


O.A. NO. 28 OF 2013

The applicant is a Postal Assistant at Perumbavur Post Office. She is aggrieved by the non feasance on the part of 3rd respondent to issue a 'No Objection Certificate' for applying for Passport / Visa for proceeding abroad to visit her daughter. The applicant's daughter is presently employed in Sultanate of Oman and she is in her family way. She badly requires the applicant's assistance at this stage at her place of residence as she wants



to join her daughter in connection with the daughter's delivery. The applicant on 29.11.2012 applied for a No Objection Certificate which is required for issuing a Passport. Though such an application was filed before the authority, they have neither refused nor granted any No Objection Certificate. Since the matter itself is likely to become infructuous in case the consideration of the matter is delayed, we posted this case twice for getting instructions. Mr. Sunil Jacob Jose, the learned counsel appearing for respondents submitted that as per Government of India instructions one of the factors to be considered before issuing a 'No Objection Certificate' is whether there is pendency of any disciplinary proceedings against the incumbent or contemplated. According to him, disciplinary action is pending against the applicant. He also submitted that the issuance of a Passport is not a service dispute coming within the jurisdiction of this Tribunal. We have considered the rival submissions and heard the respective counsel appearing on either side.

2. Admittedly, a 'No Objection Certificate' has to be issued by the employer. It is the case of the respondents that pendency of any disciplinary proceeding can be taken as a ground for non issuance of a 'No Objection Certificate'. If that be so, necessarily it is a service dispute and therefore we do not think the preliminary objection has got any substance. There may be some Government instructions, say pendency of a disciplinary action is a ground to be looked into while granting a 'No Objection Certificate' but nowhere it is stated that pendency of disciplinary proceedings is a bar to issue a 'No Objection Certificate'. After all, unless the employer has got a case that the employee is likely to retire from service in the meantime or there is no likelihood of the employee returning from



abroad, the employee normally will be entitled to get a No Objection Certificate. Admittedly, there is no case for the respondents that the employee is about to retire from service or that there is any reason to doubt whether the employee will return after the leave. In the circumstances, we are of the opinion that freedom of movement of a citizen guaranteed under the Constitution of India itself is a Fundamental right which cannot be impaired by arbitrary refusal to give a 'No Objection Certificate'. The facts and circumstances of the case clearly show that there is no criminal case pending against the applicant so as to compel her presence within the country. She is not attempting to drag on the disciplinary proceedings intentionally under one guise or other. It is only natural that the mother wants to join her daughter to assist her during her delivery time. We think that in the circumstances the refusal not to give 'No Objection Certificate' is arbitrary and violative of Article 14 of the Constitution of India. We direct the 3rd respondent to issue a 'No Objection Certificate'. However, it is open to attach any condition like executing a bond, to ensure her return after the due date. The No Objection Certificate should be issued within ten days from the date of receipt of a copy of this order.

3. OA is **disposed of** as above. No costs.

Dated, the 15th February, 2013.


K GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE P.R. RAMAN
JUDICIAL MEMBER

vs