the respondents to decide the grievance of the applicants in the light of rules and instructions prevalent at the relevant period of time (Annexure A-26). Now, the respondents have passed the impugned order dated 01.05.2019 (Annexure A-1) rejecting their request.

16. The respondents in their written statement have informed that the case of the applicants for transfer to Haryana Cadre is not covered under extant policy of inter-State cadre transfer, Haryana being the Home State of applicant No. 1. They have also stated that Government of Punjab on 26.10.2010 and Government of Odisha on 11.03.2011 have conveyed their consent for transfer to Punjab Cadre suo-motu without any reference from DoPT. Further, as the extant policy for cadre change provides that efforts should be made to ensure that cadre of one officer accepts his or her spouse, DoPT took up the matter with Government of Odisha vide D.O. letters dated 01.07.2011 and 08.07.2011 to reconsider its decision and if not, to indicate reasons for non-acceptance of applicant No. 1 in Odisha Cadre. Government of Odisha vide letter dated 11.07.2011 informed that they had earlier declined to accept applicant No. 1 due to his persistent unwillingness to join Odisha Cadre. They also decided to change their stand and to accept applicant No. 1 to join Odisha Cadre in view of large vacancies. However, there were flip-flops in the stand taken by the Odisha



Government as on 18.08.2012, they again reiterated their earlier stand taken on 02.06.2011. Meanwhile, the policy for inter-Cadre transfer to third cadre on ground of marriage was under review and as such, the case was put on hold. As per the clarification issued vide letter dated 18.01.2008, a fresh attempt was made with Odisha Government. However, they again reiterated their earlier decision of having no objection for third cadre transfer of applicant No. 2 and non-acceptance of applicant No. 1 to Odisha Cadre.

17. The respondents have quoted guidelines dated 18.01.2008 which provide as under:

“In cases of inter-cadre transfer of officers on ground of ‘marriage’, couple should normally be transferred to one of the two Cadres on which they are borne. In case of refusal of both Cadres to accept the officers, in the first instance, the matter should be taken up formally a second time with both the Cadres. In case of continued refusal of both the Cadres to accept the officer on grounds that are deemed by the Central Government to be genuine and satisfactory, the couple shall be transferred to one of the deficit cadres with the concurrence of the State Government concerned. The matter shall be re-visited after the category of ‘deficit Cadres’ ceases to exist.”

Further, as per clarificatory circular dated 22.08.2012, deficit cadre is one where there is maximum percentage of shortfall of direct recruit officers vis-à-vis direct recruit cadre strength. It is further provided therein that shortfall is to be computed on the basis of civil list of All India Service officers prevailing at the time of applications for inter-Cadre transfer. In case of continued refusal by the cadres of officers on which they are borne, the officers would be considered for transfer to third



cadre and for this purpose, Central Government is to first identify three cadres with maximum deficit and then give a choice to the couple seeking transfer to third cadre to choose one of those cadres. Thereafter, the concurrence of the concerned cadre is to be taken before the couple is transferred to the third cadre.

18. It is further pleaded by the respondents that the above procedure would be applicable in all cases which are pending consideration and also those cases which would be received in future. As the original request of the officers for inter-cadre transfer was dated 29.06.2010, cadre wise deficit was worked out with reference to 01.01.2010 and the three cadres with maximum deficit were Jammu & Kashmir (25.33%), Nagaland (24.48%) and Kerala (23.48%). The couple, therefore, should have chosen one of these three cadres.
19. It is also stated by the respondents that when the note for consideration of ACC was put up on 30.10.2013, it was desired that the case be considered as per cadre change policy as clarified in March 2013 - that is with reference to maximum deficit as prevailing on 1.1. 2013. Accordingly, Nagaland (40.63%), West Bengal (35.60%) and Jharkhand (31.72%) were identified and the applicants were asked to indicate their choice within one month failing which the proposal was to be treated as closed. The couple again reiterated their request for transfer to Punjab.



20. The Department has further stated that the deputation of applicant No. 2 to Haryana Cadre was approved vide notification dated 17.04.2014 for a period of three years on personal grounds. This was in relaxation of the guidelines as she had not completed mandatory 9 years of service in IAS till that time in her parent cadre and had finished less than five years. She applied for extension for a further period of two years which was also allowed vide notification dated 27.09.2016. Thus, she had completed maximum tenure of five years of inter-cadre deputation on 29.04.2019.

21. Regarding their memorial dated 29.06.2016, the Department had informed them that as per policy, mere NOC by the Government of Odisha regarding applicant's transfer is not sufficient. Odisha Government should also refuse to accept respondent No. 1. This was done later and formality for transfer to Punjab was complete. However, the then Secretary made the following observations at different intervals:

- "(a) It appears that officers belonging to Haryana are somehow able to gravitate to Punjab – and thereby continue to be in the same area (Chandigarh being common to both States). This would really be a distortion of our policy and not post officers to their home cadres on cadre change following marriage.
- (b) There is no reason why Odisha should not agree to take the husband if the wife is already serving in that State. We may ask Government of Odisha to reconsider especially in the light of the fact that there are short fall against their authorized strength.
- (c) A.S. may pl. speak to Chief Secretary, Odisha & request him to send a reply today. A fax may also be sent as a reminder."

It is also stated in the written statement that the then Secretary, DoPT had acted to get a certificate of refusal from the



Government of Odisha changed and that she has since taken voluntary retirement and was appointed as a Member of the UPSC.

22. It is further stated by the respondents that the applicants approached Government of Odisha to restore the previous certificate of refusal. However, the policy changed for inter-cadre transfer to third cadre before receipt of fresh certificate of refusal from Odisha in DoPT. As per the new policy, the couple can give choice only out of three most deficit cadres. It is also stated that the new policy was to apply to pending cases as well. The Minister of State (PP) observed that the earlier proposal for transfer of cadre was not feasible and approved that the said proposal be now processed as per cadre change policy as modified in March 2013.

23. Besides, the respondents have stated that memorial as per Rule 25 of All India Services (Discipline and Appeal) Rules, 1969 is to be submitted within a period of 90 days from the date of passing of an order. As this period was well over before the memorial dated 29.06.2016 of the applicants was received in DoPT on 09.12.2016 and there was a delay of 1088 days, the same was rejected.

24. The respondents have also stated that they have now passed speaking order in compliance of this Tribunal's order dated 2.04.2019. Inter-alia, it is stated therein that the request of the applicants for their transfer to Punjab Cadre cannot be acceded



to as the same is not found to be in accordance with the rules and regulations governing All India Services and guidelines thereunder. The respondents have also quoted Article 312 of the Constitution of India wherein concept of All India Services has been defined. It is stated that the Service is created in national interest and is common to the Union and the States. A Member of the All India Service, therefore, bears a liability to serve either in the Union or the State to which he or she is allocated.

25. Further, the respondents have stated that the case is almost a closed case as the same cannot be considered as per old policy after a lapse of more than seven years. If the same is revived or reviewed at this juncture, it may invite similar other cases and may wholly unsettle the settled cases. The old policy does not confer any right on officers to get transferred to any third cadre of their own choice. The window is still open for applicant No. 1 for his transfer to Odisha Cadre as applicant No. 2 cannot be transferred to Haryana being her Home State. Else, the officers could be considered for transfer to one of the most deficit cadres as on 01.01.2010, i.e. at the time when they requested for such transfer. If the officers could exercise any of these options and apply accordingly, the Department may consider their request.
26. During arguments, counsel for the applicants basically relied on the fact that consequent to marriage, the two officers applied for



their cadre transfer and NOCs from Orissa, Punjab and Haryana were all in place for their transfer to Punjab. A decision could, therefore, be taken to approve their inter-cadre transfer to Punjab. This would have been in line with the many other such transfers allowed earlier by the same Secretary, DoPT and even subsequently by the same Secretary, DoPT, of which relevant orders are attached as Annexure A-23. Further, their request was to be considered as per transfer policy existing on the date of their request and availability of relevant NOCs and not as per subsequent modification in the policy. They have also pleaded that the case of the applicant has been dealt with discriminately as the cases prior to their case and subsequent to their case have been considered favourably whereas their case had been rejected. They have also stated that the case has been dealt with malafide intentions, bias and prejudice as is clear from the detailed chronology of events given in the OA. Besides above, the applicants' counsel has also requested for consideration on humanitarian grounds as the couple has a small child of less than four years who is suffering from serious disease and is under treatment in PGI, Chandigarh.

27. On the other hand, counsel for the respondents has stated that the matter is now already more than eight years old. Any consideration of request of the applicants now will unsettle the settled things and will lead to opening up of other similar cases.



They have also stated that the circular of 25.03.2013 is not in fact a new policy but is only a clarification of the earlier policy of 18.1.2008 and as such, it is effective right from the date when earlier policy came into being which was prior to the date of representation by the applicants. They have also stated that if we go through the policy carefully, the case of the applicants is not covered under the policy.

28. We have heard the arguments of the opposing counsels and have also gone through the pleadings of the case.
29. It is important to visit the provisions of the transfer policy. The instructions as contained in OM dated 08.11.2004 are as follows:
 - (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 Govt. of India to a third cadre subject to the consent of the Cadres concerned for such transfer.”

Further guidelines contained in Circular dated 18.01.2008 are reproduced in para no. 17 of this judgement. Provisions of clarificatory circular dated 22.08.2012 are also reproduced therein.

Subsequently, vide circular dated 25.03.2013, policy was further clarified. This circular provides as follows:

“A ‘Deficit Cadre’ is one where there is a maximum percentage of shortfall of direct recruit officers vis-à-vis the direct recruit cadre strength. Shortfall percentage may be computed on the



basis of Civil List of AIS prevailing at the time of application for Inter-Cadre Transfer. In case of continued refusal by the cadre on which they are borne the officers would be considered for transfer to a third cadre and for this purpose Central Government will first identify three cadres, which have maximum deficit of direct recruit officers as a percentage of all the DR officers sanctioned post and then give a choice to the couple seeking transfer to a third cadre to choose one of those cadres. Thereafter, the concurrence of the concerned cadre would be taken before the couple is transferred to third cadre.”

30. It is clear from the above policy that inter-cadre transfer to Home State of an officer is not permissible. Hence, applicant No. 2 cannot come to Haryana Cadre being her Home State.
31. We also observe that the guidelines dated 18.01.2008 provide that a couple should normally be transferred to one of the two cadres on which they are borne. As the applicants could clearly not be transferred to Haryana Cadre, the other option was for their transfer to Odisha Cadre. Government of Odisha initially gave a No Objection Certificate for their transfer to Punjab or any other cadre in March 2011 (Annexure A-9). They later also clarified on 02.06.2011 that they were not willing to accept applicant No. 1. However, only few days later, on 11.07.2011, they changed their stand. Surprisingly, on 18.08.2012, they again changed their stand and took their earlier stand of having no objection to the transfer of applicant No. 2 to Punjab or any other cadre. There is thus, no doubt that Government of Odisha has changed its stand not once but twice. The first change in their stand was just a one month after their original stand. Applicants have alleged that this was due to undue pressure made from DoPT.



32. Applicants have even alleged malafide on the part of Secretary, DoPT, Government of India, giving detailed submissions and have reproduced file notings of both Government of India and Government of Odisha.
33. We find that the applicants have not made anyone party by name and as such, allegation of malafide cannot be borne out in the OA. However, on going through detailed submissions and chronology of events as produced in the first portion of our judgement and also after going through the detailed notings of DoPT and Government of Odisha (not produced here in judgement for sake of brevity), we find some substance in the statements made by the applicants. This is obvious from the extraordinary speed at which applicants' case has been dealt with. It is also clear from the repeated references made by DoPT to Government of Odisha and the sudden change of Government of Odisha in their stand. It is also clear from the fact that even though the initial notings and the order is dated 11.07.2011, Secretary, DoPT has signed her notings on 08.07.2011. This indicates that the Secretary, DoPT had made up her mind even before the intimation about the change in Odisha's stand had been received by DoPT on 11.07.2011. It is also surprising that immediately after receipt of change in Odisha's stand on 11.07.2011, the case had been processed upto the Secretary, DoPT level crossing six levels on the same date itself. This chronology of events shows the pre-



determined mind on the part of the then Secretary, DoPT. Surprisingly, the respondents in their written statement have merely stated that the then Secretary DoPT took voluntary retirement and was appointed as Member of UPSC. There is no specific denial by the department about the discrepancy in dates of signature, even though specific allegation has been made by the applicants and even malafide is being alleged by them mainly on this ground. The fact that Secretary, DoPT acted discriminately in this case is also apparent from number of similar cases which were dealt with favourably by the same Secretary, both prior to and subsequent to rejection of the request by the applicants. The relevant orders have been appended by the applicants as Annexure A-23. The policy continued to be the same during this period.

34. We observe that in case of refusal of both the cadres to accept officers, the couple is to be transferred to one of the “deficit cadres” with the concurrence of the State Governments concerned. The policy was earlier silent on the definition of deficit cadre. It was only subsequently on 22.08.2012 that the deficit cadre was defined as one with the maximum percentage of shortfall of direct recruit officers vis-à-vis direct recruitment cadre strength. The Central Government was to identify three cadres with maximum deficit and the officers were to be given a choice to choose from one of these three cadres. Thus, there is no doubt that subsequent to 22.08.2012, the couple could be



transferred only to one of their own cadres or to a third cadre which has to be one of the three cadres as identified as per this circular. However, the applicants' request for transfer was of 2011 and all NOCs by the three States were in place in 2011. We also note from Annexure A-23 that during the same period, in other couple cases, they have been allowed to go to other cadres. These cadres are Haryana, Punjab, Rajasthan and Karnataka. It is not disputed that at that time, the same transfer policy was continuing with no difference.

35. We also find that the cadres namely Punjab, Haryana, Rajasthan and Karnataka to which other couples have been allowed to be transferred as third cadre, would definitely not be deficit cadres as defined in modified policy of 2012 or 2013. Thus, we find that DoPT had in a number of cases and during the same period allowed couples to move to a third cadre which was not a deficit cadre. So, we find that the case of the applicants has been dealt with discriminately and with some prejudice.
36. We also observe from the pleadings that Secretary, DoPT in her note dated 27.06.2011 has recorded as follows:

"It appears that officers belonging to Haryana are somehow able to gravitate to Punjab and thereby continue to be in the same area (Chandigarh being common to both States). This would really be a distortion of our policies of not posting officers to their home cadre on marriage. There is no reason why Odisha should not agree to take the husband of the wife who is already serving in that State. We may ask Govt. of Odisha to reconsider in the light of the fact that there are short fall against their authorized strength."



We find that the consideration here by Secretary, DoPT is regarding officers belonging to Haryana Cadre somehow being “able to gravitate to Punjab” and thereby continue to be in the same area (Chandigarh being common to both States). She goes on to state that this would really be a distortion of policies of not transferring the officers to their home cadres on their marriage. This view does not get any support in the inter-cadre transfer policy and various clarifications reproduced in paragraphs 17 and 29 of this judgement. The All India Service is divided into cadres. Punjab and Haryana cadres are totally separate and independent of each other. Their being near to each other or officers choosing nearby States does not violate any provision of the policy. Intention as indicated by the Secretary, DoPT does not find articulation anywhere in the policy. There is no bar whatsoever on officers to choose nearby States or nearby regions in the policy. Thus, the grounds taken by Secretary, DoPT are not valid and not as per policy. This is a crucial note of Secretary, DoPT dated 27.06.2011 where-after the chronology of events goes to indicate that the Government of Odisha was to change its stand vide their letter dated 11.07.2011.

37. We also observe that couples on grounds of marriage have later been transferred to third cadres including Punjab Cadre which are not deficit cadres as defined in modified policies of 2012 and 2013, both prior to rejection of the applicants' case and even subsequent to the applicants' case. Thus, Punjab was definitely



not a surplus State and can be presumed to be deficit in manpower of IAS direct recruitment at the time the decision was taken by the DoPT Secretary in case of applicants. Else, subsequent transfers to Punjab Cadre on ground of marriage would not have been possible in terms of policy being oft quoted by the respondents. Moreover, it may not have been deficit cadre as per definition of deficit cadre indicated in the clarification given on 11.12.2013. However, the case of the applicants was processed not in 2013 but in 2011, and at that time, the concept of deficit cadre was not so clearly defined.

38. We note that the applicants had earlier approached this Tribunal vide OA No. 142 of 2019 which was disposed of vide order dated 02.04.2019 (Annexure A-26) with the following directions:

"In the wake of the above, we are not inclined to comment upon merits of the case else it may prejudice case of either parties, as a consensual agreement has been arrived at between the parties to dispose of this petition in limine, by directing the competent authority amongst the respondents to take a call to indicate the grievance of the applicants for their inter-state cadre transfer, as per rules and instructions prevalent at relevant point of time. The request of applicant No. 2 for extension of deputation period for further two years upto 30.4.2021, which is pending for consideration in terms of OM dated 17.2.2016 of DoPT, be decided thereon and till such a decision is taken, applicant no. 2 be allowed to continue on deputation. Ordered accordingly."

Now, the respondents have passed impugned order dated 01.05.2019. It is clear from the orders of this Tribunal that a specific direction was given to the respondents to consider the case of the applicants for their inter-State Cadre transfer as per rules and instructions prevalent at the relevant point of time.



However, as is clear from the chronology of events, the respondents have repeatedly dealt with the case of the applicants as per modified policy which came into position only in 2013 and was not prevalent at the time of representation by the applicants for inter-State cadre transfer. Nor was this modified policy prevalent at the time when No Objection Certificates of the three concerned State Governments became available i.e. March 2011. Hence, the directions of the Tribunal have not been fully complied with.

39. The respondents have stated that the policy continued to be the same and only clarificatory orders have been given in 2012 and 2013. However, we find that though policy of 18.01.2008 provided that the couple shall be transferred to one of the deficit cadres in case of continuous refusal of both the cadres to accept the officers, deficit cadre was not clearly defined in these guidelines. It was only in 2012 that the deficit cadre was defined as one of the three cadres with maximum percentage of shortfall. Hence, there is a clear change in the policy in 2012. In fact, if we see the original policy of 2004, there is no mention of deficit cadre at all. The deficit cadre term is used first time in 2008 policy. However, this general term is restricted to three cadres with maximum percentage of shortfall in the year 2012. This restriction of 2012 substantially affects the case of inter-cadre transfer for the applicants. Hence, this modified policy



does involve a substantial change as far as applicants are concerned and cannot be said to be the same policy.

40. We also find that even as per their own clarificatory circular dated 22.08.2012, shortfall was to be computed at the time of application for inter-cadre transfers. Despite this clear provision in the policy, the respondents have continuously insisted on consideration of the case of the applicants with reference to shortfall as on 01.01.2013. This shows a biased and discriminatory approach of the respondents.

41. As regards the submission of memorial of the applicants to the President and its being withheld by the respondents and rejection of the same in view of delay, we are convinced that there is delay in submission of the memorial. Undisputedly, the memorial was submitted by the applicants only on 29.06.2016. The same was forwarded by the Chief Secretary to Secretary, DoPT on 28.07.2016 (Annexure A-22). There is also no disputing the fact that the applicants' request for transfer was finally decided in 2013 vide their letter dated 11.12.2013 (Annexure A-20), copy of which was also given to the applicants. Thus, there is a delay of almost 2-1/2 years. The time period allowed as per Rule 25 of All India Service (Discipline & Appeal) Rules 1969 is only 90 days. In view of the delay, the Department was not obliged to submit the memorial to the President and hence, its rejection on account of delay cannot be faulted with.



42. Regarding deputation of the applicant no. 2 to the State of Haryana, we find that she had already completed maximum period of five years permissible under the Rules on 29.04.2019. We also note that the prayer in the OA is only regarding inter-State cadre transfer. As such, no orders in this regard are necessitated.

43. In view of the peculiar facts of this case as narrated above and the observations and findings in the preceding paragraphs, we allow the OA partly and direct the respondents to reconsider the case of the applicants for their inter-state cadre transfer to the cadre of State of Punjab as per the observations and findings made above. No costs.

(Ajanta Dayalan)
Member (A)

(Sanjeev Kaushik)
Member (J)

Place: Chandigarh
Dated:
ND*