
(2019) 11 CAT CK 0015

In the Central Administrative Tribunal

Case No : Original Application No. 3863 Of 2018

Bhavna Gupta

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 06-11-2019

Acts Referred:

Indian Administrative Service (Cadre) Rules, 1954 — Rule 5(2)

Citation : (2019) 11 CAT CK 0015

Hon'ble Judges : L. Narasimha Reddy, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : A. K. Behera, Ajesh Luthra, S.K. Tripathi, Gyanendra Singh, Raja Chatterjee, Runa Bhuyan, Amrita Sharma, Darpan K.M.

Final Decision : Disposed Of

Judgement

L. Narasimha Reddy, J

1. The applicant is an IPS officer of 2014 batch and was allotted to West Bengal cadre. At present, she is holding the post of Additional Deputy Commissioner of Police. She married an IAS Officer of Chhattisgarh cadre in the year 2017. In view of the marriage, she made a representation to the State of West Bengal-2nd respondent herein, seeking no objection for cadre change. Similar application was made to the State of Chhattisgarh and no objection was issued. The grievance of the applicant is that though, nearly two years have elapsed since the representation was made, no order has been passed thereon and she is facing severe problems and inconvenience.

2. The applicant contends that the Union of India has framed policy guidelines to be followed in the context of cadre transfers, in the year 2004 and 2009 and it was clearly mentioned that whenever requests for cadre change are made on account of marriage, the officers must be accommodated without any hindrance and despite that, the 2nd respondents has not given no objection.

3. The OA is contested mainly by the 2nd respondent. In their counter affidavit,

it is stated that there is acute shortage of IPS officers in the State and the choice of the cadre of the applicant would result in serious administrative problems. It is stated that as against the sanctioned strength of 347, only 270 officers are working. Various contentions advanced by the applicant are also denied.

4. We heard Sh. A.K. Behera and Sh. Ajesh Luthra, learned counsel for the applicant, Sh. S.K. Tripathi for Sh. Gyanendra Singh, learned counsel for respondent no. 1, Sh. Raja Chatterjee with Ms. Runa Bhuyan for respondent no. 2 and Ms. Amrita Sharma for Sh. Darpan K.M. for respondent no. 3.

5. The endeavour of the applicant is to get transferred to the Chhattisgarh cadre on account of her marriage to an IAS officer belonging to the cadre of that State. Rule 5(2) of IAS and analogous IPS (Cadre Rules) provide for the transfer of officers from one cadre to another. In the context of the consideration of the applications for such transfers, the government framed policy in the year 2004. It reads as under:

"Change of Cadre of All India Service officers-Policy (2004) Change of cadre of All India Service officers is governed by Rule 5 (2) of the IAS (Cadre) Rules, 1954 and analogous Rules in the IFS (Cadre) Rules, 1966, which is as follows:-

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

2. In recent practice, this Rules has been invoked only in cases of marriage between the All India Service (s) officers. There have been cases where following marriage one officer has moved to the cadre of his or her spouse. There have also been cases where both spouses have moved to a third cadre. The policy in this matter has been reviewed in detail and a view taken, with the approval of Prime Minister, as follows:-

(i) Inter-cadre transfer shall continue to be permitted for members of All India Service officers on marriage to another member of an All India Service, where the officer or officers concerned have sought a change.

Inter-cadre transfer shall also be permitted on grounds of extreme hardship in the rarest of cases.

(ii) Inter-cadre transfer shall not be permitted to the home State of the officer.

(iii) In cases of inter-cadre transfer on grounds of marriage, the cadre of one of the officers accepts his or her spouse.

(iv) Only after ensuring that both States, for genuine reasons are not in position to accept the other spouse, will the officers be considered for transfer by the Government of India to a third cadre subject to the consent of the Cadres concerned for such transfer.

(v) Inter-cadre transfer shall not be permitted to All India Service officers on marriage to an officer serving in a Central Service/State Service/Public Sector

Undertaking/any other Organization.

(vi) 'Extreme hardship' for purposes of inter-cadre transfer, should be defined to include (a) threat to the life of the officer or his/her immediate family and (b) severe health problems to the officer or his immediate due to the climate or environment of the State to which he is allotted.

(vii) In cases off request on grounds of threat or health, the Central Government shall have the genuineness of the request assessed by an independent Central agency or group of at least two independent experts.

(viii) If a request on grounds of threat or health is found to be genuine, the Central Government may initially send the officer on a three year deputation to a State of its choice. The situation may be re-assessed after the three years period. If the situation so warrant, the Central Government may permanently transfer the officer to the State.

The State Governments shall consider all the requests for inter-cadre transfers of All India Service (s) officers in accordance with the above policy and send only those requests, which are covered under the above guidelines, for consideration of the Government of India. The requests which are not covered under the above guidelines are liable to be rejected at State level itself."

This policy was reiterated with slight modification in the year 2009. It is a comprehensive one, and in a way, it specifically deals with the transfer of officers on the grounds of marriage with another officer in a different cadre, and other related issues. The relevant para 4 (i) thereof reads as under:-

"4 (i) Where the spouses belong to the same All India Service or two of the All India Services, namely IAS, IPS and Indian Forest Service (Group 'A'); The spouse may be transferred to the same cadre by providing for a cadre transfer of one spouse to the Cadre of the other spouse, on the request of the member of service subject to the member of service not being posted under this process to his/her home cadre. Postings within the Cadre will, of course, fall within the purview of the State Govt."

6. The question as to whether the request made by an officer for cadre transfer can be rejected by citing the reasons of shortage of officers was dealt with by Guwahati Bench of this Tribunal in OA Nos.2/2010 and 120/2010 through separate orders dated 29. 04.2010 and 02.08.2010, and OA No.218/2010 decided through order dated 29.10.2010 by Principal Bench of this Tribunal. It was mentioned that the grounds such as the shortage of staff cannot constitute the basis to reject the request made by an officer for cadre transfer on the ground of marriage. In the policy framed in the year 2009, the importance to be given to the convenience of the woman officers was reiterated. This was taken note of and the plea of State Government therein that the officers can seek for transfer of the other spouse to the cadre of that State was also not accepted. Though specific directions were issued in those two OAs directing the issuance of

letters of "No Objection", we do not propose to do that. The matter has to be left with the State Government, even by requiring them to keep in view the purport of the policy guidelines as well as the law laid down by this Tribunal.

7. We, therefore, dispose of the OA directing the 2nd respondent to pass an order on the application submitted by the applicant within six weeks from the date of receipt of copy of this order, duly taking into account, the policy guidelines issued in the year 2004 and 2009 as well as the law laid down by the Guwahati Bench of this Tribunal in OA Nos.2/2010 & 120/2010, and of the Principal Bench in OA No.218/2010. There shall be no order as to costs.