

Item no.21



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No. 365/2021

Tuesday, this the 15th day of June, 2021

(Through Video Conferencing)

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)

Renu Sogan,
R/o T-1, Plot No. 20,
Ward 7/c, Nav Bharti Co-op Housing Society,
Gandhidham, Kachchh,
Gujarat- 370201.

... Applicant

(Mr. Mayank Jain, Advocate)

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,
Howrah, Kolkata- 711102.
3. Department of Personnel and Training,
Through the Secretary, North Block,
Central Secretariat, New Delhi – 110001.

... Respondents

(Mrs. Harvinder Kaur Oberoi, Advocate for respondent Nos.1 & 3 and Ms. Madhumati Bhattacharjee, Advocate for respondent No.2)



O R D E R (ORAL)

Mr. Justice L. Narasimha Reddy:

The applicant is an IAS officer of 2019 batch. She was allotted the West Bengal cadre, through an order dated 17.10.2019. Recently, she was married to one Mr. Hitesh Kumar Meena, an I.A.S. officer of the same batch, but of Haryana cadre. She made representation on 04.11.2019 to the State of West Bengal and State of Haryana with a request to change her cadre from State of West Bengal, to that of the State of Haryana, on grounds of marriage. It is stated that the State of Haryana gave its 'no objection' for the proposal. However, the State of West Bengal passed an order dated 05.02.2020 refusing to accede to the request of the applicant. This O.A. is filed challenging the said order.

2. The applicant contends that the Government of India has framed the Rules and issued guidelines providing for transfer of officers of All India Service (AIS) from one cadre to another, in case they are married to officers of AIS from other cadres. She contends that there was absolutely no basis for the 2nd respondent in passing the impugned order. She has also pleaded that the shortage of officers is not a ground, in view of the judgements of the Hon'ble Supreme Court.



3. Today, we heard Mr. Mayank Jain, learned counsel for applicant, Mrs. Harvinder Kaur Oberoi, learned counsel for respondent Nos. 1 and 3 and Ms. Madhumati Bhattacharjee, learned counsel for respondent No. 2.

4. The issue pertaining to transfer of an IAS officer from one cadre to another, on the ground of marriage, is governed by Rule 5 (2) of IAS (Cadre) Rules, 1952. The guidelines were also issued in this behalf, in the year 2004. The only condition is that the marriage of an officer of AIS, of a particular cadre must be with another officer of AIS belonging to another Cadre. In other words, the transfer of cadre cannot be permitted, if the marriage is to a person who does not belong to AIS.

5. At the threshold of her career itself, the applicant married to an IAS officer of the same batch, but of Haryana cadre. The guidelines provide for permission to seek change her cadre. The applicant submitted a representation to all the three authorities, namely, Union of India, States of West Bengal and Haryana. The objection came only from the 2nd respondent, i.e., the State of West Bengal. The impugned order reads as under:-

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“The undersigned is directed to refer to her prayer on the subject noted above and to state that after due consideration, the Govt. of West Bengal hereby regrets its inability to accede to her prayer for cadre transfer from West Bengal Cadre to Haryana Cadre due to an acute shortage of IAS Officers in this State Cadre viz-a-viz the sanctioned strength.

The undersigned is further directed to state that the State Govt. will accord necessary NOC for change of cadre to West Bengal if her husband Shri Hitesh Kumar Meena, IAS[HARYANA:2019], applies for Cadre Transfer to West Bengal Cadre.”

On the one hand, the request of the applicant was rejected and on the other, it was mentioned that the State of West Bengal will have no objection, if the husband of the applicant seeks transfer to that State.

6. Across the Bar, Ms. Madhumati Bhattacharjee, learned counsel for respondent No.2 submitted that there is acute shortage of IAS officers in the State of West Bengal and rejection was on account of that reason. Even if it is true, the Hon’ble Supreme Court held that the shortage of officers does not constitute a ground to reject the request of an officer. It is necessary to mention that compared to other States, there are more instances of women IAS officers seeking change of cadre the State of West Bengal. Reference in this context can be made to letter dated 15.08.2019 addressed by the 1st respondent to the 2nd respondent, wherein it was mentioned that the cases of as many as 5 women IAS officers, namely, Ms. Nidhi, Ms.Reena

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Niranjan, Ms.Kritika Sharma, Ms. Bhavya Taneeru and Ms. R.Alic Vaz were pending and denial of permission is contrary to the guidelines contained in the OM dated 08.11.2000.

7. Further argument of Ms. Madhumati Bhattacharjee, learned counsel for respondent No.2 is that the word 'may' is used in Rule 5(2), and it confers discretion upon the concerned State in the context of granting 'no objection'. It is true that the word 'may' is used. However, there are many instances where the word 'may' is to be taken as 'shall' and the Hon'ble Supreme Court has already interpreted the provision and held that the State Government has no alternative except to grant 'no objection'.

8. The developments that have taken place after the letter dated 15.08.2019 are that the State of West Bengal gave its 'no objection' in favour of Ms.Alic Vaz and the O.As. filed by Ms.Kritika Sharma and Ms.Bhavya Taneeru were allowed by this Tribunal. The case of the applicant stands almost on the same footing. The impugned order cannot be sustained in law. If there is migration of women IAS officers in the State of West Bengal, it is a serious issue, which needs to be addressed at the higher level of administration. If the IAS officers do not feel comfortable secure in the State of West Bengal, it may have its reflection on the administration. We cannot address that issue.

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9. We, therefore, allow the O.A. and set aside the impugned order. We direct the 2nd respondent to consider the request of the applicant for issuance of 'no objection', keeping in view, the guidelines issued by the Government and the judgments rendered so far by the Tribunal, Hon'ble High Court and the Hon'ble Supreme Court on the similar cases, within two months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

June 15, 2021
/lg/sunil/anvit/sd/dsn/