
(2007) 02 MP CK 0040
In the Madhya Pradesh High Court

Smt. M. Geeta

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 07-02-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 227

Madhya Pradesh Re-organisation Act, 2000 — Section 67, 71

Citation : (2007) 3 MPLJ 118

Hon'ble Judges : P.K. Jaiswal, J;A.K. Gohil, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Gohil, J.

Petitioner has filed the present petition under Article 227 of the Constitution of India challenging the order dated 28-11-2006 passed by the Central Administrative Tribunal, Jabalpur, in O.A. No. 256/05, whereby the Tribunal dismiss the petition of the petitioner regarding the allocation of the petitioner to the State of Chhattisgarh and also challenging the order dated 23-2-2005 by which representation for reconsideration of allocation of her cadre to the State of Chhattisgarh from the State of Madhya Pradesh was rejected. The aforesaid order of rejection dated 23-2-2005 was challenged in the aforesaid O.A. No. 256/05.

The facts of the case are that the applicant is an IAS Officer of M.P. Cadre and is presently posted as Additional Commissioner, Gwalior in Chambal Division. On formation of the newly created State of Chhattisgarh w.e.f. 1-11-2000, the petitioner amongst others was allocated to the IAS Cadre of Chhattisgarh vide notification dated 31-10-2000. Against the aforesaid allocation she filed O.A. No. 1031/2000 before the Tribunal. Since no interim relief was granted in her favour, she filed Writ Petition No. 7154/2000 in the High Court of Judicature at Jabalpur and an interim order dated 5-1-2001 was passed in her favour looking to her personal difficulties as she was pregnant at that time. O.A. No. 1031/2000 was

finally disposed of on 11-5- 2004 in terms of the order passed by the High Court on 15-9-2003 in W.P. No. 21562/03 and in pursuance of the aforesaid order the petitioner made a representation to the respondent No. 1 Central Govt. on 23-8-2004 requesting for retention of Madhya Pradesh Cadre on the ground that her husband is a bank officer was posted there. The representation rejected by the respondents vide order dated 23-2-2005 on the ground that the petitioner cannot claim allocation to a particular cadre as a matter of right and vide order dated 9-3-2005, the petitioner was directed to be relieved. She again challenged the aforesaid order in O.A. No. 256/05.

The case was contested before the Tribunal by the respondents. Detailed reply was filed by the respondents. It was contended on behalf of the respondents that allocation of the cadre is an exclusive domain of the department and a member of All India Service, therefore bears liability to serve either the Union or the State to which he/she is allocated in accordance with the principles of cadre allotment. On the formation of the State of Chhattisgarh, the applicant was allocated to the IAS Cadre of Chhattisgarh in accordance with the norms and guidelines recommended by the U.C. Agrawal Committee constituted u/s 71 (Part VIII) of the Madhya Pradesh Reorganisation Act, 2000, which has been followed uniformly in all similar cases as on the formation of new State the allocation of the officers was necessary. It was also submitted that the representation of the petitioner was considered strictly in accordance with the policy. In the reply it was also submitted that the case of Bimal Julka, IAS, cited by the petitioner was different from the case of the petitioner. The learned Tribunal after considering the various aspects of the matter dismissed the writ petition holding therein that there is a severe shortage of manpower in the newly created State of Chhattisgarh. The State is suffering on account of manpower shortage. As regards her personal problems that her husband is a bank officer posted in Madhya Pradesh is concerned, as per the transfer policy, inter-cadre transfer is allowed only in the case of marriage between two All India Service Officers and the case of petitioner does not strictly come under the ambit of posting of husband and wife at the same station and the aforesaid policy is in the nature of guideline of general nature and the same can only be considered in view administrative requirement and the request made solely on the ground that her husband is working in the State of Madhya Pradesh is not a valid ground warranting our interference in a matter of allocation of cadre.

In the writ petition before this Court, the petitioner submitted that the order dated 23-2-2005 under challenge before the CAT was passed by the Government of India without considering the office memorandum No. 3486, dated 3-4-1986, which clearly provided that the objective of issuing the guidelines by way of office memorandum is to ensure that the husband and wife are, as far as possible and within the constraints of administrative convenience, posted at the same station. The said policy was further reiterated by another office memorandum dated 12-6-1997, in which it was further clarified that even cases where only wife is a Government servant, the concession elaborated in this O.M.

would be admissible to the Government servant and these policies are having binding effect.

It was further submitted that in O.A. No. 256/05 before the CAT the rejection order dated 23-2-2005 was challenged on two grounds namely arbitrariness and hostile discrimination against the petitioner but the Tribunal has not considered both the grounds and the Union of India has not filed any reply in the writ petition. Therefore, the contention of the petitioner was that the averments mentioned in the writ petition be treated as admitted. It was also submitted that by an amendment application dated 18-6-2006 (Annexure P-VI) before the CAT the averments with regard to arbitrariness and discrimination were pleaded by the petitioner and the aforesaid amendment was allowed on 23-6-2006 (Annexure P-IX), but no reply of the same was filed and even after the amendment the learned Tribunal has not considered the question of arbitrariness and discrimination and dismissed the O.A. No. 256/05 on 28-11-2006, which has been challenged in this writ petition.

In the writ petition we have heard the learned Counsel for the parties. Shri Anoop Choudhary, learned Sr. Advocate vehemently argued and submitted that the order passed by the Tribunal on 28-11-2006 and the order of rejection of her representation dated 23-2-2005 are contrary to law as well as contrary to the guidelines and policy issued by the Union of India for allocation of the employees to the State of Chhattisgarh. Petitioner vehemently submitted that the policy issued by the Government of India under Clause 4(v) provides that once spouse belongs to All India Service and the other spouse belongs to a Public Sector Undertaking, the spouse employed under Public Sector Undertaking may apply to the Competent Authority and the said authority may post the said officer to the station or if there is no post under the PSU in that station, to the State where the other spouse posted. The husband of the petitioner is working in the Allahabad Bank recruited as Manager and specialist in Mercantile Banking was initially posted at Hyderabad, Andhra Pradesh and has moved to the Madhya Pradesh only after the petitioner was allocated to the cadre of the State of Madhya Pradesh and request was made by the husband of the petitioner to the CMD of the Allahabad Bank for his transfer to the State of Madhya Pradesh and on allocation of the petitioner to the State of Chhattisgarh, it is not possible for her husband now to see his retransfer to inter-State again on the same lines. Neither the CAT nor the respondent Union of India has considered the personal difficulties of the petitioner. The Government of India rejected the representation of the petitioner without considering the fact that the Government has already considered the case of Bimal Julka and one Mohd. Suleman and six other officers. Representations were accepted and they were allowed to work in the State of Madhya Pradesh. While rejecting the representations of the petitioner, Government of India did not deny that the O.Ms, were not applicable to the petitioner's case. In the rejection order of representation nothing has been mentioned about the case of Mohd. Suleman and other six officers. Therefore, it is clearly a case of hostile discrimination meted out to the petitioner. Neither the

Union of India nor the Tribunal in its order even dealt with the arbitrary action and the question of discrimination, which was repeatedly raised by the petitioner and mentioned elaborately in her representation. It was further contended that the policy should be applied uniformly. The petitioner is also having special circumstances of hardship as she has a small child and as per policy, husband and wife should be posted together till the children are 10 years of age. Therefore, it is clearly a case of arbitrariness and hostile discrimination and placed reliance on the Constitution Bench judgment in the case of E.P. Royappa Vs. State of Tamil Nadu and Another, and also on a decision in the case of Divisional Manager, United India Insurance Co. Ltd. and Another Vs. Samir Chandra Chaudhary, .

In reply learned Counsel for the Union of India supported the order passed by the CAT dated 28th November, 2006 and his submission was that the representation of the petitioner was rejected by a detailed reasoned order. He placed reliance in the case of Union of India (UOI) and Others Vs. Rajiv Yadav, IAS and Others, that a member of All India Service bears liability to serve in any part of India. A selected candidate has a right to be considered to the IAS but he has no such right to be allocated to a cadre of his choice or to his home State. Allotment of cadre is an incidence of service. It was submitted that in the matter of allocation, the representation has been considered strictly on the basis of policy and neither it is a case of any arbitrary action against the petitioner nor a case of discrimination between the employees. The cases of other employees are not at part and in all cases the decision has been taken on the basis of rational policy.

Shri Vivek Khedkar, Advocate appearing on behalf of the State of Chhattisgarh vehemently opposed the petition and submitted that petitioner has suppressed the material fact regarding the pendency of Writ Petition No. 1091/05, which is pending in the High Court of Chhattisgarh, from where the petitioner has obtained the stay suppressing the aforesaid fact that O.A. was as well as this petition was filed and nothing has been mentioned in the petition about the filing and pendency of the aforesaid petition. It was stated that this petition has been filed not only by suppressing the material facts but on the basis of furnishing false information, therefore the present petition is liable to be dismissed only on this ground. In the case of Union of India Vs. Mamta Anurag Sharma and Another, , the Supreme Court has held that transfer policy does not permit Inter Cadre transfer on the ground of marriage. In the case of State of Maharashtra and another Vs. Chandrakant Anant Kulkarni and others, , it has been held that the Central Government is a final authority in the matter of transfer in reorganisation of the States, the matter of question of post is purely administrative function. It has been left entirely to the Central Government as to how it deals with this question. The case of Bimal Julka was considered on medical ground, whereas no such ground was available to the petitioner. There is shortage of manpower in the State of Chhattisgarh. The question of consideration of six other officers was not raised by the petitioner in her

representation. It was argued that the Allahabad Bank is also having its Branch in the State of Chhattisgarh and Banking services are also All India Services and as per the policy the husband can also seek transfer in the State of Chhattisgarh and for the last six years by filing petitions after petitions the petitioner was successful in avoiding the order of allocation.

Rejoinder of the aforesaid return was also filed. In the rejoinder it has been stated that the Writ Petition No. 1091/05 has been filed before the High Court of Chhattisgarh against an interim order dated 15-3-2005, but admittedly there is no mention about the aforesaid writ petition in the main writ petition. The petitioner, filed a Writ Petition No. 1091/05 in the High Court of Chhattisgarh at Bilaspur in which she challenged the order dated 31-10-2000, 23-2-2005, 9-3-2005 and 15-3-2005 and obtained the stay order in her favour on 23-3-2005,. The petitioner has suppressed the material fact regarding pendency of the writ petition before the Chhattisgarh High Court and in the present writ petition also challenged the order dated 31-10-2000 and 23-2-2005 and claimed the relief for quashing the same in Clause 2 of Para 7 of the writ petition. As a general rule, suppression of a material fact by a litigant disqualifies him from obtaining any relief from the Court. The learned Counsel for the petitioner during the course of arguments on 9-1-2007 made a statement at bar that the Writ Petition No. 1091/05 pending at Chhattisgarh be treated as dismissed, because after order dated 28-11-2006 the matter is finally decided by the Tribunal and that petition has rendered infructuous. This shows that the petitioner has not come with clean hands and the writ petition is liable to be dismissed on this ground alone of suppressing the material facts.

The question involved in this case as has been argued vehemently by the learned Counsel for the petitioner is whether non-consideration of the case of allocation of the petitioner as of others from the State of Madhya Pradesh to the State of Chhattisgarh on the bifurcation of the State under Madhya Pradesh Reorganisation Act of 2000 is arbitrary and discriminatory. Petitioner is an IAS Officer and she filed representation to the Central Government that she should be retained in the State of Madhya Pradesh and should not be allocated to the State of Chhattisgarh on the ground that her husband is also a bank employee. He is posted in Madhya Pradesh, but when in future he will get promotion, the post may not be available in the State of Chhattisgarh and as per policy of the Central Government, husband and wife should be posted together, as his husband can only be posted in large metropolitan cities and secondly on the ground that the Central Government has already considered the representations of Shri Bimal Julka, who is an IAS Officer of 1979 batch and Mohd. Suleman, who is an IAS Officer of 1980 batch. Earlier the committee and later on the Central Government vide order dated 23rd February, 2005 rejected the aforesaid representation by a detailed speaking order. It is mentioned in the said order that the Central Government constituted an Advisory Committee under the Chairmanship of Shri U.C. Agrawal, IAS (Rtd.) to recommend the initial strength and composition of the cadre of all the three All India Services for the State of

Madhya Pradesh and Chhattisgarh and to recommend as to which of the members of the All India Services borne on the cadre of the existing State of Madhya Pradesh should be allocated to the cadres of Chhattisgarh of the same service. It is further mentioned in the order that Committee found that the grounds of petitioner Smt. M. Geeta could not be treated as grounds of genuine hardship and rejected the request. In view of the order passed in M.A. No. 751 of 2004 on 26-7-2004 it was directed that the petitioner may file representation within one month from the date of the order and thereafter on 23-8-2004 she filed another representation to the Secretary Department of Personnel and Training New Delhi and the same has been decided by the aforesaid order. It has been decided that inter-cadre transfer of All India Service Officers are allowed only on ground of marriage between two All India Service Officers. The policy categorically states that cadre transfer shall not be permitted to All India Service Officers on marriage to an officer serving in a Central/State Government or Public Sector Undertakings and held that the petitioner is not eligible for transfer on account of her marriage to a Bank Officer. It was further held that the husband of the petitioner can apply for transfer to the nearest station to the State where the petitioner was posted. She is seeking her transfer to the Madhya Pradesh in anticipation that her husband would be holding higher posts in future for which there would be no position at least in the State of Chhattisgarh and it was found that at present she is admitting that her husband can be posted at Chhattisgarh. It was also considered that as Member of I.A.S. Cadre of undivided Madhya Pradesh, Smt. M. Geeta was liable to be posted in those parts also which now form part of Chhattisgarh State. It was also clarified that the transfer of Shri Bimal Julka, IAS was recommended by the Grievance Committee on the ground that the family of the officer was having medical problems and would face undue hardship if shifted to Chhattisgarh. It was also mentioned that like the case of petitioner Smt. M. Geeta, the request of Ajay Singh, IAS, Shri S.K. Pathak, IAS and Shri Sonmani Borah, IAS for transfer from Chhattisgarh to Madhya Pradesh on the ground that their spouse are working in the State of Madhya Pradesh was also rejected by the Grievance Committee and the representation was rejected. The learned Tribunal after considering the representation as well as the order of rejection of the representation dated 23rd February, 2005 and also considering the various other grounds raised by the petitioner, has held that the policy of posting of husband and wife at one place, cited by the petitioner is a guideline of general nature and such requests are entertained on the basis of merit and keeping in view the administrative requirements. It was also considered that petitioner's husband is posted at the nearest place in the undivided State and, therefore, the Tribunal dismissed the aforesaid petition.

It was vehemently argued before us that nonconsideration of the case of the petitioner which is at par with Shri Bimal Julka and Mohd. Suleman and in the order dated 23rd February, 2005 nothing has been mentioned about the retention of Mohd. Suleman in the State of M.P., the action of the Central Government is arbitrary and discriminatory. The matter of considering the

hardship of one employee in comparison to the other employee can never be a question of discrimination. There is no arbitrariness in taking decision regarding the position of the petitioner in the State of Chhattisgarh. She has been allocated on the basis of some policy decision taken by the Government. Therefore, we do not find that in rejecting the representation, the authorities have committed any illegality or their action is arbitrary or discriminatory. Learned Counsel for the petitioner could not point out any law that under the administrative exigencies in the matter of transfer and posting, the question of discrimination is relevant. The allocation of the petitioner to the State of Chhattisgarh has been made on the basis of some policy decision taken by the Central Government and some of the representations were considered by the Committee and if some officers were retained in the State of Madhya Pradesh, it cannot be argued that the petitioner should also be retained on the same ground or the representation cannot be rejected after considering the hardships which were not found genuine. In fact under the administrative law it is the consideration of the committee to consider the scale of hardship separately of the employees. The Committee may consider the hardship of one employee as genuine and under the facts and circumstances of the case may not consider the hardship of another employee as genuine. Thus, under the administrative law there is hardly any scope for judicial review on such consideration. The basic principle of judicial review in transfer matters is that the transfer should not be arbitrary or malafide and must be based on administrative exigencies. The Court can only interfere when the transfer is not bonafide or malafide or punitive in nature or contrary to the administrative exigencies. The petitioner claiming retention in the State of Madhya Pradesh only on the ground that her husband is a bank employee and in future he cannot be posted in the State of Chhattisgarh and this aspect has already been considered by the Committee as well as by the Central Government while rejecting the representation by a reasoned order. So far as the policy of transfer is concerned, as per the guidelines issued, the husband of the petitioner can apply for the transfer to the nearest station to the State where the petitioner is posted and without applying and without its rejection in anticipation it cannot be said that the husband cannot be transferred to the State of Chhattisgarh. The learned Tribunal has mentioned that she was allocated way back in the year 2000 in the State of Chhattisgarh, but for more than five years she has somehow managed to continue in the State of Madhya Pradesh. The Tribunal has also considered that there is a severe shortage of manpower in the newly created State of Chhattisgarh. We are also impressed with the fact that the petitioner has not disclosed that one Writ Petition No. 1091/05 is still pending in the High Court of Chhattisgarh and she has obtained interim order in that petition on 15-3-2005 whereas it was the duty of the petitioner to disclose all the facts in this petition.

Learned Counsel for the petitioner placed reliance on the Constitution Bench decision in the case of *E.P. Royappa* (supra). In this case the petitioner was officiating in the key post of Chief Secretary to Tamil Nadu Government was first transferred by the Chief Minister to the post of Deputy Chairman State Planning

Commission and then to the post of Officer on Special Duty in the larger interests of the administration and it was not shown that the action of the Chief Minister was arbitrary or malafide or that the posts to which he had been transferred were in any way inferior in status and responsibility to the post of Chief Secretary, it was held that the petitioner could not challenge the orders of transfer as violating Articles 14 and 16. It was also considered that to establish malafide is very heavy on the person who alleges it. The allegations of malafides are often more easily made than proved and the very seriousness of such allegations demands proof of a high order of credibility and suspicion cannot take the place of proof and ultimately the petition was dismissed. Therefore, the said judgment is not helpful to the petitioner. The another case cited by the learned Counsel for the petitioner is the case of United Indian Insurance Co. (supra), which is not directly helpful to him as it not applicable on the facts of this case. On the contrary the present case is covered by the decision in the case of Rajiv Yadav (supra) Union of India v. MamtaAnurag (supra) and State of Maharashtra v. Chandrakant (supra).

The order of allocation has been passed u/s 67(4) of the M.P. Reorganization Act, 2000 read with Rule 5 of the Indian Administrative Service (Cadre) Rules, 1954. As per Rule 5 (2) of 1954 Rules, inter-cadre transfer shall continue to be permitted for members of All India Service Officers on marriage to another member of an all Indian 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. The extreme hardship for purposes of inter-cadre transfer includes (a) threat to the life of the officer or his immediate family and (b) severe health problems to the officer or his immediate due to climate or environment of the State to which he/she is allotted. 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 years deputation to a State of its choice. The Central Government issued instructions under the above Rules vide memo dated 8-11-2004 (Annexure R-I). The petitioner's case does not come in any of the categories mentioned in the above memo and therefore this Court is very slow in interfering with the allocation order allocating the petitioner from State of M.P. to State of Chhattisgarh, unless the order is made in violation of any mandatory statutory rule or on the ground of malafide. The Apex Court in the case of Shilpi Base (Mrs.) v. State of Bihar 1991 Supp. (2) SCC 659, has held that even if a transfer order is passed in violation of executive instructions or orders the Courts ordinarily should not interfere with the order.

It was argued that since the Central Government has not filed return in this case nor had replied the amendments, which were made in the O.A., therefore, Central Government has admitted the allegations made in the petition, but we do not think that such argument is helpful to the petitioner. From the rejection letter of representation dated 23-2-2005, it is clear that the Central Government has rejected the representation by a reasoned order, therefore it will not amount an admission on the part of the Government. We have already observed that so far

as the question of genuine hardships are concerned, the two cases of hardships cannot be at par and it is a question of subjective satisfaction of the concerned authority, which cannot be said to discriminatory or arbitrary and on that ground the petitioner is not entitled for any relief. Since the husband of the petitioner is working in Public Sector Undertaking, therefore, the said policy is also not applicable in this case. Therefore, we do not find any merit in the petition. Consequently, the petition filed by the petitioner is hereby dismissed. Parties to bear their own costs.