

State Of West Bengal vs Sagar & Anr on 15 March, 2023

Author: V. Kameswar Rao

Bench: V. Kameswar Rao, Anoop Kumar Mendiratta

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3137/2023, CM APPL. 12158/2023 & 12159/2023

STATE OF WEST BENGAL Petitioner
Through: Mr. Sunil Fernandes, Ms. Astha
Sharma, Ms. Priyansha Sharma and
Mr. Shreyas Awasthi, Advocates.

Versus

SAGAR & ANR.
Through: Mr. Anurag Ahluwalia,
Mr. Vedansh Anand, GP
Mr. M.K. Bhardwaj, Ms.
Bhardwaj and Mr. Maria
Kannan H, Advocates.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA
ORDER

% 15.03.2023 CM APPL. 12159/2023 (for exemption) Exemption allowed subject to all just exceptions. Application stands disposed of.

W.P.(C) 3137/2023, CM APPL. 12158/2023

1. This petition has been filed by the petitioner, State of West Bengal with the following prayers:

"(i) Set aside /quash the Impugned Judgment and order 13.02.2023 passed by the Hon ble Central Administrative Tribunal, Principal Bench at New Delhi in O A No. 3290 of 2023 on the facts and ground mentioned above;

(ii) Pass such order or further orders as this Hon ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. The challenge in this petition is to an order dated February 13, 2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal' hereinafter) in OA 3290/2022, whereby the Tribunal has allowed the Original Application filed by the respondent No.1 by directing the petitioner as under:

"14. In the result, for the foregoing reasons, the present OA is partly allowed and the respondent no.2 is directed to grant No Objection Certificate to the applicant within a period of four weeks from the date of receipt of a copy of this Order, failing which „No Objection Certificate (NOC) shall be deemed to have been issued by the respondent No.2, and thereafter the respondent no.1 is directed to take immediate action for cadre transfer of the applicant from West Bengal Cadre to Rajashtan Cadre by passing a necessary order in this regard within four weeks thereafter."

3. The claim of the respondent No.1 before Tribunal was primarily with regard to change of cadre from West Bengal to Rajasthan on the ground that his wife is an IPS Officer of Rajasthan Cadre.

4. The facts as noted from the petition are that the respondent No. 1 is an IPS Officer of 2019 batch and was allotted West Bengal Cadre. He married Ms. Ranjeeta Sharma, an officer of Rajasthan Cadre who is also of the same batch, on November 28, 2021. In view of the marriage, respondent No.1 became eligible to make a request for change of his cadre from West Bengal to Rajasthan as per OM dated November 8, 2004 of the Govt. of India regarding change of cadre. He made a representation in that regard on January 4, 2022 for change of cadre. The said representation was duly forwarded to the Ministry of Home Affairs, which in turn sent a letter dated March 3, 2022 to the Govt. of West Bengal for views / comments on the request of the respondent No.1, to take further action in the matter. Similarly, a letter was also sent to Govt. of Rajasthan, which in turn conveyed its consent vide letter dated April 11, 2022. However, despite a lapse of 7 months, there was no response from the Govt. of West Bengal.

5. The case of the respondent No.1 before the Tribunal was that similarly placed persons were granted / allowed the change of cadre. It is an admitted position that respondent No.1 and Ms. Ranjeeta Sharma were blessed with a daughter on July 26, 2022. However, due to the delay caused by the petitioner herein, respondent No.1 could not join his wife and daughter. In the above circumstances, the OA was filed.

6. The case of the Union of India through Ministry of Home Affairs, before the Tribunal was that inter-cadre transfer of an IPS Officer recruited in the service is as per Rule 5(2) of the Indian Police Service (Cadre) Rules 1954 and the guidelines issued by the DoP&T. The same stipulates concurrence of the State Government concerned for transfer of a cadre officer from one cadre to another cadre. The Office Memorandums dated November 8, 2004 and November 11, 2022 issued by the DoP&T provides as under:

"(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, efforts should be made in the first instance to ensure that the cadre of one officer accepts his or her spouse.

(iv) Only in instances where both States have refused 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."

7. It was the case of the respondent No.2 before the Tribunal that the request of the respondent No.1 was examined and as a pre-requisite to process the case further, views / comments of the Govt. of West Bengal and Govt. of Rajasthan were sought vide letter dated March 3, 2022. Although Govt. of Rajasthan vide letter dated April 11, 2022 conveyed their no- objection to the request of the officer, Govt. of West Bengal had not responded to the same. It is also stated that as such the case of the respondent No.1 could not be processed in the absence of no-objection from the parent cadre. It is also stated by the respondent No.2 that in case of inter-cadre transfer on the ground of marriage effort should be made in the first instance to ensure the cadre of one officer accepts his or her spouse. But in the present case, in the absence of views / comments from West Bengal, it is difficult to ascertain as to whether the Govt. of West Bengal, i.e., the petitioner herein intends to grant no-objection to the respondent No.1. In case no objection is not granted by the Govt. of West Bengal, then the wife of the respondent No.1 herein would have the option of seeking inter-cadre transfer to West Bengal cadre. As such no action is pending on the part of the Union of India, Ministry of Home Affairs.

8. Though the petitioner did not dispute the aforesaid facts, its case was that Rule 5(2) of the Rules clearly depicts that the same applies to either of the spouses and not only to the husband. Essentially the respondent No.1's wife being an All-India Service Officer is also entitled to seek transfer under the aforesaid provision. The petitioner after due consideration recorded that the cadre transfer of the respondent No.1 from West Bengal cadre to Rajasthan cadre would not be possible on account of acute shortage of IPS Officers in the State Cadre as the cadre strength in the State of West Bengal is 387 while the actual number of IPS Officers presently in position is 300 only. The Tribunal while allowing the OA has in paragraphs 11 to 14 stated as under:

"11. The facts as noted in para 2 above are not in dispute. So far as respondent no.1 is concerned, having regard to the reply and submissions made on behalf of respondent no.1, the said respondent is ready to consider the case of the applicant immediately subject to receipt of views/comments of the State Government of West Bengal, i.e., respondent no.2. The grounds for not issuing No Objection to the applicant as raised in the instant case by the respondent no.2 have already been dealt with by the Hon ble Delhi High Court recently also in Arsh Verma (supra), the relevant portion of the said Order/Judgment reads as under:-

"4. The learned counsel for the petitioner states that: i) there is an extreme shortage of officers since a number of officers have sought transfer from West Bengal Cadre on various grounds, including the ground on account of their marriage to officers belonging to other State cadres; ii) the petitioner is a male and there are no urgencies

of duties towards the family which could require the State to relieve him and iii) it is the discretion of the State to do so in light of the fact that there is a shortage of officers in the State.

5. On the other hand, the learned counsel for the respondent no. 1 submits that the respondent has not been able to start a family, as his wife is posted in a different State, nor is he able to take care of his family and his ailing widowed mother; he says that he needs to be stationed at the same place as them. He further submits that while deciding such cases, the authorities may well keep it in mind that the young officers, who are stationed at different places having different State Cadres will find it difficult to even start their family.

6. The learned counsel for the respondent no. 2 submits that the issue raised by the petitioner in the present case is no longer res integra and the same has been decided by the various judgments of this Court.

7. The issue raised in this petition stands decided against the petitioner herein by way of the following Division Bench judgments:

(i) In Bhavna Gupta vs. The Union of India & Ors., [W.P.(C) No. 13444/2019 decided on 3.02.2020]: The relevant portion of the same is reproduced herein below:-

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

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

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

(ii) In Ms. Loganayagi Divya V. vs. Union of India & Ors., [WP(C) No.3927/2020 decided on 22.7.2020}.

It was directed inter alia, as under:-

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

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

(iii) In The State of West Bengal vs. Raj Karan Nayyar & Anr., [WP(C) No.11966/2018 decided on 02.11.2018).

It was directed, inter alia, as under:-

"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."

8. In a recent judgment in the case of S K Nausad Rahaman & Ors. Vs. Union of India & Ors., reported in 2022 SCC Online SC 297 a similar issue arose and the Supreme Court has observed as under:-

"...55. The State in the present case has been guided by two objectives: first, the potential for abuse of ICTs and second, the distortion which is caused in service

leading to plethora of litigation. The State while formulating a policy for its own employees has to give due consideration to the importance of protecting family life as an element of the dignity of the person and a postulate of privacy. How a particular policy should be modulated to take into account the necessities of maintaining family life may be left at the threshold to be determined by the State. In crafting its policy however the State cannot be heard to say that it will be oblivious to basic constitutional values, including the preservation of family life which is an incident of Article 21.

56. The circular dated 20 September 2018 has taken into account, what it describes "exceptional circumstances" such as "extreme compassionate grounds". Leaving these categories undefined, the circular allows for individual cases to be determined on their merits on a case by case basis, while prescribing that transfers on a "loan basis" may be allowed subject to administrative requirements with a tenure of three years, extendable by a further period of two years. While proscribing ICTs which envisage absorption into a cadre of a person from a distinct cadre, the circular permits a transfer for a stipulated period on a loan basis. Whether such a provision should be suitably enhanced to specifically include cases involving:

(i) postings of spouses;

(ii) disabled persons; or

(iii) compassionate transfers, is a matter which should be considered at a policy level by the Board.

57. In considering whether any modification of the policy is necessary, they must bear in mind the need for a proportional relationship between the objects of the policy and the means which are adopted to implement it. The policy above all has to fulfil the test of legitimacy, suitability, necessity and of balancing the values which underlie a decision making process informed by constitutional values. Hence while we uphold the judgment of the Division Bench of the Kerala High Court, we leave it open to the respondents to revisit the policy to accommodate posting of spouses, the needs of the disabled and compassionate grounds. Such an exercise has to be left within the domain of the executive, ensuring in the process that constitutional values which underlie Articles 14, 15 and 16 and Article 21 of the Constitution are duly protected...."

9. It may be noted here that in the present case, the petitioner had already obtained a No Objection Certificate vide letter dated 20.08.2019 whereby the State of Haryana conveyed its agreement for the transfer of the Respondent no. 1 to the Haryana cadre where his wife is posted as an IPS Officer. However, despite repeated requests, his representation has been turned down and a No Objection Certificate has not been granted by the State of West Bengal.

10. Keeping in view, the mandate of law as discussed above, the right to a healthy family life, to start a family and the right to parenthood have to be respected while balancing the careers and duties of

the officers concerned. Time and tide wait for none. Child-bearing age for the young couple should not be irretrievably prejudiced by the non-grant of a relieving order for the officers to start their family. Compassion is expected from the State.

11. The urgency of the present case is of starting a family at present, which cannot wait indefinitely depending upon the decision of the concerned authorities.

12. The present writ petition along with the application is dismissed and the State of West Bengal is directed to relieve the respondent no. 1 within a period of three weeks from the date of receipt of a copy of this order. In the event of the respondent no.1 not being relieved within the aforesaid stipulated period, he shall be deemed to have been relieved by the virtue of this order."

12. From the above, it is evidently clear that plea of shortage of officers in a catena of cases, some of them are referred to above, has been considered to be not justified, for non-relieving of officer(s) for inter-cadre transfer requested on the ground of marriage. Further the coordinate Bench of this Tribunal in OA No.2061/2021 (Renu Sogan) (supra) has also observed that the shortage of officers is not abnormally high in the State of West Bengal. From the documents annexed with the OA, it is evidently clear that a number of officers from other states have been transferred to the State of West Bengal on grounds of marriage and vice versa. As such having regard to the catena of cases, especially to the aforesaid Order/Judgment of the Hon ble Dehi High Court, the plea of shortage of officers is no more tenable. We are also of the considered view that the relevant Rules/Policy and/or the law in no manner entitled the respondents to dictate to the All India Service Officers that whether husband or the wife should seek the cadre transfer. The present claim of the applicant is neither regarding seeking transfer or posting of his choice nor is the same a case of request of the cadre allocation. Accordingly, the judgments referred and relied on behalf of the respondents are of no help to them in the facts and circumstances of the case in hand.

13. In view of the aforesaid facts and circumstances of the case, we are of the considered view that the applicant deserves to have a No Objection Certificate from Respondent No.2 for inter-cadre transfer to Rajasthan cadre. It is also pertinent to mention that in a number of earlier cases, this Tribunal had referred the matter back to the respondent no.2, i.e., Govt. of West Bengal, for reconsidering grant of NOC. However, it is evident that the respondent No.2 has not taken effective action on those directions and in the present case, they have already indicated their view that NOC can't be issued, any such further direction in the present case will not serve any purpose.

14. In the result, for the foregoing reasons, the present OA is partly allowed and the respondent no.2 is directed to grant No Objection Certificate to the applicant within a period of four weeks from the date of receipt of a copy of this Order, failing which „No Objection Certificate (NOC) shall be deemed to have been issued by the respondent No.2, and thereafter the respondent no.1 is directed to take immediate action for cadre transfer of the applicant from West Bengal Cadre to Rajashtan Cadre by passing a necessary order in this regard within four weeks thereafter."

(emphasis supplied)

9. The submission of Mr. Sunil Fernandes, learned counsel appearing for the State of West Bengal is by highlighting the fact that cadre strength in the State of West Bengal is presently much below the actual requirement and as such it is not possible to consent for transfer of cadre. He would also rely upon paragraph (iii) of the DoP&T OM which we have already reproduced above to submit that it is not obligatory on the part of the State of West Bengal to agree for an inter-cadre transfer of the respondent No.1 to State of Rajasthan, when his wife can similarly seek transfer to the State of West Bengal.

10. We are not convinced by the submissions made by Mr. Fernandes for the simple reason that when it comes to inter-cadre transfer on the ground of marriage, some amount of discretion lies with the officers (husband and wife) to decide who amongst them shall seek transfer to a particular cadre. The discretion having been exercised by the respondent, the same cannot be interfered with. The plea of shortage of officers in West Bengal Cadre cannot be a ground to deny the request. In fact, the issue of inter cadre transfer is no more res integra in view of the judgement of this court in the case of Bhavna Gupta v. the Union of India & Ors., W.P.(C) 13444/2019, as has already been noted by the Tribunal, more specifically in paragraphs 11 and 13. In the State of West Bengal v. Raj Karan Nayyar and Anr., W.P.(C) No. 11966/2018, decided on November 1, 2018, similar view was taken by this Court.

11. Given the settled position of law, we are of the view that the Tribunal is justified in giving directions as it has given in paragraph 14, which we have already reproduced above.

12. This Court is of the view that the order of the Tribunal needs no interference. The writ petition is devoid of merit. The same is dismissed. No costs.

Dismissed as infructuous.

V. KAMESWAR RAO, J.

ANOOP KUMAR MENDIRATTA, J.

MARCH 15, 2023/R/jg