

**(2021) 05 DEL CK 0190**

**In the Delhi High Court**

**Case No :** Civil Writ Petition No. 4048 Of 2021

State Of West Bengal

APPELLANT

Vs

Gandharva Rathore & Ors

RESPONDENT

**Date of Decision :** 28-05-2021

**Acts Referred:**

**Citation :** (2021) 05 DEL CK 0190

**Hon'ble Judges :** Manmohan, J;Navin Chawla, J

**Bench :** Division Bench

**Advocate :** Madhumita Bhattacharjee, V.K.Gupta, Ruchira Gupta, Mona Sinha, Parmatma Singh, Madhur Jain

**Final Decision :** Dismissed

## Judgement

Manmohan, J

1. The petition has been heard by way of video conferencing.
2. The State of West Bengal impugns the order dated 04th December, 2020 of the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, allowing OA No.3579/2019 preferred by the respondent no.1 impugning non-grant of No Objection Certificate (NOC) for change of her cadre in the Indian Administrative Service (IAS) from West-Bengal to Himachal Pradesh, to an officer of which cadre the respondent no.1 has been married. By way of the impugned order, the petitioner has been directed to issue NOC/consent for cadre transfer of the respondent No.1 from the State of West Bengal to Himachal Pradesh.
3. On the last date of hearing, learned counsel for the petitioner had prayed for some time to obtain instructions. Though it was made clear that no adjournment would be granted today, yet learned counsel for the petitioner

states that due to cyclone 'Yaas', it has not been possible to obtain instructions.

4. However, the request for adjournment is opposed by learned senior counsel for the respondent No.1 on the ground that the cyclone has not affected the State Secretariat situated at Kolkata and even after the last date of hearing, some officials have been transferred.

5. Keeping in view the aforesaid as well as the fact that sufficient opportunities have been granted to the petitioner to obtain instructions, the prayer for adjournment is declined and the matter is taken up for hearing.

6. Learned counsel for the petitioner states that there is an extreme shortage of officers as a number of officers have sought transfer from the West Bengal cadre on account of their marriage to officers belonging to other State cadres.

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

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

11. Reading of the above-cited Government Policy leaves no room for doubt that the same would apply to the petitioner. The petitioner

waited patiently for two years after making her first representation to the State of West Bengal; and only after having received no response

did she approach the Tribunal. The Tribunal granted six weeks time to the State of West Bengal to consider the petitioner's

representation; however no response has yet been received to that representation.

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13. Counsel for the State of West Bengal now submits that a "No - Objection" cannot be granted in view of certain proceedings

pending before the Calcutta High Court. With the highest regard for the Calcutta High Court and with full deference to the comity of courts,

we have queried counsel for the State of West Bengal to point-out any order where the Calcutta High Court has restrained the transfer of

the petitioner; or by which the petitioner has been ordered to remain present in

court; or any order to even show that the petitionerâ??s

presence is necessary in West Bengal for the proceedings pending in court. No such order or direction or requirement has been brought to

our notice.

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16. In view of the above, we dispose of this petition directing that the petitioner be relieved within two weeks from the date of receipt of this

order.

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

4. In our view, there can be absolutely no justification for the State of West Bengal not relieving the petitioner to enable her to join the IPS

Cadre in the State of Odisha. This shows complete apathy on the part of the State of West Bengal â?? which cannot be countenanced. We

are left with no alternative, but to issue directions to enable the petitioner to join her post in the IPS Cadre in the State of Odisha.

5. Accordingly, we declare that the petitioner stands forthwith relieved from her post in the IPS Cadre of the State of West Bengal. No

further orders would be required to be passed by the State of West Bengal in this regard. We direct the State of Odisha to treat this order as

a relieving order of the petitioner to enable her to join her post in the IPS Cadre in the State of Odisha.

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

Considering the overall circumstance, we grant time to the petitioner up to 28.02.2019 to relieve the respondent No.1 so that he can join

his services with the State of U.P. It is made clear that no further extension shall be sought or granted and, in case, no express order is

passed relieving the respondent No.1 from his services by the State of West Bengal, he shall be deemed to have been relieved on 28.02.2019

and it shall be open to him to join the services with the State of U.P.

8. Keeping in view the aforesaid mandate of law, the present writ petition is dismissed and the State of West Bengal is directed to relieve the

respondent no.1 within eight weeks. In the event, the respondent no.1 is not relieved within the aforesaid stipulated period, she shall be deemed to

have been relieved by virtue of the order of this Court.

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