

(2022) 06 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 2014 Of 2021

Alankrita Pandey

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 07-06-2022

Acts Referred:

Indian Administrative Service (Cadre) Rules, 1954 — Rule 5, 5(2)
Constitution Of India, 1949 — Article 21

Citation : (2022) 06 CAT CK 0023

Hon'ble Judges : R.N. Singh, Member (J); Mohd. Jamshed, Member (A)

Bench : Division Bench

Advocate : Shashank Bajpai, Vidula Mehrotra, Aasna Mehra, Hanu Bhaskar, Madhumita Bhattacharjee

Final Decision : Allowed

Judgement

Mohd. Jamshed, Member (A)

1. The applicant is an IAS Officer of 2016 batch and was allotted West Bengal Cadre. While undergoing her training at Lal Bahadur Shastri National Academy of Administration (LBSNAA), she got married to one Shri Anshul Agrawal, an IAS Officer of the same batch but of Bihar Cadre on 24.04.2018. On account of her marriage to Shri Anshul Agrawal, who was allotted Bihar Cadre, she made an application dated 08.06.2018 to Respondent No.1 requesting for Inter-Cadre transfer to the Cadre of her husband i.e. State of Bihar. Pursuant to this application, Respondent No.1 requested Respondent No.2, i.e. State of West Bengal and also Government of Bihar to convey their consent on the applicant's request for her Inter-Cadre transfer from West Bengal to Bihar on the ground of her marriage vide letter dated 25.06.2018. Consequently, the Government of Bihar, vide letter dated 30.07.2018 addressed to respondent No.1 conveyed its No Objection for the Inter-Cadre transfer of the applicant from State of West Bengal to State of Bihar. NOC was, however, not granted by Respondent No.2. In the meanwhile, the applicant further made various requests, but no action was

taken on her application and No Objection Certificate was also not issued.

2. Aggrieved by the non-action on the part of Respondent No.2 for over 2 years, the applicant filed O.A. No. 721/2021. This Tribunal, vide order dated 28.07.2021, disposed of the O.A. with the following directions:-

"5. We, therefore, dispose of the OA, directing the State of West Bengal to pass orders on the representation, made by the applicant, for cadre change, within a period of four weeks from the date of receipt of a copy of this order, duly taking into account, the relevant provisions of law".

3. In compliance of the Tribunal's order, the Respondent No.2 vide order dated 01.09.2021 refused to accede to the request of the applicant in view of the ongoing Covid-19 Pandemic, need of the services of administrative officers and the shortage of IAS officers. The applicant, aggrieved by order dated 01.09.2021, has filed the present O.A. challenging the same, seeking following relief(s):-

"(a) Set aside the order dated 01.09.2021 and direct the Respondents to grant the Applicant a 'No Objection Certificate' for the change of her Cadre to the State of Bihar as per the Consolidated Cadre-Change Policy within 4 weeks; and

(b) Any other relief which this Hon'ble Tribunal may deem fit and appropriate in the circumstances of the case".

4. Applicant also filed a W.P. (C) No.8399/2022 before the Hon'ble High Court of Delhi on 26.05.2022. The Hon'ble High Court directed that since the applicant's O.A. is already listed before the Tribunal on 31.05.2022, the Tribunal is requested to dispose of the said O.A. on that date or soon thereafter. In terms of the directions of the Hon'ble High Court of Delhi, the case was heard on 31.05.2022.

5. The applicant contends that she is in desperate need of Inter-Cadre transfer in view of her marriage to a Bihar-Cadre IAS officer. She submits that in order to raise her child born on 17.01.2020, presence of the father is also needed. It is also submitted that her application made way back in 2018, immediately after her marriage, was rejected vide the impugned order after more than 2 years by the Respondent No.2, whereas the State of Bihar has already granted No Objection Certificate in this regard. It is also submitted that Rule 5(2) of IAS (Cadre) Rules, 1954 mandates that change of Cadre of an IAS officer can be done in the cases of marriage. The O.M. dated 08.11.2004 further clarifies that Inter-Cadre transfer shall continue to be permitted for members of All India Service Officers on marriage to another member of All India Service, where the officer or officers concerned have sought a change. Reliance has also been placed by the applicant on a number of orders passed by this Tribunal and judgments of the Hon'ble High Court of Delhi whereby similar transfers have been permitted and directions have been issued to the States to issue No Objection Certificate. The applicant has relied upon the following judgments:-

(i) Gandharva Rathore Vs. Union of India and Others O.A. No.3579/2019.

(ii) Order of the Hon'ble High Court of Delhi in W.P. (C) 4048/2021 in State of West Bengal Vs. Gandharva Rathore & Others.

(iii) Order of the Hon'ble High Court of Delhi in W.P. (C) 13444/2019 titled as Bhavna Gupta Vs. The Union of India and others.

(iv) Order of the Hon'ble High Court of Delhi in W.P. (C) No.3927/2020 titled as Ms. LoganayagiDivya V. Vs. Union of India and Others.

(iv) Order of the Hon'ble High Court of Delhi in W.P. (C) No.11966/2018 titled as The State of West Bengal Vs. Raj Karan Nayyar and Another.

It is contended that in all the above judgments, the grounds taken by Respondent No.2 regarding shortage of officers for issuing No Objection Certificate has been held to be invalid and directions have been issued for issuing No Objection Certificate and relieving of the applicants.

6. Counter affidavit has been filed by Respondent Nos.1 and 3. It is submitted that the Government of Bihar vide order letter dated 30.07.2018 conveyed its consent for Inter-Cadre transfer of the applicant to Bihar on grounds of marriage to Shri Anshul Agarwal, IAS officer of 2016 batch, Bihar Cadre. The Government of West Bengal vide their letter dated 16.08.2021, however, refused to give its consent for Inter-Cadre transfer and rejected the representation of the applicant vide order dated 01.09.2021. The respondents have further submitted that they can process the Inter-Cadre transfer of the applicant only on receipt of the concurrence from both the State Governments.

7. Respondent No.2 has opposed the O.A. by filing counter affidavit. It is submitted that the applicant is an IAS officer of 2016 batch and allotted West Bengal Cadre, she got married while undergoing training at LBSNAA to an IAS officer of Bihar Cadre, namely, Shri Anshul Agarwal. The applicant made an application for change of her cadre to Bihar. Subsequently in the year 2021, the applicant approached the Tribunal by filing O.A. 721/2021. The Tribunal vide order dated 28.07.2021 directed the State of West Bengal to consider and pass order on her representation. Accordingly, Respondent No.2 advised Respondent No.1 expressing its inability for Inter-Cadre transfer of the applicant from West Bengal Cadre to Bihar Cadre on account of acute shortage of IAS Officers in the State vide letter dated 16.08.2021. It is submitted that in compliance of the Tribunal's order, a detailed speaking order dated 01.09.2021 was passed on the representation of the applicant turning down her request for Inter-Cadre transfer in view of Pandemic situation and acute shortage of IAS officers in the State. Respondent No.2 has reiterated that there is acute shortage of IAS officers in the cadre of West Bengal and, therefore, it is not possible to relieve the applicant as per her request to Bihar. It was further stated that the State of West Bengal is prepared to accept her husband if he so desires for Inter-Cadre transfer to West Bengal. It is submitted that Rules pertaining to change of Cadre of All India Service Officers are covered by Rule 5(2) of the Indian Administrative Service (Cadre) Rules, 1954 which specifically mentions that the Central Government

may, with the concurrence of the State Governments concerned, transfer a cadre officer from one cadre to another cadre.

8. Respondent No.2 has also relied upon the following judgments of the Hon'ble Supreme Court:-

(i) Official Liquidatory Vs. Dharti Dhan 1977 (2) SCC 177.

(ii) Ajeet Singh Singhvi Vs. State of Rajasthan 1991 Supp.1 SCC 343.

(iii) Namrata Verma Vs. The State of Uttar Pradesh and Others in SLP (C) No.36717/2017.

It is also submitted by respondent No.2 that Government of West Bengal has preferred and filed one Special Leave Petition (C) No.015914/2014 titled as The State of West Bengal Vs. Reena Joshi and Another which is pending adjudication.

9. It is the contention of Respondent No.2 that it is the prerogative of the State Government to grant NOC to an officer seeking Inter-Cadre transfer. The reason for not granting NOC to the applicant is shortage of IAS Officers in the State of West Bengal and urgent need of these officers in view of the ongoing Pandemic situation. For these reasons, request of the applicant has been rejected.

10. The applicant has filed a rejoinder reiterating the averments made in the O.A. and challenging the submissions made by Respondent No.2 in the counter affidavit. It is submitted that despite the stated shortage of administrative officers it is a fact that in the recent past a number of IAS/IPS officers have been granted No Objection Certificates. It is also a fact that quite a few officers have joined Government of West Bengal from other States on account of their marriages. It is also stated that the shortage of IAS Officers in the West Bengal cadre is lesser than many other States and that vacancies are also filled up by promoting Officers in the State to make good the shortage. It has been reiterated that the applicant in view of her duties and being single parent, is facing serious hardships in raising her very small child without the presence of her husband causing her serious mental agony and thus depriving her to lead a normal family life which is in clear violation of right to life under Article 21 of the Constitution of India.

11. The applicant has also reiterated that this Tribunal through a number of recent orders and through various judgments of the Hon'ble High Court have directed the State of West Bengal to issue No Objection Certificate to the applicants therein.

12. Heard Mr. Shashank Bajpai with Ms. Vidula Mehrotra and Ms. Aasna Mehra, learned counsels for the applicant and Shri Hanu Bhaskar for Respondents No.1 and 3, Ms. Madhumita Bhattacharjee for Respondent No.2 and; perused the record and relied upon judgments.

13. The facts are indisputable that the applicant is a 2016 batch IAS Officer of West Bengal Cadre who got married to one Shri Anshul Agrawal, IAS who

belongs to Bihar Cadre. She got married while undergoing training at LBSNAA and immediately thereafter, applied for Inter-Cadre transfer from West Bengal to Bihar Cadre. Her case was forwarded by Respondent No.1 to Respondent No.2 and the Government of Bihar seeking No Objection Certificate. The Government of Bihar conveyed No Objection Certificate on 30.07.2018, however, the required No Objection Certificate was not conveyed by the State of West Bengal. Aggrieved by the non-action of the part of the Government of West Bengal, the applicant filed O.A. No.721/2021. This Tribunal, vide order dated 28.07.2021 directed the State of West Bengal to pass orders on the representation, made by the applicant, for cadre change, within a period of four weeks from the date of receipt of a copy of this order, duly taking into account, the relevant provisions of law. In terms of the directions given by this Tribunal, Respondent No.2 advised Respondent No.1 their inability to accede to the request of the applicant vide order dated 16.08.2021, i.e., after a lapse of more than 2 years. Applicant's representation was also rejected vide impugned order dated 01.09.2021 which has been challenged in this O.A. The same is extracted below:-

"Government of West Bengal

Department of Personnel and Administrative Reforms

Nabanna, 7th Floor, 325, Sarat Chatterjee Road, Howrah-

711102

No.1395-PAR(IAS)/7P-02/2017 Dtd. Howrah, the 1st day of September,2021

ORDER

O.A. No.721 of 2021

(Alankrita Pandey vs Union of India and Ors.)

In compliance to the Order dtd.28.07.2021 passed by Hon'ble CAT, Principal Bench. NewDelhi in the matter of Alankrita Pandey vs Union of India and Ors. being O.A. No.721 of 2021, therepresentation dtd.08.06.2018 made by Smt. Alankrita Pandey, [IAS:2016] (hereinafter the applicant)for grant/issuance of No objection Certificate (NOC) for her inter-cadre transfer on the ground ofmarriage as forwarded by DoPT, Government of India vide letter dtd.25.06.2018, is herebyconsidered.

Hon'ble CAT, Principal Bench, New Delhi disposed of the original application with a direction to the State of West Bengal to pass orders on the representation, made by the applicant, forcadre change, within a period of four weeks from the date of receipt of a copy of the orderdtd. 28.07.2021, duly taking into account, the relevant provisions of law.

Official record reveals the following:

(i) That the applicant while was a Probationer and was undergoing IAS ProfessionalCourse Phase-II training at Lal Bahadur Shastri National Academy of

Administration(LBSNAA), Mussorie, requested for No Objection Certificate (NOC hereinafter) to change her Cadre from West Bengal to Bihar in terms of Rule 5(2) of the Indian Administrative Service (Cadre) Rules, 1954 on the ground of her marriage to Shri Anshul Agarwal, IAS [BH: 2016], an Officer of Bihar Cadre.

(ii) That subsequently Ministry of Personnel, Public Grievances and Pensions Department of Personnel & Training, Government of India requested to convey comments/consent of the State Governments in this regard in respect of the applicant in connection with her application for Cadre change and was under consideration of the State Government.

(iii) That Government of West Bengal after due consideration of the said prayer intimated the DoPT regretting its inability to give its consent for Cadre transfer of the applicant from West Bengal Cadre to Bihar Cadre on account of acute shortage of IAS Officers in the State Cadre vide No.1310-PAR(IAS)/7P-02/2017, dated 16.08.2021.

(iv) However, the Government of West Bengal proposes vide the referred letter dtd. 16.08.2021 that if Sri Anshul Agarwal, IAS [BH: 2016], the husband of the applicant applies for inter-cadre transfer from Bihar to West Bengal then the State Government may accord NOC to him.

However, Change of cadre of All India Service Officers is governed by Rule 5(2) of the Indian Administrative Service (Cadre) Rules, 1954 which is as follows:

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

Now, by applying the literal/grammatical rule of interpretation, it may be said that the relevant rule seems to be applicable to either of the spouses in the IAS Cadre.

That Rule 5 of the Cadre rules was construed by Hon'ble Apex Court of India in Union of India vs V. Rajiv Yadav, IAS & Ors. (1994 6 SCC 38) wherein Hon'ble Court was of view that cadre allocation is an incidence of service and not a right of the applicant.

The aforesaid position in Rajiv Yadav's case (supra) was reiterated by the Hon'ble Supreme Court in its opinion reported in (1996) 10 SCC 562 Union of India vs Mhathung Kithan.

That the main spirit of the guidelines issued by the DoPT, Ministry of Personnel, Public Grievances and Pensions, Government of India vide OM No.13017/16/2003-AIS-I dtd.08.11.2004 is to keep the married couple in one place but it does not confer any right to the officer to demand for any specific cadre.

That Government of West Bengal has requested the DoPT, Government of India vide letter no.1372-PAR(IAS) dtd.05.11.2020 for consideration of the issue of transfer of the spouses of the IAS officers prayed for transfer to the West Bengal

Cadre or to consider suitable replacements before issuance of NOC for Inter Cadre transfer of those IAS officers, so that the administrative machinery is not jeopardized.

That the whole nation is going through the Covid 19 Pandemic since the last one and half years and the State is in dire need of the services of the administrative officers to combat with such situation as the State is presently in on account of acute shortage of IAS officers.

Based upon the above stated facts, records and relevant judgments, at present, it is not possible to grant/issue No objection Certificate to the applicant for her inter-cadre transfer on the ground of marriage.

Hence, the matter is considered, rejected and disposed of accordingly.

Please inform all concerned.

Sd/-

(Chief Secretary)

to the Government of West Bengal”.

14. The ground taken for rejection of the representation of the applicant by Respondent No.2 primarily concerns two aspects-one regarding applicability of Rule 5 (2) of the Indian Administrative Service (Cadre) Rules, 1954 which provides that the Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre. This clause has been interpreted by Respondent No.2 to include both the spouses. It is argued that Respondent No.2 is willing to grant No Objection to the husband of the applicant for Inter-Cadre transfer from Bihar Cadre to West Bengal Cadre if he so wishes. Second aspect that has been reiterated time and again, is about shortage of IAS Officers in the Cadre and the dire need of the services of the administrative officers to combat the Covid-19 Pandemic.

15. In identical cases, this Tribunal and the Hon'ble High Court of Delhi have passed a number of orders/judgments recently. The reason cited for non-grant of NOC by the Respondents, i.e. State of West Bengal in most of these cases was shortage of IAS officers. It would thus be pertinent to take note of some of these orders, in brief:-

(i) Hon'ble High Court of Delhi in W.P. (C) 11966/2018 titled as The State of West Bengal Vs. Raj Karan Nayyar and Others vide judgment dated 03.12.2018 order as under:-

“By this application, the respondent seeks modification of the order dated 02.11.2018, whereby we granted time to the petitioner upto 28.02.2019 to relieve respondent no.1, so that he could join his services with the State of U.P. The modification is sought by the respondent on the ground that, firstly, there is no dearth of officers with the petitioner – this information the respondent has

been able to now collect. Secondly, the respondent's wife, who is herself an IPS officer, is in need of an urgent medical attention and she recently suffered miscarriage and needs emotional support. She has, however, not been able to join the company of the respondent on account of the fact that she is herself a serving officer and she has also to take care of her own parents and her mother-in-law.

Notice is accepted on behalf of the petitioner by learned counsel. We dispose of this application with a direction to the petitioner to sincerely examine the facts disclosed in the application and the circumstances of the respondent and to sympathetically consider the same, so that the respondent could be relieved at the earliest and if possible before 28.02.2019 so as to be able to join his services with the State of U.P.

The application stands disposed of in the aforesaid terms".

(ii) This Tribunal in O.A. No. 1919/2019 titled as Ms. Longanayangi Divya V. Vs. Union of India and Others passed the following order on 28.02.2020:-

"5. A specific observation was made to the effect that, the Chief Secretary of the State of West Bengal shall ensure that the applicant is relieved from duty with immediate effect. For one reason or the other, the second respondent did not relieve the applicant so far. Whatever may be the problems faced by the second respondent, refusal to relieve the applicant, even after two years from the date of notification cannot be countenanced at all.

6. We, therefore, dispose of the OA directing the second respondent to relieve the applicant within four weeks from the date of receipt of a copy of this order. There shall be no order as to costs".

The above order was challenged in the Hon'ble High Court of Delhi and the Hon'ble High Court of Delhi in W.P. (C) No.3927/2020 dated 22.07.2020 passed the following order:-

"4. In our view, there can be absolutely no justification for the State of West Bengal not relieving the petitioner to enable her to join the IPS Cadre in the State of Odisha. This shows complete apathy on the part of the State of West Bengal – which cannot be countenanced. We are left with no alternative, but to issue directions to enable the petitioner to join her post in the IPS Cadre in the State of Odisha.

5. Accordingly, we declare that the petitioner stands forthwith relieved from her post in the IPS Cadre of the State of West Bengal. No further orders would be required to be passed by the State of West Bengal in this regard. We direct the State of Odisha to treat this order as a relieving order of the petitioner to enable her to join her post in the IPS Cadre in the State of Odisha.

6. The petition is allowed with Costs of Rs.20,000/- against the State of West Bengal, which shall be paid to the petitioner positively within four weeks from

today.

7. The petition stands allowed in the aforesaid terms”.

(iii) This Tribunal in O.A. No.995/2020 titled as Kritika Sharma Vs. The State of West Bengal and Others passed the following order on 22.12.2020:-

“10. In case of Ms. R Alice Vaz, IAS, letter of consent was issued on 05.03.2018 by the State of West Bengal. The order does not mention any special reason for that. It is to be noted that in the letter of rejection of five women IAS officers, the only reason mentioned is about shortage of officers. Once the Government has acceded to the request of one of such officers, by name, Ms. R Alice Vaz, IAS, a differential treatment comes into existence in case of applicant. Added to that, the Central Government has impressed upon them that the shortage of officers cannot be a ground to deny the request for inter cadre transfer.

11. We, therefore, allow the O.A. and set aside the letter dated 12.02.2016. The respondent No.2, the State of West Bengal, is directed to consider the issue afresh in light of the judgments on the subject as well as letter dated 28.07.2019, within a period of six weeks from the date of receipt of a copy of this order. The fact that the request of Ms. R Alice Vaz, IAS was acceded to, shall also be taken into account.

There shall be no order as to costs.

(iv) In O.A. No. 365/2021 titled as Renu Sogan Vs. The State of West Bengal and Others, the following order was passed on 15.06.2021:-

“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.AlicVaz and the O.As. filed by Ms.Kritika Sharma and Ms.BhavyaTaneeru 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.

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, Honble High Court and the Honble 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”.

(v) This Tribunal in O.A. No.3579/2019 titled as Gandharva Rathore Vs. The State of West Bengal and Others passed the following order on 09.10.2020:-

“12. Ordinarily, we would have remitted the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 and take a fresh decision in the

matter, however, in view of the fact that in spite of the issue already settled in a number of cases, the Respondent No.2 has failed and neglected to follow the Order/Judgment of this Tribunal upheld by the Hon'ble High Court of Delhi (supra) and they have taken the same defence as taken by them in previous litigations referred to hereinabove, we are of the considered view that no useful purpose would be served by remitting the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 in the matter.

13. In view of the aforesaid, the present OA is allowed with direction to the Respondent No.2 to issue 'No Objection Certificate'/consent for cadre transfer of the applicant from State of West Bengal to State of Himachal Pradesh on the ground of her marriage to Shri Anurag Chander, IAS (HP:2016) as expeditiously as possible and in any case within four weeks of receipt of a copy of this Order".

The above order of the Tribunal was challenged in the Hon'ble High Court of Delhi in W.P. (C) No.4048/2021 titled State of West Bengal Vs. Gandharva Rathore and Others and passed the following judgment on 28.05.2021:-

"7. However, a perusal of the paper book reveals that the issue raised by the petitioner in the present case is no longer res integra and the same stands decided against the petitioner by way of the following three Division Bench judgments:-

(1) Bhavna Gupta vs. The Union of India &Ors., W.P.(C) No.13444/2019. The relevant portion of the same is reproduced hereinbelow:-

"11. Reading of the above-cited Government Policy leaves no room for doubt that the same would apply to the petitioner. The petitioner waited patiently for two years after making her first representation to the State of West Bengal; and only after having received no response did she approach the Tribunal. The Tribunal granted six weeks time to the State of West Bengal to consider the petitioner's representation; however no response has yet been received to that representation.

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13. Counsel for the State of West Bengal now submits that a 'No - Objection' cannot be granted in view of certain proceedings pending before the Calcutta High Court. With the highest regard for the Calcutta High Court and with full deference to the comity of courts, we have queried counsel for the State of West Bengal to point-out any order where the Calcutta High Court has restrained the transfer of the petitioner; or by which the petitioner has been ordered to remain present in court; or any order to even show that the petitioner's presence is necessary in West Bengal for the proceedings pending in court. No such order or direction or requirement has been brought to our notice.

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16. In view of the above, we dispose of this petition directing that the petitioner

be relieved within two weeks from the date of receipt of this order."

(2) Ms.LoganayagiDivya V. vs. Union of India &Ors., WP(C) No.3927/2020. The relevant portion of the same is reproduced hereinbelow:-

"4. In our view, there can be absolutely no justification for the State of West Bengal not relieving the petitioner to enable her to join the IPS Cadre in the State of Odisha. This shows complete apathy on the part of the State of West Bengal - which cannot be countenanced. We are left with no alternative, but to issue directions to enable the petitioner to join her post in the IPS Cadre in the State of Odisha.

5. Accordingly, we declare that the petitioner stands forthwith relieved from her post in the IPS Cadre of the State of West Bengal. No further orders would be required to be passed by the State of West Bengal in this regard. We direct the State of Odisha to treat this order as a relieving order of the petitioner to enable her to join her post in the IPS Cadre in the State of Odisha."

(3) The State of West Bengal vs. Raj Karan Nayyar &Anr., WP(C) No.11966/2018. The relevant portion of the same is reproduced hereinbelow:-

"Considering the overall circumstance, we grant time to the petitioner up to 28.02.2019 to relieve the respondent No.1 so that he can join his services with the State of U.P. It is made clear that no further extension shall be sought or granted and, in case, no express order is passed relieving the respondent No.1 from his services by the State of West Bengal, he shall be deemed to have been relieved on 28.02.2019 and it shall be open to him to join the services with the State of U.P."

8. Keeping in view the aforesaid mandate of law, the present writ petition is dismissed and the State of West Bengal is directed to relieve the respondent no.1 within eight weeks. In the event, the respondent no.1 is not relieved within the aforesaid stipulated period, she shall be deemed to have been relieved by virtue of the order of this Court.

9. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail".

(vi) In another O.A. No. 1299/2020 dated 02/02/2021 in Lakshmi Bhavya Tanneeru Vs. Government of West Bengal and Others the following order was passed:

"15. We therefore allow the OA and set aside the order dated 25.11.2016, passed by the 2nd respondent. The 2nd respondent i.e., the State of West Bengal shall consider the request of the applicant afresh within a period of four weeks from the date of receipt of a copy of this order, in the light of the letter dated 28.09.2017 addressed by the Union of India, the first respondent, and keeping in view of the fact that the request of Ms.R.Alice Vaz, IAS was acceded to. It is 8 OA No. 1299/2020 made clear that the shortage of officers shall not constitute a

ground for rejection. Respondents 1 and 3 shall take further steps without loss of time, once the consent from the 2nd respondent is conveyed. There shall be no order as to costs”.

The above order was challenged before the Hon’ble High Court of Delhi in W.P. (C) No.5533/2021 and vide judgment dated 16.11.2021, detailed order was passed. The concluding portion of the same is extracted below:-

“13.4. As noticed by us hereinabove, the reasons for rejecting the request of the petitioner have remained unchanged. The only change, which has been brought about, is that the State of West Bengal has propped up Covid-19 as its shield to defend its decision.

Conclusion:

14. Thus, for the foregoing reasons, we are inclined to allow the prayers made in the writ petition.

14.1. Accordingly, the order dated 02.02.2021, passed by the Tribunal, is set aside.

14.2. Furthermore, the order dated 02.08.2021, passed by the State of West Bengal, is also set aside.

14.3. The State of West Bengal will issue a no-objection directive qua the petitioner to enable effectuation of her request for inter-cadre transfer within two weeks from the date of receipt of a copy of this judgement.

14.4. Respondent no.1 will act on the said no objection, and accordingly, effect inter-cadre transfer of the petitioner from the State of West Bengal to the State of Tamil Nadu. Since Ms Raju, counsel for respondent no.1, has conveyed to us that respondent no.1 supports the request made by the petitioner for inter-cadre transfer, it is expected to act with due alacrity in the matter.

15. The costs will follow the result.

16. The writ petition is disposed of in the aforesaid terms. Consequently, pending applications shall also stand closed”.

16. From the above, it is evident that Respondent No.2, i.e. Government of West Bengal has not been able to put forward any substantive or compelling reason other than shortage of officers in IAS cadre. This aspect has already been covered in the above mentioned orders/judgments, wherein it has been categorically held that the term “shortage of officers” cannot be a justification for refusing No Objection Certificate for Inter-Cadre transfers requested on grounds of marriage. The Rules too provide for the same. The justification given by respondent No.2 about the ongoing Pandemic situation is also not tenable. This situation perhaps prevailed at the time of regretting grant of No Objection Certificate in September, 2021 and does not exist anymore. This justification also cannot be sustained. The applicant has relied upon various documents and has

enclosed the same in the rejoinder wherein the vacancy and shortage of IAS officers not only in the State of West Bengal but also in other States has been indicated. It has also been brought to the notice of this Tribunal that a number of vacancies in the IAS cadre are filled up by promoting officers from the State Government. In our view, it is entirely upto the State Government to take action in this regard. Further, it is also brought out that not only the West Bengal cadre officers have sought Inter-Cadre transfer from State of West Bengal to other States on grounds of marriage but in a number of cases, officers from other States have also taken Inter-Cadre transfers to the State of West Bengal.

17. In view of the above mentioned, we are of the considered view that the case of the applicant is identical to the above mentioned cases decided by this Tribunal and the Hon'ble High Court of Delhi. We also do not find any substantive and sustainable justification on part of Respondent No.2 not to grant NOC for Inter-Cadre transfer to the applicant. Referring the matter back to Respondent No.2 for any further consideration will not serve any purpose as a long delay has already taken place in deciding the representation of the applicant.

18. In view of the above mentioned, the O.A. is allowed and the impugned order dated 01.09.2021 is quashed and set aside. The respondents are further as under:-

(a) Respondent No.2, i.e. Government of West Bengal will issue a No Objection Certificate to the applicant on her request for Inter-Cadre transfer to the State of Bihar within a period of 4 weeks from the date of receipt of a copy of this order.

(b) Respondent Nos.1 and 3 shall on receipt of the NOC from Respondent No.2, take further necessary action to consider and issue Inter-Cadre transfer order of the applicant within a period of 4 weeks thereafter.

There shall be no order as to costs.