

(2018) 02 CAT CK 0048

In the Central Administrative Tribunal

Case No : Original Application No. 2233, 2236 Of 2017

Pradeep Kumar Shrivastava And Ors

APPELLANT

Vs

Central Bureau Of Investigation And Ors

RESPONDENT

Date of Decision : 08-02-2018

Acts Referred:

All India Services (Joint Cadre) Rules, 1972 — Rule 4(1)

Citation : (2018) 02 CAT CK 0048

Hon'ble Judges : Permod Kohli, J; Uday Kumar Varma, Member (A)

Bench : Division Bench

Advocate : Ajesh Luthra, Hanu Bhaskar, R.K. Jain

Final Decision : Allowed

Judgement

Permod Kohli, J

OA No.2236/2017

1. This OA has been filed seeking judicial intervention in the matter of transfer of the applicant on specified reasons, i.e., mental illness and retardation of the applicant's child aged 13 years who is suffering from autism, as also of his wife who is a patient of schizophrenia and obsessive compulsive disorder and diabetes.
2. The applicant was recruited as a Delhi, Andaman & Nicobar Islands Civil Services (DANICS) officer. He joined the service on 15.05.1989. He was posted at the outlying segment at Andaman & Nicobar Islands till 1991. Thereafter he was posted at Delhi.
3. Later the applicant was inducted into the Indian Administrative Service (IAS) by way of promotion in April, 2016. He belongs to AGMUT cadre. On his nomination/induction into IAS, the applicant made a representation dated 06.04.2016 seeking exemption from transfer out of Delhi on account of mental illness of his only son Master Aparnesh Ahan, born on 18.02.2004, and mental illness of his wife Mrs. Richa Chetna, who is allegedly suffering from acute

obsessive compulsive disorder and schizophrenia and diabetes. Now he has been transferred from Delhi to Pudducherry vide the impugned order dated 29.05.2017 (Annexure A-1). Vide this order as many as 24 AGMUT cadre officers have been transferred to various places, including the applicant at serial number 13. The applicant made another representation dated 02.06.2017 seeking cancellation of his transfer. The said representation has been rejected by the respondents. It is under these circumstances that the present OA has been filed with the following relief:

"b. Quash and set aside the impugned transfer order 29/05/2017 (Annexure A/1) to the extent it relates to the applicant along with the order of rejection of representation (if any) and consequently direct the respondents to retain the applicant at Delhi itself and"

4. The applicant has made detailed averments with regard to illness of his minor son and wife. It may be useful to refer to such averments. It is mentioned that the applicant's only child Master Aparnesh Ahan suffers from mental illness having special learning disability and attention deficit hyperactivity disorder (ADHD). His son requires constant caregiver support on continuous basis in order to rehabilitate him and enable him to reach and maintain his optimum physical, sensory, intellectual and psychiatric levels at a social functional level. It is also stated that it requires a positive and progressive support system comprising preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care etc. This entire support system has to be on continuous basis. Reference is made to a request made to the school vide letter dated 10.12.2015. A copy of the request has been placed on record as Annexure A-6. The following requests were made in the said communication:

"On the basis of recommendations of the psychoeducational report, I request the following:-

- 1) he may be exempted from third language.
- 2) he should be allowed additional time for his exam.
- 3) he should be provided scribe during exams.
- 4) Any other measure(s) as deem fit by the school for enhancement of his learning abilities, etc."

The applicant has placed on record evaluation reports of his son from Development Clinic, Department of Neonatal, Pediatrics and Adolescent Medicines, BLK Super Specialty Hospital (pages 64-81).

5. The applicant has also referred to the medical status of his wife, who is allegedly suffering from acute obsessive compulsive disorder and schizophrenia for more than ten years and requires constant medical and psychological counseling and other support systems. She is also a patient of diabetes. It is

stated that she remained admitted in emergency in VIMHANS (Vidyasagar Institute of Mental Health, Neuro & Allied Sciences) for more than one and a half month in the year 2005. A detailed set of medical reports and OPD cards from DDU Hospital, Delhi has been placed on record which contains various prescriptions and tests etc. indicating the problematic disease being suffered by the applicant's wife.

6. Based upon the above, it is contended by Mr. Ajesh Luthra that the wife of the applicant also essentially needs a constant and uninterrupted support system without changing the environment. The applicant is the only support system in the family, and there being no other member in the family, the wife and the child of the applicant are totally dependent upon him, who is the sole caregiver to both of them.

7. The applicant has placed on record the policy decision of the Government as notified by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) vide office memorandum No.42011/3/2014-Estt.(Res.) dated 06.06.2014 (Annexure A-5). This office memorandum is reproduced hereunder:

"Sub: Posting of Government employees who have differently abled dependents - reg.

There has been demand that a Government employee who is a care giver of the disabled child may not have to suffer due to displacement by means of routine transfer/rotational transfers. This demand has been made on the ground that a Government employee raises a kind of support system for his/her disabled child over a period of time in the locality where he/she resides which helps them in the rehabilitation.

2. The matter has been examined. Rehabilitation is a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, and psychiatric or a social functional level. The support system comprises of preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors, etc. Thus, rehabilitation is a continuous process and creation of such support system takes years together.

3. Considering that the Government employee who has disabled child serve as the main care giver of such child, any displacement of such Government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be a hindrance for the rehabilitation process of the child. Therefore, a Government servant who is also a care giver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

4. Upbringing and rehabilitation of disabled child requires financial support. Making the Government employee to choose voluntary retirement on the pretext of routine transfer/rotation transfer would have adverse impact on the rehabilitation process of the disabled child.

5. This issues with the approval of MoS(PP).

6. All the Ministries/Departments, etc. are requested to bring these instructions to the notice of all concerned under their control."

The aforesaid office memorandum is followed by another office memorandum No.42011/3/2014-Estt.(Res) dated 17.11.2014 whereby apart from various disabilities mentioned in office memorandum dated 06.06.2014, another disability, namely, "autism spectrum disorder" has also been declared as one of the disabilities for purposes of application of office memorandum dated 06.06.2014.

This office memorandum is also reproduced hereunder:

"Sub: Posting of Government employees who have differently abled dependents - reg.

The undersigned is directed to refer to this Department's OM of even number dated 06.06.2014 (copy enclosed) exempting a Government employee, who is also a care giver of disabled child, from the routine exercise of transfer/rotational transfer subject to the administrative constraints. The word 'disabled' includes (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or Cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities.

2. The matter regarding the scope of 'disabled' has been examined in consultation with the Department of Disability Affairs. Considering the fact that the autism spectrum disorder child requires constant caregiver support and it would be imperative for the Government employees to take care of their autism spectrum disorder child on continuous basis, it has been decided to include 'Autism' in the term 'disabled', as defined in Para 3 of the above-mentioned O.M. dated 06.06.2014.

3. This issues with the approval of the MoS (PP).

4. All the Ministries/Departments, etc. are requested to bring these instructions to the notice of all concerned under their control."

From the endorsements made at the foot of both these office memoranda, it is evident that these OMs have been circulated to all Ministries/Departments of the Government and various PSUs for wider circulation.

8. Respondent No.1 has filed a detailed counter affidavit. In the preliminary submissions, it is stated that the AGMUT cadre of IAS/IPS caters to the needs of four units, i.e., the three States of Arunachal Pradesh, Mizoram and Goa, and the Ministry of Home Affairs, Government of India representing the Union Territories

of Andaman & Nicobar Islands, Lakshadweep, Daman & Diu, Dadra & Nagar Haveli, Puducherry, Chandigarh and Delhi. The constituent units are stated to be far-flung, geographically dispersed and sharply differ from each other climatically, culturally, linguistically and administratively. It is further stated that there is a great amount of diversity amongst the constituents in terms of location, connectivity and educational/medical facilities etc. It is accordingly stated that the cadre management of IAS/IPS officers, especially their transfer/posting requires careful and objective handling. It is also submitted that AGMUT cadre is a joint cadre of four constituents, viz., Arunachal Pradesh, Mizoram, Goa and MHA (representing all Union Territories). It is stated that the Central Government has constituted the Joint Cadre Authority (for short, JCA) required under rule 4(1) of the All India Services (Joint Cadre) Rules, 1972. The JCA has been conferred the power under rule 5(1) of the aforesaid Rules to transfer and post officers amongst its constituent segments. It is further stated that keeping in view the nature of constituents within the AGMUT cadre, policy/guidelines known as "Guidelines for transfer/posting of IAS/IPS officers of Joint AGMU Cadre 2016" have been framed and are in public domain. A copy of the guidelines has been placed on record as Annexure R-1. Under these guidelines the AGMUT cadre has been classified into two categories, namely:

"Category 'A' - Regular Areas -

Delhi, Chandigarh, Goa Puducherry, Daman & Diu and Dadra & Nagar Haveli.

Category 'B' - Hard Areas -

Arunachal Pradesh, Mizoram, Andaman & Nicobar Islands and Lakshadweep."

The policy contains details of total cadre strength of IAS/IPS, including senior scale. The details of the tenures for IAS and IPS officers in the above two categories have been indicated in para 7. The tenure etc. of IAS officers is shown in the following chart:

Category A (Regular Areas)

Category B (Hard Areas)

Total

Delhi, Goa, Chandigarh, Puducherry, DD, DNH and Central Deputation

Arunachal Pradesh, Mizoram, Andaman & Nicobar Islands and Lakshadweep

All Segments

Senior Scale Posts

49 (+44 CD)

61

110

Tenure

9 years 3 tenures

5 years 2 tenures

14 years 5 tenures

Super Time Scale & above posts

52 (+29 CD)

21

73

Tenure

15 years (4 tenures including Central Deputation

4 years 2 tenures

19 years 6 tenures

In para 8, the factors taken into consideration for effecting transfers in two categories of the posts are also indicated. In para 10, the policy provides for enforcement of the guidelines. Relevant part of para 10 reads as under:

"10. To enforce these guidelines, the following provisions would be considered:-

xxx xxx xxx

(iii) Medical certificate furnished by an officer in order to seek his transfer or cancellation of transfer on medical grounds would be placed in his/her APAR dossier and a note to that effect will be made in the column relating to State of Health in the ACR of the relevant period. Also every request/representation of officer for cancellation/change of transfer/posting shall be placed in APAR dossier."

Apart from the above general guidelines, para 17 empowers the Government to transfer an officer to any constituent any time on administrative grounds/in public interest. Para 17 is reproduced hereunder:

"17. Notwithstanding anything contained in this policy, Government (MHA) has the absolute right, if necessary, to transfer or post any officer to any constituent at any time on administrative grounds/in public interest."

9. Relying upon the aforesaid guidelines, it is mentioned that the tenure of the officers has been fixed in the policy for serving in hard areas, and that there is absolute need to allocate sufficient number of officers to the hard areas and soft areas outside Delhi for efficient running of the administration of all segments. It is also mentioned that there is a general tendency among certain officers to avoid postings outside Delhi especially in hard areas. Referring to the case of the

applicant, it is stated that the applicant was selected to the UTs cadre known as DANICS in the year 1988 and appointed on 15.05.1989. He was inducted into the IAS for the select list 2014 vide DOP&T order dated 01.04.2016. Referring to letter dated 23.07.2015 from the applicant, it is mentioned that the applicant initially submitted his unwillingness for appointment to the IAS because of his wife's growing medical predicaments. However, he changed his mind and submitted his willingness dated 22.02.2016 for appointment to the IAS. It is accordingly stated that he was aware of the fact that he was liable for transfer to any segment of the AGMUT cadre. Referring to para 7 of the aforesaid guidelines, it is further stated that an AGMUT cadre officer has to serve about five years in category 'B' hard area and about 9 years in category 'A' regular area while in senior scales. It is stated that the applicant has already served in Delhi for about ten years from the batch of allotment, i.e., 2007, whereas tenure in category 'B' hard area is 'Nil'. The applicant has served only about one year and two months in hard area (in Andaman & Nicobar Islands), while in DANICS he was placed at serial number 2 in the station seniority of GNCTD, and, therefore, was due for transfer to a segment outside Delhi. According to the counter-affidavit, on his promotion to the IAS on 01.04.2016, the applicant was due for transfer from Delhi to outlying segment. However, he submitted a representation dated 06.04.2016 seeking exemption from his transfer/posting out of Delhi to outlying segment in terms of the provisions contained in DOP&T office memorandum dated 06.06.2014 and 17.11.2014 on the ground of serious mental illness of his wife and also mental condition of his minor son. The representation dated 06.04.2016 was placed before the Joint Cadre Authority in its meeting held on 26.04.2016. The Joint Cadre Authority took a considered view on his representation and decided to allow the applicant to continue in Delhi. It is further stated that the Joint Cadre Authority in its meeting held on 26.05.2017 considered the transfer/posting of number of IAS/IPS officers from the regular area to hard area/outside Delhi, and the applicant was one of them. The Joint Cadre Authority approved his transfer/posting from GNCTD to Pudducherry, whereupon the transfer order dated 29.05.2017 has been issued. The GNCTD was requested to relieve the applicant within fifteen days. The applicant again submitted a representation dated 02.06.2017 requesting to cancel the order of his transfer to Pudducherry, again giving reasons of his two differently-abled dependants (son and wife), he being the only caregiver. The representation of the applicant has been taken into consideration by the Joint Cadre Authority and the applicant has been posted to Pudducherry, where best medical facilities are stated to be available in Jawaharlal Institute of Post Graduate Medical Education and Research (JIPMER). The representation of the applicant has been considered and could not be acceded to. It is stated that the transfer is an incidence of service and no Government servant can remain in a particular place or any particular post permanently. The medical condition of dependants of the applicant has been taken into consideration. It is also stated that the applicant has also been relieved w.e.f. 11.05.2017 by the GNCTD to enable him to join the Government of Pudducherry. The respondents have relied upon various

judgments of the Hon'ble Supreme Court, viz., Mrs. Shilpi Bose & others v State of Bihar [AIR 1991 SC 532]; Union of India v S. L. Abbas [(1993) 4 SCC 357]; State of UP & others v Goverdhan Lal [2004 (3) SLJ 244 SC]; as also a judgment of the Hon'ble High Court of Delhi in Sujata Kohli v High Court of Delhi [148 (2008) DLT 17 (DB)].

10. The applicant has filed a rejoinder. Besides reiterating the averments made in the OA, the applicant has also mentioned that though initially he conveyed his unwillingness for induction into IAS, however, later when OM's dated 06.06.2014 and 17.11.2014 were notified, the applicant submitted his willingness dated 22.02.2016 to the respondents. The applicant has also mentioned that since operation of the impugned order dated 29.0.2017 was kept in abeyance by this Tribunal vide order dated 17.07.2017, the relieving order dated 11.07.2017 by the GNCTD has become infructuous. It is further stated that the applicant neither received the relieving order dated 11.07.2017 nor he was relieved by the Power Department, Government of NCT of Delhi, where he is substantially posted and drawing salary. He was on medical leave w.e.f. 30.06.2017 to 14.07.2017 and he reported for duty on 17.07.2017 in the Power Department. A sur-rejoinder has been filed by the respondents only to reiterate the averments made in the counter affidavit.

OA No.2233/2017

11. The applicant who is a Senior Public Prosecutor, CBI, has been transferred from SC.I, New Delhi to CBI, SCB, Kolkata with immediate effect vide office order No.1223/2017 dated 30.06.2017. The factual background of this case is that the applicant was initially appointed as Assistant Public Prosecutor with CBI on 18.01.2007 at Nagpur (Maharashtra) where he served till 30.06.2008, whereafter he was posted at Jabalpur, where he served from July, 2008 to September, 2011. The applicant was thereafter selected for the post of Senior Public Prosecutor by way of direct recruitment through UPSC in CBI, where he joined on 06.09.2011 and posted at ACB/CBI, Mumbai. He was later transferred to Jaipur in July, 2012 where he served till March, 2014. The applicant was thereafter transferred to Delhi. The family of the applicant consists of his wife and two children - one son presently seven years of age, and one daughter four years of age. The applicant has challenged his transfer on two grounds - (i) that his son, namely, Master Navam is disabled and suffering from autism spectrum disorder; and (ii) that the applicant himself is an acute diabetic patient and is on high dose of insulin. The wife of the applicant is also stated to be suffering from acute hypothyroid and is under treatment from Safdarjung Hospital. She is also suffering from severe varicose veins, impairing her movement.

She is also stated to be suffering from continuous temporary paralytic attacks and is under treatment from Indian Spinal Injuries Centre, New Delhi. The applicant has placed on record disability certificate of his son dated 11.06.2014 issued by PGIMER - Dr. Ram Manohar Lohia Hospital, New Delhi, Navam (Annexure A/3). Relevant part of the certificate reads as under:

"This is to certify that I have carefully examined Shri/Smt/Kum NAVAM SHRIVASTAVA son/wife/daughter of Shri PRADEEP KUMAR SHRIVASTAVA Date of Birth 09.09.2009 Age 04 years, male. Registration No.PSY/20140369611 permanent resident of House No.316 Block-G, Ward/Village/ Street PRAGATI VIHAR HOSTEL, LODHI ROAD, District Delhi State Delhi whose photograph is affixed above, and am satisfied that he/she is a case of MODERATE MENTAL RETARDATION WITH AUTISM 75% disability. His/her extent of percentage physical impairment/disability has been evaluated as per guidelines."

12. It is stated that earlier when the applicant was posted at Jaipur, he requested for his transfer/posting to Delhi as effective treatment of his autistic son was not possible at Jaipur. Vide order dated 03.03.2014 the applicant was transferred by mutual exchange to Delhi and was posted at EO-I branch, New Delhi from March, 2014 to September, 2014, and was further posted in SC-I branch, New Delhi from September, 2014. It is also mentioned that since posting in SC-I branch, New Delhi involves frequent outstation touring due to which not only the applicant's health deteriorated but also he was not able to pay full attention towards his autistic child, he requested the respondents to post him to a non-touring branch at Delhi itself vide his application dated 05.04.2017. It is mentioned that the disabled son of the applicant is taking treatment in Delhi-based hospital, including AIIMS, Safdarjung Hospital and Dr. Deepak Gupta, MD (Psychiatry), Sir Ganga Ram Hospital, Delhi. The child is continuously taking speech therapy, occupational therapy and special education, and has been admitted in an enrichment centre. It is further mentioned that the applicant was able to arrange suitable medical, educational and better surroundings for his autistic child after facing numerous difficulties, which has already taken a lot of time to make him comfortable at Delhi. The applicant has also placed on record medical certificates regarding his son's treatment at Delhi. Another certificate issued by AIIMS OPD reads as under:

"C/o Hyperactive

- Speech is not developed. Speaks meaningless words.
- Repetitive body movement.
- Comprehension is poor.
- FTND, delivered at hospital, Breach baby.
- Normal development Milestones except Speech N. H/o ineligible/heart injury.
- Does not mix-up with other children.

IQ Assessment is done using V.S.M.S. The overall S.A is causing among 2 years. The S.Q. is falling in a range age 40-44 which suggest Moderate M.R. child is unable to tied himself properly. He cannot dress, take bath or comb his hair. He is not toilet trained, speech is not developed except few words (Memo syllable). Speech is unclear social skills are not developed act all.

Parents are counseled plan for Autism assessment. F/U on next Tuesday."

The applicant has placed on record another certificate from Shakti Foundation which reads as under:

"This is to inform that Master Navam Shrivastava S/o Mr. Pradeep Kumar Shrivastava aged 7.10 years is a Special Child. Master Navam was assessed at Shakti Foundation and diagnosed as Autism spectrue disorder. He is undergoing therapeutic intervention since last 3.6 years and improving very well. The is taking Occupational Therapy since last 3.6 years and is very regular. He is responding very well and after taking regular therapeutic intervention he is admitted in Integrated School. In school also his performance is quite satisfactory.

I want to say that he needs regular therapeutic intervention further also. If therapeutic intervention stops or irregular, he might be show poor performance in daily life skills as well as school performance."

Apart from these certificates, some prescriptions from Safdarjung Hospital and speech therapy assessment report from Shakti Foundation have also been placed on record. Another medical record comprises of Dr. Deepak Gupta's prescriptions who is a Consultant Child & Adolescent Psychiatrist. Even Dr. Gupta has given a certificate dated 02.02.2015 mentioning suggestive of autism spectrum disorder. There are other prescriptions from Fortis Escorts Hospital, which are suggestive of speech disorders and autism spectrum disorder. The applicant has also placed on record medical prescriptions and reports of his diagnostic tests wherein his glucose levels (fasting & PP) have been shown between 141-174 and 231-401 respectively. However, these reports are for the year 2015. The applicant has also placed on record medical reports from CGHS Specialist Wing, Safdarjung Hospital, which indicate that wife of the applicant Smt. Shweta Shrivastava is being treated for thyroid.

13. The respondents have filed their counter-affidavit resisting the prayer of the applicant. The respondents have given details of the postings of the applicant in CBI from the date of his appointment since the year 20078 as under:

"(i) Nagpur

18.01.07 to 30.06.08

(ii) Jabalpur

01.07.08 to 05.09.11

(iii) ACB/Mumbai

06.09.11 to 30.06.12

(iv) ACB/Jaipur

04.07.12 to 05.03.14

v) EO-I/New Delhi

06.03.14 to 10.09.14

(vi) SC-I/New Delhi

11.09.14 to 30.06.14"

Regarding the status of the applicant's child who is allegedly suffering from autism spectrum disorder, it is stated that office memorandum dated 06.06.2014 is for exemption of care-giver's transfer from routine exercise subject to administrative constraints. It is further stated that transfer is a prerogative of the department and is an exigency of service and cannot be interfered by the Tribunal as it does not sit as a court of appeal. The respondents have relied upon the judgments of the Apex Court in *State of Haryana & others v Kashmir Singh & another* [(2010) 13 SCC 306]; *C.I.T v Sun Engg Works (P) Ltd.* [(1992) 4 SCC 363]; *Government of Karnataka & others v Gowramma & others* [AIR 2008 SC 863]; and *Union of India v S. L. Abbas* [AIR 1993 SC 2444]. The respondents have also mentioned that while the applicant was posted in Jaipur, on 29.08.2013 he intentionally tried to bribe one L. L. Meena, Crime Assistant, CBI, Jaipur in his office cabin by forcefully putting a bunch of currency notes in his pocket as motive or reward for getting transfer travelling allowance bills processed from the office, for which regular departmental proceedings have been initiated against the applicant which are at present pending. In respect to the office memorandum dated 06.06.2014 and 127.11.2014 it is stated that the same are matter of record. While admitting about the medical treatment of the applicant's son for autism spectrum disorder, it is stated that Kolkata is a metro city where each and every medical facility is readily available. It is stated that no mala fide is involved in the transfer of the applicant which has been approved by the competent authority. Accordingly, the respondents have sought dismissal of the OA.

14. In the rejoinder the applicant has referred to transfer of two Senior Public Prosecutors, namely, Pankaj Gupta and T. P. Negi who were transferred to Kolkatta three months back and have been posted at Delhi upon their request. The applicant has reiterated the averments made in the OA and laid emphasis on the OMs dated 06.06.2014 and 17.11.2014.

15. Apart from the medical grounds of the applicant's son, himself and his wife, the applicant has also claimed violation of the transfer policy. It is stated that as per the transfer policy, normal tenure for posting is seven years in a particular branch or fourteen years in a particular station, whichever is less. In case of the applicant, neither he has served seven years in a particular branch nor fourteen years in a particular station, and thus there is violation of the transfer policy.

16. The respondents have produced the transfer policy dated 12.06.2015 for Constables to Additional SP, Law Officers and Technical and Ministerial Staff in CBI. Para (B) relates to tenure which reads as under:

"(B) Tenure of posting:

? For Constables to Addl. SP, Law Officers and Technical Staff, the normal tenure shall be 07 years in a particular Branch or 14 years at a particular Station, whichever is less.

? For other ranks as Ministerial Staff, the tenure shall be 10 years in a particular Branch or 14 years at a particular Station, whichever is less.

? The specialized officers may be given relaxation of maximum length of tenure in a particular branch beyond 07 years after duly recommended by the concerned HoB and HoZ. This relaxation may not be more than 03 years. However, the maximum continuous tenure at one Station shall be 14 years only.

? For the Hard Zones i.e. NER, J&K, A&N Island, the tenure will be minimum 02 years and after that one may be considered for posting at a Station of his/her choice to the extent possible in the interest of administrative efficiency.

? Every official must serve minimum 03 Stations in entire career including 01 Hard Zone posting.

? The minimum tenure at a branch/station will be 03 years."

Admittedly, there is violation of the transfer policy. The applicant has neither completed seven years at a particular branch nor fourteen years at a particular station. In any case, the more important aspect is the request for exemption from transfer on account of the disability of his son. The respondents have not disputed the factum of disability of the applicant's son.

17. When OA No.2236/2017 was taken up for consideration on 11.07.2017, by way of interim direction, the operation of the impugned order dated 29.05.2017 was kept in abeyance till next date of hearing, and thereafter the said interim order has been continued till the matter was heard finally and reserved for orders. Similar directions in OA No.2233/2017 were passed on 11.07.2017.

18. We have heard the learned counsel for parties at length and have carefully gone through the transfer policy of respondent No.1 regarding transfer of IAS/ IPS officers of joint AGMUT cadre of 2016 (Annexure R-1) as also the OMs dated 06.06.2014 and 17.11.2014.

19. There is absolutely no dispute that the applicant is governed by the aforesaid transfer policy which inter alia provides for transfer to two classified areas, i.e., regular areas and hard areas. The applicant on induction to the IAS and even prior to that had served in New Delhi, except for a period of less than two years at a hard station, i.e., Andaman & Nicobar Islands. He is governed by the aforementioned transfer policy and according to the conditions of the policy, he is liable to be transferred to outlying segments of the constituent units of the AGMUT cadre, including Pudducherry. There is also no quarrel with the proposition of law enunciated in the aforementioned judgments relied upon by the respondents, as it is now settled law that the transfer of a Government

servant is an incidence of service and no person has any right or claim to a particular post or station. However, the transfer policy guidelines are meant to be applied in routine rotational transfers of Government servants belonging to the cadre. Having examined the transfer policy in its entirety we find that these policy guidelines are meant for normal circumstances under which a Government servant is required to serve at various places on the cadre posts. There is only one condition which inter alia deals with the medical circumstances, i.e., clause (iii) of para 10 quoted hereinabove. This condition deals with the state of health of the Government servant, which can be a ground for seeking cancellation of transfer on medical grounds. This policy in no manner deals with a situation like the present one. The circumstances whereunder the applicant has questioned his transfer and is seeking cancellation of the same are absolutely different and not envisaged by the aforesaid policy, though relevant where the transfer is effected in normal and due course of a member of the Service. However, where the transfer is challenged on grounds other than those envisaged in the transfer policy, the respondents are under an obligation to consider the exclusive/special circumstances prevailing at the time of effecting the transfer of a Government servant. It goes without saying that the object and purport for which the policy decision dated 06.06.2014 followed by the one dated 17.11.2014 were formulated and notified, has to be respected by all the departments of the Government. The applicant has placed on record sufficient medical evidence to support his plea of illness of his only son who is of adolescent age at 13 years suffering from mental retardation of a peculiar kind known as "autism spectrum disorder" (ASD), and that of his wife who too is suffering from schizophrenic mental disorder and obsessive compulsive disorder, besides a diabetic. The contention of the respondents is that the representations of the applicant have been duly considered by the Joint Cadre Authority, and on consideration the applicant has been transferred to Puducherry, where adequate medical facilities are available.

20. The question that arises for consideration is, is it the availability of medical facilities which is the sole criteria for declining the request of the applicant, or there are circumstances in addition to the medical facilities which needed consideration of the respondents and are also to be examined by this Tribunal in exercise of its power of judicial review to judge the validity of the order of transfer and consequential rejection of the applicant's request. For this purpose, we may firstly examine the Government policy notified by the DOP&T vide its policy decision dated 06.06.2014 and dated 17.11.2014. The preface of the policy refers to demand of the Government employee who is a caregiver to the disabled child to seek exemption from routine/rotational transfer. Reference is made to the support system for such disabled child over a period of time in the locality where he/she resides, which helps in the rehabilitation of the disabled child. Para 2 of the policy refers to the nature of disabilities which fall within the purview of the policy. The disabilities referred to in paras 2 and 3 are wide ranging. Special emphasis is laid to persons with disabilities to reach and

maintain their optimal physical, sensory, intellectual and psychiatric or a social functional level. The support system which is required to be provided to such disabled child includes preferred linguistic zone, school/academic level, administration, neighbours, tutors/special educators, friends, medical care including hospitals, therapists and doctors etc. It is also provided that rehabilitation of such disabled child is a continuous process and creation of such support system takes years together. The policy decision dated 06.06.2014 has been supplemented by the policy decision dated 17.11.2014 wherein apart from the known kind of disabilities recognized, another special disability, namely, autism spectrum disorder, has been included in the scope of disabilities with which a person may be suffering, and for which the policy dated 06.06.2014 was issued.

21. 'Autism' has been defined by various dictionaries and references in the following manner:

"Autism is a complex neurobehavioral condition that includes impairments in social interaction and developmental language and communication skills combined with rigid, repetitive behaviors. Because of the range of symptoms, this condition is now called autism spectrum disorder (ASD)."

The causes for autism are genetic and environmental factors. We have also carefully perused the "Psychoeducational Evaluation Report" prepared by the Development Clinic, Department of Neonatal, Pediatrics and Adolescent Medicine, BLK Super Specialty Hospital. This assessment was made on 23.10.2015. Various scientific and other procedures were applied, including the inputs from the parents and the school, and the behavioural aspect of the child. After such evaluation following summary is noticed:

"In summary, Aparnesh's cognitive profile demonstrates poor reading comprehension skills (the inability to receive, comprehend, organize, and express language in its appropriate forms in the absence of sensory impairments), a written expression deficit (he is unable to effectively communicate thoughts and ideas in a structured, sequential, and organized form) and poor processing speed."

Based upon the aforesaid evaluation, recommendation was made for the rehabilitation of the child, which inter alia includes additional time for his exams; to reduce quantity of work in favour of quality; exemption of third language; to shorten writing assignments etc.; extra time to complete reading, math, or writing tasks; use of scribe during exams or assessments; preferential seating in a classroom; and also considering alternative methods other than a written test.

22. This evaluation of the applicant's son by expert body clearly establishes that the child is suffering from autism spectrum disorder. The efforts for his rehabilitation are being made but as noticed hereinabove and as referred to in the policy also, it is not only educational aspect or the medical treatment which is required for such disabled child; it is the complete support system which inter

alia include the environment, like language comfort, friends, tutors/special educators, school and home environment, counseling, the manner of interaction with the child, and so on. The applicant's son is studying in Sanskriti School, New Delhi, which is one of the prestigious schools. The medical evaluation report also suggests that such a child should be kept in normal atmosphere, to be allowed to study with the normal children and to be allowed to interact with them, with the other support system envisaged and suggested by the medical and psychotherapy experts. The respondents have raised a plea that the applicant's son is studying in a normal school. In other words, the respondents are doubting the status of the child of the applicant, as pleaded in the OA. Such an approach needs to be deprecated.

23. Now coming to the second limb of the applicant's plea against his transfer is the long and continued illness of his wife. The medical reports which inter alia include OPD cards, prescriptions and tests have been placed on record. All these prescriptions are from Deen Dayal Upadhyay Hospital, Safdarjung Hospital and Netaji Subhash Institute of Technology, and the authenticity of these documents cannot be disputed. There is a certificate by Dr. Anuj Mittal, Specialist & HOD, Department of Psychiatry, DDU Hospital, New Delhi, dated 08.09.2015 (Annexure-III), which reads as under:

"It is to certify that Richa Chetna is suffering from Schizophrenia (a major mental illness) since last 10 years. Currently she is under my treatment. She needs regular treatment & care by close family member."

24. At the first place, the medical evidence produced by the applicant has not been disputed by the respondents and in fact should not have been disputed unless there are serious doubts about their authenticity. To the contrary, the first representation of the applicant dated 06.04.2016 seeking exemption from transfer on the ground of illness of his wife and mental status of his child was accepted and the applicant was allowed to continue in Delhi, as per the clear admission made by the respondents in the counter-affidavit.

25. From the reading of the various documents referred to above, it comes to the fore that it is not only the medical facilities which matter for the applicant to provide medicare and for rehabilitation of his child and wife, but the host of factors referred to hereinabove which are also to be taken note of, rather given credence and weightage. Autism has been introduced in the supplementary policy dated 17.11.2014, which has a laudable purpose and clear objective to provide circumstances and environment for the rehabilitation of such a child. Apart from the above policy decision, the Parliament enacted "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995".

Besides defining the nature of disabilities for the persons suffering from disabilities and various opportunities to them, Section 66 of the aforesaid Act also provides social security, which includes rehabilitation of all the persons with

disabilities, including grant of financial assistance to non-governmental organizations providing such kind of rehabilitation. The 1995 Act has now been replaced by the new Act, namely "Rights of Persons with Disabilities Act, 2016".

Some relevant provisions of this Act are noticed hereunder:

"3. Equality and non-discrimination.-(1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others."

"4. Women and children with disabilities.-(1) The appropriate Government and the local authorities shall take measures to ensure that the women and children with disabilities enjoy their rights equally with others.

(2) The appropriate Government and local authorities shall ensure that all children with disabilities shall have right on an equal basis to freely express their views on all matters affecting them and provide them appropriate support keeping in view their age and disability."

"16. Duty of educational institutions.-The appropriate Government and the local authorities shall endeavour that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities and towards that end shall-

(i) admit them without discrimination and provide education and opportunities for sports and recreation activities equally with others;

xxx xxx xxx

(iv) provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;

xxx xxx xxx

(vi) detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;

(vii) monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;"

"17. Specific measures to promote and facilitate inclusive education.-The appropriate Government and the local authorities shall take the following measures for the purpose of section 16, namely:-

(a) to conduct survey of school going children in every five years for identifying children with disabilities, ascertaining their special needs and the extent to which these are being met:

Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;"

xxx xxx xxx

(c) to train and employ teachers, including teachers with disability who are qualified in sign language and Braille and also teachers who are trained in teaching children with intellectual disability;

xxx xxx xxx

(j) to promote research to improve learning; and (k) any other measures, as may be required."

"24. Social security.-(1) The appropriate Government shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community:

Provided that the quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least twenty-five per cent. higher than the similar schemes applicable to others."

"27. Rehabilitation.-(1) The appropriate Government and the local authorities shall within their economic capacity and development, undertake or cause to be undertaken services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities."

"28. Research and development.-The appropriate Government shall initiate or cause to be initiated research and development through individuals and institutions on issues which shall enhance habilitation and rehabilitation and on such other issues which are necessary for the empowerment of persons with disabilities."

"38. Special provisions for persons with disabilities with high support.-(1) Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support."

This Act also defines the terms "care-giver", "high support", "inclusive education" and "person with disability" in Section 2, asunder:

"2. Definitions.-In this Act, unless the context otherwise requires,-

xxx xxx xxx

(d) "care-giver" means any person including parents and other family Members who with or without payment provides care, support or assistance to a person with disability;

xxx xxx xxx

(l) "high support" means an intensive support, physical, psychological and otherwise, which may be required by a person with benchmark disability for daily activities, to take independent and informed decision to access facilities and participating in all areas of life including education, employment, family and community life and treatment and therapy;

(m) "inclusive education" means a system of education wherein students with and without disability learn together and the system of teaching and learning is suitably adapted to meet the learning needs of different types of students with disabilities;"

xxx xxx xxx

"(s) "person with disability" means a person with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others;"

This enactment confers various rights and entitlements under Chapter-II upon persons with disabilities. Section 3 confers the enjoyment of right to equality, life with dignity and respect for such persons. Section 4 requires the appropriate Government to take measures to ensure that women and children with disabilities enjoy their rights equally with others. Section 16 imposes an obligation upon educational institutions to provide necessary support, individualised or otherwise, in environments that maximise academic and social development of disabled persons; detect specific learning disabilities in children and take suitable measures to overcome them; and monitor participation, progress in terms of attainment of levels and completion of education of the students with disabilities. Section 17 further imposes an obligation and requires the educational institutions to conduct survey of school going children every five years to identify special needs and the extent to which these are being met by the institutions; to train and employ teachers who are qualified in sign language etc. to teach the children with intellectual disabilities; and also to promote research to improve learning and take such other measures as are required in this direction. Section 24 provides social security, of course, within the economic capacity of the appropriate Government, to formulate necessary schemes and programmes to safeguard and promote the rights of persons with disabilities. Section 27 further required the appropriate Government and local authorities within their economic capacity to undertake services and programmes of rehabilitation, particularly areas of health, education and employment for persons suffering from disabilities. Section 28 requires the Government to ensure research and development for the empowerment of persons with disabilities. Section 38 makes a provision for providing high support to any person with benchmark disabilities, in accordance with the procedure prescribed therein.

26. The intendment of this statute is evident from the above quoted Sections. The entire scheme of the statute is to provide all possible support to the persons suffering with disabilities, particularly in their education, health care and to

provide conducive atmosphere for their living with dignity. The definition of "care-giver" includes "parents and other family member" who provides support or assistance to a person with disability. The definition of "high support" includes an intensive support - physical, psychological and otherwise - which is required to be provided for the daily activities of persons suffering with benchmark disabilities to enable them to take independent decisions with the passage of time, and to enable them to acquire education, employment etc. "Inclusive education" includes the system of teaching and to suitably adapt to meet the learning needs of students with disabilities. The term "person with disability" has been defined to mean person with long term physical, mental, intellectual or sensory impairment, which hinders the effective participation of such person in society. Even though the policy decisions dated 06.06.2014 and 17.11.2014 were earlier in time than the Right of Persons with Disabilities Act, which came to be enacted in 2016, nonetheless the aim and object of the above policy decisions is same as the enactment. It would not be incorrect to say that the policy decision of the Government has been adopted in the form of the enactment. The policy was a solemn commitment of the State and its functionaries towards persons suffering from disabilities, including autism spectrum disorder, and after the 2016 Act, it now becomes the statutory obligation of the State to provide the support system to the persons with disabilities, including high support wherever required. In order to provide the support system to the disabled, the role of the care-giver cannot be ignored. The definition of care-giver under Section 2(d) includes the parents. Even otherwise, the parents being responsible legally, socially and morally to their minor children, have to be given due and required support to enable them to provide support system to their disabled children for their rehabilitation, including their education, health care and environment etc.

27. It is on the basis of the aforementioned parameters that the validity of the impugned transfer of the applicant is required to be addressed. Undisputedly, the child and the wife of the applicant are disabled persons. They require special attention, high support, medicare, social and physical support even for their day to day activities. The applicant is the sole member in the family who is to provide them such kind of support and is thus a 'care-giver'. The transfer policy of the Government is meant for the Government servants whose circumstances are normal and not extraordinary. Here is a case where the applicant has extraordinary, rather abnormal circumstances. His request for transfer cannot be looked into under the normal circumstances. Special circumstances exist and have to be addressed differently. Special disease requires special treatment.

28. In the present case, shifting of the applicant would have definitely adverse impact on the child and wife of the applicant, particularly the child. Pudducherry being in South zone, the child would definitely feel language problem in interaction with his teachers and classmates. He will have to develop new relations in a new school both with teachers and students. Sanskriti being a very prestigious and advanced institute, there may be special educators for such disabled children. In any case, over the years the teachers may have understood

the disability factor of the applicant's son and they may be in a better position to communicate and interact with him. The atmosphere at Delhi for study of the child of the applicant is conducive. He is undergoing treatment at Delhi and is being assessed and evaluated by an expert super specialty hospital. We are not informed that similar facilities on medical front would be available at Pudducherry. There may be doctors who may be able to treat such disability, but without the other support system, such treatment may not be an effective instrument. It is the total support system for such a disabled child, which includes the social atmosphere, the language, communication, interaction and various other aspects that matter for his rehabilitation, which are essential. Such support system may be lacking at Pudducherry. One cannot take a chance with the new environment under the given circumstances.

29. Insofar as the guidelines issued in respect to the transfer of Government employees are concerned, such guidelines only provide parameters for effecting transfer of Government employees, and are not enforceable like statutes or statutory rules, and do not confer any legally enforceable right on the Government servant. In *Union of India v S. L. Abbas* [AIR 1993 SC 2444], the Hon'ble Supreme Court held that guidelines issued by the Government did not confer upon the employee a legally enforceable right and, therefore, even though the authorities are bound to keep in mind such guidelines, the order of transfer cannot be interfered with unless it is vitiated by mala fides or has been passed in violation of any statutory rule. However, where executive instructions confer some kind of special privileges under special situations, such guidelines, in absence of any statutory rules would have to be adhered to and followed by the State as a model employer. In the present case, the transfer policy relied upon by the respondents is of general character, whereas the policy guidelines dated 06.06.2014 and 17.11.2014 demonstrate a special and specific policy of the Government in respect to specified category of the people who constitute a class themselves. Such policy decisions which are in the nature of privileges for under-privileged members of the family of a Government servant, have to be followed by the Government. It is settled law that the Government is bound to adhere to its own policy. In *Swaran Singh Chand v Punjab State Electricity Board & others* [(2009) 13 SCC 758], the Hon'ble Supreme Court made following observations:

"8. It is furthermore well settled that when the State lays down the rule for taking any action against an employee which would cause civil or evil consequence, it is imperative on its part to scrupulously follow the same. Frankfurter, J. in *Vitarelli v. Seaton* [3 L Ed 2d 1012 : 359 US 535 (1958)] stated: (US pp. 546-47)

"An executive agency must be rigorously held to the standards by which it professes its action to be judged. ... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed. ... This

judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

In *Home Secretary, UT of Chandigarh v Darshjit Singh Grewal and others* ((1993) 4 SCC 25], the Apex Court observed as under:

"14. It may be relevant to emphasise at this juncture that while the rules and regulations referred to above are statutory, the policy guidelines are relatable to the executive power of the Chandigarh Administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned including the Chandigarh Engineering College, the Administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it."

In yet another decision reported as *Virender S. Hooda & others v State of Haryana & others* [(1999) 3 SCC 696] the Hon'ble Supreme Court while observing that the view taken by the High Court that administrative instructions cannot be enforced in the matter of recruitment would amount to looking at the matter from a narrow and a wrong angle, further held that policy decision taken by the Government is binding, if it is not contrary to the rules.

30. In view of the factual circumstances and the position in law, we are of the view that the present applicants have to be given a different treatment than envisaged under the transfer policies of the respondents. The respondents have failed to take into consideration the circumstances mentioned by the applicants in their respective representations indicating disability of their children and spouse requiring special attention, care and high moral support. Mere consideration of the request without taking into consideration the circumstances and the policy of the Government of India, which is surely and definitely attracted in the present state of circumstances, the decision to transfer the applicants is not only against the statutory rights of the children and spouse of the applicants but against the public policy and the provisions of the Rights of Persons with Disabilities Act, 2016 and the policy guidelines dated 06.06.2014 and 17.11.2014.

31. These OAs are accordingly allowed. The impugned transfer order dated 29.05.2017 in OA No.2236/2017 and the order dated 29.06.2017 rejecting the applicant's request for cancellation of his transfer; and the transfer order dated 30.06.2017 along with the relieving order of even date impugned in OA No.2233/2017, are hereby quashed.