

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.1275/2004

New Delhi, this the 24th day of May, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

In the matter of:

Smt. Soya Sanjeev,
Wife of Shri T.M. Sanjeev,
Lower Division Clerk,
(at present working in EB-II Branch),
Force Hqrs. SSB, East Block-V, R.K. Puram,
New Delhi - 110 066

... Applicant
(By Advocate : Shri K.L. Bhandula)

Versus

1. Union of India through
The Cabinet Secretary,
Cabinet Secretariat,
New Delhi - 110 001
2. The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001
3. The Director General,
Shashtra Seema Bal (SSB),
Ministry of Home Affairs,
East Block-V, R.K. Puram,
New Delhi - 110 066

... Respondents

O R D E R (ORAL)

Heard the learned counsel for the applicant.

2. The applicant has filed this Original Application against the orders of the respondents issued vide Memorandum dated 6.5.2004 rejecting her application dated 23.4.2004 seeking cancellation of her transfer order on compassionate ground. She has prayed that her transfer ordered vide respondents' order dated 7.4.2004 (Annexure XII) be quashed.

Conclu. Me

3. Applicant is posted as Lower Division Clerk in Special Service Bureau/ the Office of the Director General of Security under the Cabinet Secretariat. The said Office was trifurcated into SSB Secretarial Service, ARC Secretarial Service and SFF Secretarial Service in August, 2001. However, the Cabinet Secretariat continues to be a separate cadre. The applicant has submitted that initially she had been posted at Jammu vide appointment letter issued by the respondents dated 30.6.1997. However, being an unmarried girl, she made a representation seeking change of the posting order and the same was accepted and she was allowed to join duty at Delhi on 17.7.1997. She joined the Ministerial Cadre of the Cabinet Secretariat. She continued to work in the Cabinet Secretariat and it was in August, 2001 that she was informally posted to work in the Ministry of Home Affairs without any formal order. She has, therefore, assumed that the Cabinet Secretariat continued to be her cadre. However, on 7.4.2004, she was transferred from FHQ, New Delhi to AO Sikkim (Indo-China Border) together with 48 other LDCs. She represented in the matter, seeking cancellation of the said transfer order again on the grounds that her case be considered on compassionate ground and further that her Cadre being the Cabinet Secretariat she cannot be posted to MHA formations with change of her cadre without obtaining her option in terms of the order of this Tribunal in OA No.2320/2003 with OA No.7323/2003 and MA No.1984/2003 as decided on the 2nd January, 2004 and also the judgement of the Hon'ble Delhi High Court in CWP 3000/2003 as passed on 6.11.2003, copies of which are annexed at page 25 (A-VI) and page 22



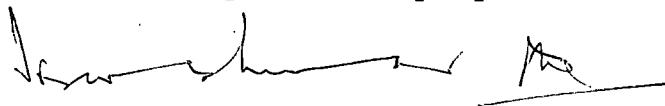
(A-V). She has also submitted the facts of her having a small child and her husband being employed in the Central Government and posted in Special Protection Group as grounds for seeking cancellation of the transfer order. Referring to the guide-lines relating to transfer policy, she has submitted that these guide-lines are essentially meant for a combatised/para military personnel and not for the female Ministerial staff. Finally, she has laid emphasis on the fact that her cadre is yet to be decided.

4. It is observed that the various aspects of the matter as have been raised by the applicant in this OA have already been discussed in great detail in the orders of this Tribunal in OA No.2320/2003 with OA No.7323/2003 and MA No.1984/2003 in which, among other things, the following has been held:

"In such a situation, the persons who are in the mixed cadre, the policy of 'as is where is' cannot run because some of them were being retained or in any case there has to be something more than merely the policy of 'as is where is'. On that count also the application of these applicants even in the alternative is required to be allowed."

5. It is further observed that in CWP 3000/2003 in the case of Union of India vs. S.K. Nayak, the Hon'ble Delhi High Court had held as follows:

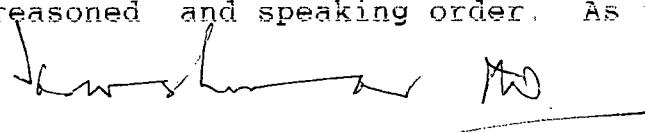
"....no fault can be found with the view taken by it (the Central Administrative Tribunal) in so far as the apprehension of the petitioners that if such options are given to the employees of a Department, it will open flood gates for similar representation is concerned, it would suffice to note that though the decision to trifurcate the units had been taken as far back as in the year 2001 only a few employees had asked for the option.



There is no merit in the writ petition and the same is dismissed".

6. It is thus observed that the cases of the applicants in the said OAs as also what had been agitated against by the petitioners in the CWP No. 3000/2003 being rather similar to what has been submitted and prayed for by the applicant in the present OA, and the decisions thereon as given by the Tribunal as also by the Hon'ble High Court being relevant to the case of the applicant, it would be appropriate that the respondents keep the said decisions in view before they take a view in the matter as raised by the applicant in the present OA. I also find that the question of change of cadre had been extensively raised by the applicants in the said OAs and also discussed in the decisions of the Hon'ble High Court and are directly relevant to the case of the applicant which, in my opinion, do not seem to have been kept in view by the respondents while considering the applicant's case.

7. Under these circumstances and having regard to the other facts which have been mentioned by the applicant in this OA, I am of the considered opinion that the appropriate course, at this stage, would be to dispose of the present OA without issuing notice to the respondents with a direction to them that they reconsider the matter as raised by the applicant in this OA in the light of the decisions as already given by this Tribunal as also by the Hon'ble High Court as referred to hereinabove and to dispose it of accordingly by issuing a reasoned and speaking order. As the applicant has also

prayed for interim relief seeking stay of her transfer order pending disposal of the OA, the respondents are directed to keep the transfer of the applicant in abeyance till they have reconsidered the matter and disposed it of by issuing a reasoned and speaking order with specific reference to the decisions of this Tribunal as well as the Hon'ble High Court as referred to hereinabove.

8. Registry is directed to make available a copy of the OA together with this order to the respondents.

Issue DASTI.


(SARWESHWAR JHA)
Member (A)

/pkr/