

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

10.04.2013

OA No. 710/2012

Mr. Amit Mathur, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondent no. 1.

Mr. V.D. Sharma, Counsel for respondents nos. 2 & 3.

Heard learned counsel for the parties. The OA is disposed of by a separate order.

Anil Kumar

(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S.Rathore)
Member (J)

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THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

Wednesday, this the 10th day of April, 2013

ORIGINAL APPLICATION No.710/2012

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Akhilesh Kumar
s/o Shri Puran Mal Meena,
aged around 35 years, r/o Village Jharoti,
Tehsil Weir, District Bharatpur,
Presently posted as Superintendent of Police,
District Shahjahanpur (U.P.)

.. Applicant

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India
through its Secretary,
Ministry of Personnel, Public Grievances and
Pensions, Department of Personnel and Training,
North Block, New Delhi.
2. The Secretary, Ministry of Home,
North Block, New Delhi.
3. The Chief Secretary,
State of Rajasthan, State Secretariat,
Jaipur.
4. The Chief Secretary,
State of Uttar Pradesh,
Lucknow (U.P)

.. Respondents

(By Advocate: Mr. Mukesh Agarwal, for resp. No1.
Mr. V.D.Sharma for resp. 2 and 3)

ORDER (ORAL)

Brief facts of the case are that the applicant being member of Indian Police Service, 2005 batch, was allotted Uttar Pradesh Cadre. He got married with Ms. Anupama Jorwal on 20.2.2008 and after their marriage, Ms. Anupama Jorwal also got selected in Indian Administrative Service, 2011 batch and she was allotted Rajasthan Cadre.

2. On 8.2.2012, the applicant submitted representation to the respondents for change of cadre from Uttar Pradesh to Rajasthan. The representation of the applicant was forwarded by the State of Uttar Pradesh to the Union Government for consideration vide letter dated 6.3.2012 (Ann.A/3). The Union Government sought views/comments of the State of Rajasthan over the matter vide communication dated 23.4.2012 (Ann.A/4). The State of Rajasthan on 6.6.2012 (Ann.A/5) communicated to the Government of India that if the change of cadre is agreed by the Government of India then the State Government has no objection.

3. It is submitted on behalf of the applicant that as per Rule 5(2) of the Indian Police Service (Cadre) Rules, 1954 only the Central Government is having power of allocation and transfer



of cadre but concurrence of the State Government is also essential. The State Government plays a vital role in transfer of cadre and normally the request is accepted.

5. The learned counsel appearing for the applicant further submitted that the applicant and his wife both belong to Scheduled Tribe (ST) community and no insider ST candidate has been allocated Rajasthan Cadre since year 2001 in Indian Police Service, therefore, also the State of Rajasthan is having no objection in transfer of cadre. It is further contended that there is shortage of IPS officers in Rajasthan State and therefore as per balancing act the transfer of cadre of applicant is in the interest of State of Rajasthan. The authorized cadre strength of IPS as on 1.1.2012 is placed on record by the applicant as schedule-A. By bare perusal of Schedule-A it reveals that there is total number of 205 authorized strength of the member of IPS in Rajasthan of which 143 posts relate to Direct Recruitment and 62 relates to promotional post. Out of these authorized strength, 43 are still lying vacant in which 22 relate to Direct Recruitment. As such, it is evident that 22 Direct Recruitment posts in the IPS are lying vacant in Rajasthan and if the cadre of the applicant is transferred then it will be in the interest of Rajasthan State also.

(12)

6. It is also stated that the Union Government has rejected the claim of the applicant for change of cadre without considering the concurrence of the respective State, vide order dated 22.8.2012 (Ann.A/1) without assigning any reason for rejecting prayer of the applicant.

7. The learned counsel appearing for the applicant submitted that under the Indian Police Service (Cadre) Rules, 1954 there is no bar for changing the cadre and it is merely subsequent policy of 2004 which provides that person should not be given his Home State cadre. It is further contended that the policy of 2004 is merely the guidelines and it is neither a rule nor it is having statutory force. The policy provides this provision with intent to restrict mis-use of Rule 5(2).

8. Feeling aggrieved and dis-satisfied with the communication dated 22.8.2012 (Ann.A/1) issued by the Union of India, the applicant has filed the present OA on the grounds as stated hereinabove. In support of his submissions, the learned counsel appearing for the applicant referred provisions of Rule 5(2) of Indian Police Service (Cadre) Rules, 1954, which reads as under:-

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"The Central Government may, with the concurrence of the State Government concerned, transfer a cadre officer from one cadre to another cadre."

9. After referring this provision, the learned counsel appearing for the applicant submitted that the Government of Rajasthan has given concurrence. Wife of the applicant was allocated Rajasthan Cadre only in 2011 i.e. after three years of their marriage which was solemnized in the year 2008. The need for change of cadre arises only in the year 2011 when his wife was allotted Rajasthan cadre, as such, the applicant is not misusing Rule 5(2) of the IPS (Cadre) Rules, 1954, but he is entitled to change of cadre to Rajasthan State.

10. The learned counsel appearing for the respondents have strongly controverted the fact that the applicant is having any legal right for asking change of cadre. Further submits that the applicant was allotted Uttar Pradesh Cadre and the representation made by the applicant can be considered under the provisions of law and as per policy guidelines of 2004. However, as per policy guidelines inter cadre transfer to the Home State is not permissible whereas the option of change of cadre of Smt. Anupama Jorwal to Uttar Pradesh is available to her under the policy guidelines, in case Smt. Jorwal opts to come



to Uttar Pradesh. The learned counsel appearing for the Union of India further submitted that Rule 5(2) of IPS (Cadre) Rules, 1954 cannot be read in isolation but it should be read with the policy guidelines issued by the DOPT vide OM dated 8.11.2004 which provides that Central Government may with the concurrence of the State Government concerned transfer a cadre officer from one cadre to another cadre. Further as per para 2(ii) of the policy guidelines, inter cadre transfer shall not be permitted to the Home State of the officer and as per Para 2(iii), in case 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.

11. In support of his submissions, the learned counsel appearing for the State of Rajasthan placed reliance on the judgment rendered by the Supreme Court in the case of Union of India vs. Mamta Anurag Sharma and another, reported in (2001) 8 SCC 129 wherein the Hon'ble Supreme Court held that inter cadre transfer from one State to another on the marriage of one member to another will not be permissible if it results in transfer to the Home State of the spouse seeking the transfer. The learned counsel for the applicant tried to distinguish the judgment rendered by the Hon'ble Supreme Court by referring

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relevant para-6 of the judgment and submitted that in the case before Supreme Court, the marriage took place after allocation of cadre to the husband as well wife. Therefore, the ratio decided by the Hon'ble Supreme Court is not applicable to the facts and circumstances of the case. In the instant case, the applicant is member of Indian Police Service, 2005 batch and was allotted Uttar Pradesh cadre and marriage with Ms. Anupama Jorwal took place on 20.2.2008 i.e. after three years of allocation of Uttar Pradesh cadre to the applicant and after their marriage, wife of the applicant was selected in the Indian Administrative Service in the year 2011 and was allotted Rajasthan Cadre. After allocation of Rajasthan cadre to his wife, the applicant filed representation for change of cadre from Uttar Pradesh to Rajasthan on 8.2.2012 and the Govt. of Rajasthan has given concurrence vide Ann.A/5 stating therein that if the Union of India agrees, the State has no objection for change of cadre.

12. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record as well as the pleading of the case, relevant provisions and the judgments referred by the respective parties, it is not disputed that the State of Rajasthan has no objection if cadre of the applicant is changed from Uttar Pradesh to Rajasthan by the

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Union Government and this is the requirement of Rule 5(2) of IPS (Cadre) Rules, 1954. For fulfilling the requirement of Rule 5(2), the Central Government asked for comments/views from Government of Rajasthan and in response to the letter issued by the Central Government, the State of Rajasthan has given concurrence for transfer of cadre from Uttar Pradesh to Rajasthan.

13. So far as judgment rendered by the Hon'ble Supreme Court is concerned, in that case Smt. Mamta Anurag Sharma joined the IPS w.e.f. 1.9.1982 and was allotted West Bengal Cadre. In the year 1985, she got married to Shri Anurag Sharma, an IPS officer of Andhra Pradesh cadre. After marriage, Smt. Mamta Anurag Sharma requested for change of cadre from West Bengal to Andhra Pradesh. In the present case, as discussed hereinabove, the applicant is member of Indian Police Service, 2005 batch and was allotted Uttar Pradesh cadre. He got married with Ms. Anupama Jorwal on 20.2.2008. At the time of marriage in the year 2008, there was no question for change of cadre of the applicant. After marriage when Smt. Anupama Jorwal was also selected in the Indian Administrative Service, 2011 batch and was allotted Rajasthan cadre, necessity for change of cadre arose and the applicant submitted



representation for change of cadre and upon asking view/comments, the State of Rajasthan has given concurrence. In the instant case, requirement of Rule 5(2) of IPS (Cadre) Rules, 1954 has been partially fulfilled after concurrence of the State of Rajasthan and it is for the Government of India to consider request of the applicant. In such peculiar circumstances, we deem it proper to direct the Union of India as well as the Secretary, Ministry of Home Affairs to consider the case of the applicant for change of cadre from Uttar Pradesh to Rajasthan in accordance with provision of Rule 5(2) of IPS (Cadre) Rules, 1954 and pass appropriate orders expeditiously, but in any case not beyond the period of three months from the date of receipt of a copy of this order.

14. With these observations, the OA stands disposed of with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

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