

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 1039 of 2018

Reserved on: 26.9.2019

Order dated: 08.11.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Mr. Chinna Murugan,
Son of C. Chinna Govindan,
Residing at Flat No. A/7, No. 32,
Government Hospital Estate,
Ballygunje Circular Road,
Kolkata-700020.
Applicant.

Versus

1. The Union of India,
Service through The Secretary,
Department of Personnel and Training,
North Block,
New Delhi-110001.
2. The Principal Secretary to the
Government of West Bengal,
Personnel and Administrative Reforms
Department, "Nabanna" 325,
Sarat Chatterjee Road,
H.R.B.C. Building, Mandiratala,
Howrah,
Pin - 711 102.

Respondents.

For the Applicant

Mr. C. Sinha, Counsel

Ms. Gargi Roy, Counsel

For the Respondents :

Mr. S.K. Pal, Counsel

Mr. A.K. Chattopadhyay, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached the Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

heh

"8.(a) An order do issue thereby Cancel/rescind/withdraw/set-aside/revoke/quash the reasoned order vide letter No. 94-Pr.Secy/PAR & e-G/2017 dated 07.11.2017 issued by the Principal Secretary, Personnel & Administrative Reforms & e-Governance, Department of West Bengal, within a stipulated time period.

(b) An order do issue directing the concerned respondent authorities to forthwith issue No Objection Certificate for Inter Cadre Deputation to Tamilnadu after setting aside the reasoned order dated 07.11.2017 and also taking into consideration the health condition of his younger son who has been diagnosed with Autism Spectrum Disorder (ASD) and Attention Deficit Hyperactivity Disorder for the past 03 years and as such visited different therapy centers and hospitals in Kolkata, but there is no significant improvement in his health and further as per observation of the consulting doctors.

(c) A further order to issue directing the concerned respondent authorities to allow your applicant to move to Tamilnadu cadre for the present as it has been advised by the consulting doctors that the child's development will speed up if he is exposed to his mother tongue only for which he needs to stay in an environment that is enriched with his mother tongue (preferably in his native place) along with his family.

(d) A order do issue directing the respondent authorities to reconsider and dispose of the representation dated 20.09.2016, 09.03.2017, as well as 05.04.2017.

(e) An order do issue directing the concerned respondent authorities to transmit all the records before this Hon'ble Tribunal in ends of justice.

(f) Any other appropriate order/orders direction/directions as this Hon'ble Tribunal may deem fit and proper to protect the right of the applicants."

2. Heard Ld. Counsel for the parties, examined pleadings and documents on record.

3. The case of the applicant, as articulated by his Ld. Counsel, is as follows:-

That, the younger son of the applicant is suffering from "Autism with ADHD" and is undergoing treatment for the last three years without any improvement in his health condition. His consulting doctor has observed that for improvement of the child, he should be exposed in an environment enriched with his mother tongue. The applicant had sought Inter Cadre Deputation to Tamilnadu along with his family by preferring a representation to the Secretary to the Government of India as well as before the Principal Secretary to the Government of West Bengal seeking for "Inter Cadre Deputation to Tamilnadu" as well as for a "No Objection

hew

Certificate" from his parent cadre but his prayers have not been considered.

That, the applicant had earlier approached the Tribunal by filing an Original Application No. 350/01176/2017 ventilating his grievances and the same was disposed of by directing the respondents to consider his representation and to pass a reasoned and speaking order. Thereafter, the applicant preferred a representation to the Principal Secretary, Personnel & Administrative Reforms and E-Governance Department. His prayer was rejected on 7.11.2017.

Hence, being aggrieved with the said speaking order, the applicant has approached this Tribunal praying for the aforementioned relief.

The applicant has furnished the following grounds, inter alia, in support of his claim:

- (a) That the respondent authorities failed to consider that the applicant has already completed nine years under West Bengal cadre.
- (b) That, the applicant preferred various representations before the respondent authorities on 25.07.2016, 20.09.2016, 09.03.2017 as well as 05.04.2017 but to no effect.
- (c) That, as per the Rules regarding inter cadre deputation, mandatory period of nine years is to be completed by the concerned officer; a condition fulfilled by the applicant.
- (d) That, the procedure to be followed for such appointment under inter cadre deputation has also not been followed by the respondent authorities.
- (e) That the respondent authorities, while passing their reasoned order dated 07.11.2017, failed to consider the fact that the son of

halm

the applicant is suffering from "Autism ADHD" for a prolonged period, and requires a conducive environment wherein residents converse in his mother tongue.

4. Both the respondents on behalf of Union of India as well as State respondents have contradicted the claim of the applicant by stating as follows:-

(a) That, this Tribunal while disposing of O.A. No. 1176 of 2017 on 30.8.2017, had directed the respondents to issue a speaking and reasoned order disposing of the representations of the applicant dated 20.9.2016, 9.3.2017 and 5.4.2017 respectively.

(b) That, the respondent authority in Union of India, have not received any request letters dated 20.9.2016 and 5.4.2017 as referred to in the O.A. nor any NoC from the State Government of West Bengal for the purpose of applicant's inter-cadre deputation.

(c) The State Government of Tamilnadu, vide their letter dated 9.11.2017, had agreed for inter-cadre deputation of the applicant to the Government of Tamil Nadu for 5 years with the condition that he would not be considered for the post of District Collector in the State.

(d) That, the State Government of West Bengal thereafter passed a reasoned order on 7.11.2017 rejecting the prayer of the applicant on the grounds of an existing policy of the State Government regarding inter-cadre deputation and, the fact, that medical assistance as insisted upon by the applicant/official for his child are available in the State of West Bengal and, particularly, in Kolkata.

W.B.

(e) That, inter-cadre deputation from West Bengal to Tamilnadu cadre cannot be finalized without the consent of the lending cadre, namely, the Government of West Bengal.

The respondent authorities would cite the provisions in Para 6(1) of the Indian Administrative Service (Cadre) Rules, 1954 in support.

5. The issue to be adjudicated upon in the instant O.A. is

1) whether the State Government i.e. the lending cadre can withhold issue of NoC for inter-cadre deputation to the applicant/officer without advancing any objective reasons leading to such rejection and

2) What relief may be accorded to the applicant.

6. At the outset, we would proceed to examine the reasoned order issued by the Principal Secretary to the Govt. of West Bengal of the Personnel Department (Annexure A-6 to the O.A.), which is reproduced as hereunder:-

“
Government of West Bengal
Personnel & Administrative Reforms & e-Governance Department
NABANNA
325, Sarat Chatterjee Road, Howrah - 711102

No. :- 94-Ps. Secy/PAR & e-G/2017

Date :- 07/11/2017

REASONED ORDER

Perused the judgement passed in connection with O.A. no. 1176 of 2017. Direction is upon Respondent Nos. 1 & 2 to consider the representation the dated 20.09.2016 of Sri Chinna Murugan, IAS. Perused this representation dated 20.9.2016.

The Government of West Bengal has put Sri Murugan on very important assignments throughout his career. During the last ten years of his service to the Government, his personal problem has always been addressed by this Government very sympathetically so that he can take care of his son properly during his posting in the State of West Bengal.

In such circumstances, his prayer has been considered and rejected in line with existing policy of State Government regarding Inter-cadre deputation and the fact that all medical help is available in Kolkata.

Let the copy of this order be communicated to Sri Chinna Murugan.

Principal Secretary to the

Government of West Bengal”

hah

Upon a close reading of the same, the following is inferred:

- (i) That, the applicant has always been placed on important assignments by the Government of West Bengal.
- (ii) That, the applicant has spent last 10 years of his service in the State cadre.
- (iii) The applicant's personal problems have been addressed sympathetically by his State Cadre.
- (iv) The applicant's prayer has been rejected in line with existing policy of the State Government regarding inter-cadre deputation.

What has not been made clear in the above mentioned reasoned order is what exactly is "the existing policy of the State Government regarding inter-cadre deputation." It is noted herein that nowhere in the reasoned order the State Government has advanced the grounds that there is a paucity of All India Service Officers to carry out the administrative functions in the State Government and that the inter-cadre deputation of the applicant (even if, for a limited tenure) to another cadre would severely jeopardize the administrative interests of the State.

- (v) It is noted here that the borrowing cadre, namely, the State Government of Tamilnadu had reportedly accorded their consent to accept the said officer on deputation.

On 9.8.2019, this Tribunal had directed the Respondent No. 2 to clarify on behalf of the State Government "the existing policy of the State Government regarding inter-cadre deputation as referred to in their speaking order dated 7.11.2017."

In response, the respondents furnished on 24.9.2019, by way of instructions, a communication to the Health & Family Welfare

hch

department to seek information as to whether the applicant's son may receive treatment at Kolkata.

The above communication does not answer this Tribunal's query. Hence, we can only infer that there is no existing policy of the State Government regarding NOC for inter cadre deputation of the All India Service Officers borne in the cadre.

In **Union of India & anr. v Bhaskorendu, Civil Appeal no 7116/2010**, the Hon'ble Apex Court had dismissed the appeal of Union of India stating that the Central government had not been able to show any record indicating the reason as to why a differing view was taken, leading to the only inference that no reasons whatsoever had been recorded.

Similarly, in **Union of India v. NP Dhamania, 1995 Supp (1) SCC 1**, The Hon'ble Apex court held that to differ from recommendations of the DPC, the Union of India must give reasons to ward off any attack of arbitrariness.

6.2. In legal parlance, a deputation is a service outside the cadre or outside the parent department. In **State of Punjab v. Inder Singh, 1998 SCC (L&S) 34**, the Hon'ble Apex court ruled as follows:

"The concept of 'deputation' is well understood in service law and has a recognized meaning. In simple words, 'deputation' means service outside the cadre or outside the parent department and deputation means deputing or transferring an employee to a post outside his cadre, that is to say, to another department on a temporary basis."

Hence, deputation is a tripartite agreement based on voluntary consent of the principal employer to lend the service of his employee, a decision which has to be accepted by the borrowing department/ employer and also involves consent of the employee.

haly

The above ratio has also been articulated in **Ratilal B Shah v. State of Gujrat 1990 (Supp) SCC 243, Kunal Nanda v UOI AIR 2000 SC 2076 and in Girinder Pal Singh v State of Punjab 2005(1) SLR 629.**

In **Mundevadi v. State of Mysore, (1969) II LLH 460** it has been held that in deputation there can be a "plurality of masters", the master who lends the servant would be his general master and the borrower would become his special employer and in such a case, as per principles of service law, the rules would be the deciding factor.

6.3. The provisions of Indian Administrative Service (Cadre Rules), 1954 and, particularly, para 6 of the same that guides deputation of cadre officers, are reproduced as hereunder:

"6. Deputation of cadre officers - 6(1) A cadre officer may, with the concurrence of the State Government concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government.

6(2) A cadre officer may also be deputed for service under:-

(i) A company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a Municipal Corporation or a Local Body, by the State Government on whose cadre he is borne; and

(ii) An international organization, an autonomous body not controlled by the Government, or a private body, by the Central government in consultation with the State Government on whose cadre he is borne:

Provided that no cadre officer shall be deputed to any organization or body of the type referred to in item (ii), except with his consent:

Provided further that no cadre officer shall be deputed under sub rule (1) or sub-rule (2) to a post other than a post under the Central Government or under a company, association or body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government, carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basic pay he would have drawn in the cadre post but for his deputation."

hal

The rules before us that guide inter - cadre deputation of officers borne in the Indian Administrative Service (Cadre) Rules, 1954 are as quoted above and vide O.M. of DOP&T dated 8th November, 2008, as extracted below:

- “(i) Inter-cadre deputation will be available to the officers only after completion of nine years of service in his or her cadre and before reaching the Super time Scale in his or her home cadre.
- (ii) Inter-cadre Deputations have normally been processed only in cases where individual officers have sought a deputation in view of the personnel difficulties.”

6.4 The applicant's issue is now considered in the perspective of Rule 6(1) of the AIS Rules. Admittedly, Rule 6(1) is the basic rule which provides that a cadre officer, with the concurrence of the state government, and the central government, can be deputed for service to either the central government or to another state government, to a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the state government or by another state government. The proviso further provides that in case of any disagreement, the matter is to be decided by the central government and the state government(s) shall give effect to the decision of the central government.

The provisions of rule 6(1) of the **AIS rules (supra)** does not speak of any other condition nor does it provide for any limitations to the same. The scheme is also very clear under the provision that states that whenever there is a dispute, the decision of the central government shall be final and the state government(s) are bound to implement the same.

In the present matter the state government has rejected the applicant's prayer for inter cadre deputation on the ground that necessary medical facilities for his son's treatment is available in Kolkata. The applicant has averred that such treatment, which has been availed of during the last three years, has not led to any improvement in the child's condition.

hsc

Hence, the state's repeated insistence on local treatment vis-a-vis medical advice for nurturing the child in his native environment may not facilitate the five year old child's healthy upbringing and may further impede the child's growing years to a situation of abortive return to normalcy.

Secondly, as held in **Kunal Nanda (supra)**, an employee does not have a vested right to continue on deputation. DoPT OM dated 8th November 2004 states that inter cadre deputation at a time normally cannot exceed three years. Hence, if the applicant is allowed to proceed for inter cadre deputation, he will necessarily have to return in three years' time to his parent cadre,

The Principal bench of this Tribunal has adjudicated and allowed requests for inter cadre transfer on permanent basis in **OA 3921 of 2010 (Pankaj Kumar Pal v. UOI & ors)** as well as in **OA 292 of 2018 (Dr. Jitendra Gupta v. M/O Personnel and Public Grievances)** by directing the state government not to withhold consent for inter cadre deputation.

In the instant matter, the applicant's prayer is only for a limited tenure of inter cadre deputation and no objective rationale has been advanced by the State government in their resistance to grant No Objection to the applicant.

6.5 The lending state government, represented by respondent no 2, has not been able to furnish any cogent policy statement for grant/ withholding of NOC towards inter cadre deputation. No objective reasons have been advanced in rejecting the prayer of the applicant in their reasoned order dated 07.11.2017. The state's insistence that the applicant's young child should continue to receive medical treatment in Kolkata / State has not led to any improvement in the child's condition.

hah

Accordingly, being bereft of logic or reason, we quash the order dated 7.11.2017 (Annexure A6 to the O.A.) and set it aside.

7. The fact remains that while the concurrence of the lending cadre authority is a must, a disagreement has occurred between the two State cadres, namely, the lending State and the borrowing State to the extent that while the borrowing State is willing to accept the officer on deputation, the lending State has withheld clearance. The officer, however, fulfilled the necessary conditions of DOPT's O.M. dated 8th November, 2004.

8. In our considered view, the rightful authority to decide on such disagreement would be the Central Government as provided in proviso to Rule 6(1) of the Rules. Accordingly, we would grant liberty to the applicant concerned to prefer a comprehensive representation to respondent No. 1 who is the Secretary, DOPT on the issue of disagreement between the two cadres in deciding upon his inter cadre deputation within a period of 4 weeks from the date of receipt of a copy of this order.

In the event such representation is preferred, the said respondent authority shall examine the contents of the representation in accordance with law and decide on the same within a further period of 12 weeks and convey his decision to the State Governments and the applicant concerned forthwith thereafter. Needless to state, the State Governments concerned will be bound to implement the decision of the Central Government as per AIS Rules.

9. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member