

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH**

O.A.NO.060/00142/2019 &
M.A.No.302/2019 & 591/2019

Decided on : 02.04.2019

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. P. GOPINATH, MEMBER (A)

1. Ajit Balaji Joshi son of Sh. Balaji Shrinivas Joshi, aged 40 years, presently posted as Director Agriculture, Panchkula, Haryana (134112)- (Group-A).
2. Gauri Parasher Joshi wife of Sh. Ajit Balaji Joshi aged 37 years, presently posted as Director Social Justice and Empowerment, Panchkula, Haryana (134112) (Group-A).

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Applicants

(Argued by: **MR. PANKAJ JAIN, ADVOCATE**).

Versus

1. Union of India through the Secretary of Government of India, Ministry of Personnel, Pensions and Training, North Block, New Delhi-110003.

(Argued by : **MR. SANJAY GOYAL, SR.CGSC.**)

2. State of Haryana through its Chief Secretary, Haryana Civil Secretariat, Sector-1, Chandigarh-160001.

(Argued by : **MR. SAMARVIR SINGH, DAG**).

3. State of Punjab through its Chief Secretary, Punjab Civil Secretariat, Sector-1, Chandigarh-160001.

(Argued by : **MR. RAKESH VERMA, ADVOCATE**).

4. State of Odisha through its Chief Secretary, Government of Odisha, General Administration, Department, Odisha Secretariat, Bhubaneshwar-751001.

(Argued by : None).

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Respondents

ORDER (oral)
SANJEEV KAUSHIK, MEMBER (J)

M.A.No.060/0302/2019 is allowed and applicants are permitted to file a joint Original Application (OA). M.A.No.060/00591/2019 is allowed and documents annexed therewith and marked as Annexures A-27 to A-29 are taken on record.

2. Two officers, belonging to Indian Administrative Service (IAS), happen to be couple, are before this Court for ventilation of their grievance relating to inter-cadre transfer, on the plea that they have been extended step motherly and discriminatory treatment towards them in deciding their indicated request.

3. The applicants have approached this Tribunal for quashing of the order dated 15.1.2018 (Annexure A-1), with further direction to the respondents to take a final decision on memorial dated 29.6.2016 (Annexure A-20) submitted to the President of India, for change of cadre of applicant no.2 to State of Haryana or change of cadre of both the applicants to State of Punjab, as per rule 5 (2) of the All India Services (Cadre) Rules, 1954 (for short "Cadre Rules, 1954), on merit of the case and not on technical grounds.

4. When case came up for motion hearing on 18.2.2019, the Court noticed the following pleas raised by learned counsel for the applicant :-

"Learned counsel submitted that the applicant No. 2, after her marriage, made a request to the State of Odisha to transfer her to Haryana Cadre to which her husband applicant No. 1 belongs, which was recommended under rule 5(2) of the AIS Cadre Rules, 1954, vide letter dated 27.07.2010, but was rejected by Respondent No. 1 on the ground that she cannot be transferred to her home cadre. Subsequently, a joint representation was made by the applicants to allocate them a third cadre i.e. State of Punjab, on the ground of marriage. The State of Punjab has also expressed its willingness to take both the applicants in its cadre. However, the Respondent No.1, is sitting over the matter and has not accepted their representation till date, which is in contravention of instructions dated 01.04.2011 (Annexure A-10) issued by the Govt. of India which provide a window to officers, in certain conditions, for inter cadre transfer.

Learned counsel has also alleged step motherly treatment against the applicants as the request of other similarly situated officers for inter cadre transfer have been accepted to by the respondents. In support of his claim, he has placed on record the relevant documents (Annexures A-20 to A-26)."

After noticing the aforesaid facts, notices were issued to the respondents for 2.4.2019. Mr. Sanjay Goyal, Sr. Central Government Standing Counsel, accepted notice on behalf of Respondent No.1 and Mr. Samarvir Singh, DAG (Haryana) appeared and accepted notice on behalf of Respondent No.2. Notice to Respondents No.3 and 4 were issued in ordinary process. The respondents No.1&2 sought and were granted four weeks time to file written statement.

5. The applicants have also prayed that they be granted interim protection by directing the respondents not to relieve applicant no.2, who is on deputation with Respondent No.2, State of Haryana, since 2014, till the matter is pending before this Court.

6. Today, when the matter came up for hearing, learned respective counsels for the respondents No.1, 2 and 3, sought further four weeks' long adjournment to file reply. The request was opposed by Mr. Pankaj Jain, learned counsel for the applicants on the plea that the deputation period of applicant no.2 is coming to an end on 30.4.2019 and she has already requested for its extension upto 30.4.2021, therefore, the request for grant of ad-interim prayer be decided today itself. In the alternative, it is further argued by learned counsel for applicant that since the respondents have not decided the pending application dated 29.6.2010 (Annexure A-2), as supplemented by further representations from time to time, on merit for change of cadre of applicant no.2 to State of Haryana or change of cadre of both the applicants to State of Punjab as per rule 5 (2) of Cadre Rules, 1954, on the ground of marriage, therefore, this petition can be disposed of at this stage by

directing the respondents to take a call and decide their claim on merit, as has been done in the case of similarly situated other officers and relief has been allowed to them relating to change of cadre. It is further argued that pending O.A. applicant no.2 has also moved a representation dated 25.2.2019 (Annexure A-28), for extension of deputation period for another two more years beyond 30.4.2019, in terms of the DoPT instructions dated 17.2.2016, which has not been decided as yet and therefore, a request has been made that the present OA be disposed of by directing the respondents to decide the above noted prayers of applicants, in accordance with law and till respondents take a decision on Annexure A-28, the applicant no.2 be allowed to remain on deputation with State of Haryana.

7. Mr. Sanjay Goyal, learned Sr. Central Government Standing Counsel, for Respondent No.1 (DoPT), Mr. Samarvir Singh (DAG Har) for Respondent No.2 and Mr. Rakesh Verma, Advocate, for Respondent State of Punjab (Respondent No.3), did not object to the prayer of applicants, rather counsel for the Respondents No.2 and 3 supported their case and submitted that they have already given favourable consideration in the favour of the applicants and as such they have no objection if O.A. is disposed of in the indicated manner. None has put in on behalf of State of Odisha as yet.

8. The facts of the case are largely not in dispute. It is apparent that Applicant No.1 (Ajit Balaji Joshi) belonging to State of Maharashtra, was appointed to IAS in 2003. He was allocated to State of Haryana and is working as Director, Agriculture, Haryana. Applicant No.2 (Gauri Parasher Joshi), too was appointed to IAS in 2009. She was allocated to Odisha Cadre. They got married on 28.6.2010. Applicant No.2 requested State of Odisha (Respondent No.4), for change of her cadre

to State of Haryana (Respondent No.2), on the ground of marriage, vide her representation dated 29.6.2010 (Annexure A-2) in accordance with rule 5 (2) of the Cadre Rules, 1954. Respondent No.4 issued "No Objection Certificate" (NOC) vide letter dated 27.7.2010 (Annexure A-3). They also prayed that if transfer of cadre to State of Haryana is not feasible, then transfer of their cadre to neighbouring State of Punjab be also considered. The State of Punjab (Respondent No.3) consented to accept the request vide letter dated 26.10.2010 (Annexure A-4). Applicants submitted a joint representation dated 27.10.2010 (Annexure A-5) to change cadre to State of Punjab. Respondent No.4 forwarded the case of applicant No.2 for transfer of her cadre to Respondent No.1. However, the respondent no. 1 rejected the prayer of applicant No.2 for transfer of her cadre to State of Haryana, vide order dated 29.11.2010 (Annexure A-6). Applicants again submitted a representation dated 10.3.2011 (Annexure A-7) for change of cadre to State of Punjab on the ground that the experience gained by them would be useful in the State of Punjab. As per rule 5 (2) of Cadre Rules, 1954, in case of cadre transfer on ground of marriage, efforts should be made in the first instance to ensure that the cadre of one officer accepts his or her spouse. NOC was asked for from the Odisha State for transfer to Punjab which was allowed vide letter dated 1.3.2011 (Annexure A-8). Meanwhile, even Government of Haryana, had accorded approval (NOC) for change of cadre of applicant no.1 on the ground of marriage vide letter dated 21.3.2011 (Annexure A-9). It is submitted that in the past also, transfers have been allowed in the case of Smt. Beela Rajesh and Smt. Sukriti Likhi.

9. Respondent No.1, vide letter dated 1.4.2011 (Annexure A-10) informed the State of Odisha, to advice applicant no.1 to apply for his

transfer to Odisha. Further correspondence took place and ultimately, applicants submitted a Memorial to the President of India on 29.6.2016 and reminders including one dated 2.10.2017. However, the memorial was upheld vide letter dated 15.1.2018 (Annexure A-1) on technical grounds only instead of considering it on merit. The pleadings also show that respondent no.1 had approved her request for deputation to the Government of Haryana in 2014 for 3 years and it was extended upto 30.4.2019. She has again submitted a representation, Annexure A-28, for extension upto April, 2021, which is yet to be decided by respondent no.1.

10. It is, thus, clear from the facts on record that the request of the applicants for change of cadre to State of Haryana and/ or alternatively to State of Punjab has been favourably recommended by stake holders, i.e. State of Odisha, State of Haryana and State of Punjab, but their claim has not been considered by respondent no.1 in right perspective and it has not yet been allowed without any logic, reason and in disregard to the indicated rule and instructions.

11. We would also like to mention here that the higher officers, who are working with the Government of India or in their allocated respective States, discharge their functions, as adjudicatory authorities under various statutory acts and rules by following the principles of natural justice to remove arbitrariness in administrative actions. It is a very unique case in which such officers are before this Tribunal when they have been pushed to the wall in considering their request for change of inter-state cadre on marriage ground, which is otherwise permissible under the pointed rules. If their request is not addressed, as per rules governing the field, then they will have grouse against the Government, thus, we are of the view that let this request be addressed

in accordance with law and rule by the respondents at the first instance, by passing a speaking and reasoned order, by dealing with pointed issues, as raised in their representations. We would not like to jump over to the jurisdiction of the Government of India, at the first instance to consider the request/relief, otherwise, it will set a wrong precedent. To keep the balance, we think it appropriate to accept the consensual request, at notice stage and to dispose of the petition at this moment.

12. In the wake of the above, we are not inclined to comment upon merits of the case else it may prejudice case of either parties, as a consensual agreement has been arrived at between the parties to dispose of this petition in limine, by directing the competent authority amongst the respondents to take a call to vindicate the grievance of the applicants for their inter-state cadre transfer, as per rules and instructions prevalent at relevant point of time. The request of applicant no.2 for extension of deputation period for further two years upto 30.4.2021, which is pending for consideration in terms of OM dated 17.2.2016 of DoPT, be decided thereon and till such a decision is taken, applicant no.2 be allowed to continue on deputation. Ordered accordingly.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: CHANDIGARH.
DATED: 02.04.2019

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