

OA 350/231/2020
MA 350/236/2020



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA.

O.A. No. 350/ 231 of 2020
M.A. No. 350/236/2020
In the matter of:

Mala Das @ Mala Karmakar Das, Wife of Sri
Tapas Karmakar, aged about 51 years,
resident of 8, Deshbandhu Nagar, Post
Office and District- Jalpaiguri, West
Bengal, Pin Code - 735 101.

... Applicant/Petitioner.

-Versus-

1. The Union of India, service through
the Secretary to the Government of India,
Ministry of Home Affairs, Intelligence
Bureau, North Block, New Delhi- 110001.
2. The Director General, Sashastra Seema
Bal, East Block-V, R.K Puram, New Delhi-1
10066.
3. The Inspector General, Sashastra
Seema Bal, Siliguri Frontier, P.O-
Ranidanga, District Darjeeling, Pin Code
734101.
4. The Deputy Inspector General, Sector
Head Quarter, Sashastra Seema Bal,
Ranidanga Post Office Sushruta Nagar,
District Darjeeling, West Bengal, Pin -
734012.
5. The Director, Intelligence Bureau,
Government of India, 35, Sardar Patel
Marg, New Delhi- 110021.

6. The Joint Director, Intelligence Bureau, Government of India, 35, Sardar Patel Marg, New Delhi-110021.

7. The Joint Deputy Director, Intelligence Bureau, Government of India, 35, Sardar Patel Marg, New Delhi-110021

8. The Joint Deputy Director, Subsidiary Intelligence Bureau, Government of India, Siliguri, Dr. RB Ambedkar Building, Pradhannagar, Siliguri, District-Darjeeling-734403.

... Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/231/2020
M.A.350/236/2020

Date of order: 24.06.2020

Present : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

MALA DAS ALIAS MALA KARMAKAR
VS.
UNION OF INDIA & OTHERS
(Subsidiary Intelligence Bureau)

For the Applicant : Ms. S. Sehanabis(Mandal), counsel
Mr. A. Roy, counsel
For the Respondents : Mr. R. Halder, Counsel

ORDER

Per Bidisha Banerjee, Judicial Member

Heard Id. counsel for the parties.

2. The O.A: has been filed to seek the following reliefs:-

"8.A) Order of Transfer being No. 5/EST/CV/2018(1)-20013-20080 dated 09.10.2019 issued by the respondent No. 6 with respect to the applicant is not sustainable in the eye of law and as such the same may be quashed.

B) Speaking Order being No. 10/C-IV/SSB/2019(45)25023 dated 30.12.2019 and No. 10/C-IV(CWS)/SSB/2019(45) dated 05.02.2020 issued by the respondent No. 7 and Office Order of release dated 14.02.2020 issued by the respondent No. 8 are not sustainable in the eye of law and as such the same may be quashed and thereby directing the respondents to allow the applicant to perform at her present place of posting under Siliguri SIB.

C) Integration of personnel of Civil Wing of SSB with the respondent Bureau by the respondent Ministry and consequent placement of the applicant under respondent Bureau without asking for any options from the applicant about her willingness is not tenable in the eye of law and the same may be quashed.

D) Costs and Incidentals.

E) Such further Order/Orders and/or direction/directions as your lordships deem fit and proper."

3. On 19.02.2020 the following order was issued by this Tribunal:-

"5. Upon perusal of the applicant's representation at Annexure-A/5 to the present O.A., it is seen that the applicant is a bereaved mother and her surviving son is a minor child, who requires adequate attention both by the applicant as well as her husband, the latter having opted for voluntary retirement and is in trauma on account of unfortunate demise of their elder son.

Ld. Counsel for the applicant will obtain instructions as to whether the applicant is willing to move to Kolkata, Guwahati or Patna as, according to the Ld. Counsel for the respondents, posts may remain available therein in accordance with her present dispensation. In case the applicant is willing to move to any of these places, she may offer her choice accordingly within a period of three weeks from the date of receipt of a copy of this order and, once received, the competent respondent authority shall dispose of such prayer within a period of three weeks thereafter.

While disposing of the same, the said respondent authority should consider the applicant's prayer sympathetically, particularly, in the context of the fact that the applicant is a bereaved mother and, although the transfer guidelines have not been brought forth by any of the parties most policies would contain a clause for consideration on compassionate grounds.

It is also made clear that if the applicant, however, does not indicate her preferences within the specified period of time, respondents would be at liberty to move her to the transferred place of her posting.

Till such time, the respondents will not take any coercive action against the applicant to force her to join her transferred place of posting."

4. M.A.No.350/236/2020 has been preferred on 19.06.2020 to seek the following reliefs:-

"In the above facts and circumstances, the applicant humbly prays that Your Lordships would be graciously pleased to pass the interim relief restraining the respondents and each of them from interfering with the present posting of the applicant at Subsidiary Intelligence Bureau, Sector Headquarters, Jalpaiguri, Post Office – Panga, Sahebbari, District – Jalpaiguri, Pin – 735 121 and directing the concerned respondents and each of them to pay and disburse the salary and other emoluments as admissible to the applicant from the fund of the Intelligence Bureau of the Intelligence Bureau on ad-hoc basis till disposal of the present original application and to pass such other order or orders, direction or directions as Your Lordship may deem fit and proper."

5. At hearing Id. counsel for the applicant would submit that in view of an order of the Hon'ble High Court in WPCT.70/2018 it was imperative for the respondents to allow the applicant to exercise three choices for her transfer.

6. We note that by way of an order dated 30.12.2019 the Joint Deputy Director in compliance of the direction of this Tribunal in O.A.No.350/1443/2019 mentioned as under:-

"9.the competent authority, considering the request of the applicant and going through the all relevant facts as well as requirement of the organisations, has directed Smt Malalkar to give 3 choices for 3 different setups within 15 days of receipt of this memorandum for further consideration;"

which irrefutably indicates that even while issuing the speaking order authority allowed the applicant to exercise three choices for three different set ups for further consideration. However, on 05.02.2020 the Joint Deputy Director mentioned as under:-

"6. Smt Karmakar has failed to submit 3 choices for 3 different set ups (Jalpaiguri is within the set up of SIB Siliguri) for her posting despite our repeated communications. Therefore, her transfer issued vide order No. 5/EST/CV/2018(1)-20013-20080 dated 9.10.19 stands."

7. We further note that this Tribunal on 19.02.2020 had permitted her to indicate her preferences within 3 weeks from the date of receipt of a copy of this order. She once again failed to exercise her choice within time. The respondents whereafter were at liberty to move her to her transferred place of posting. Therefore, we find no infirmity with the respondents' action in asking the applicant to go and join at the place of transfer.

8. However, in view of the changed scenario post 23.03.2020 and countrywide lockdown, on humanitarian ground, we extend the time limit as allowed on 19.02.2020 and permit the applicant to exercise her choice for her posting indicating three preferences at three different set ups within 2 weeks from the receipt of a copy of this order, which if preferred shall be



considered and disposed of by granting her appropriate posting within one month from the date of receipt of the same.

9. Accordingly both the O.A. and M.A. stand disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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