

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.24/2023

1. The Union of India, Represented by the Secretary, Ministry of Defence, New Delhi, Pin-110001.
2. Director General of Medical Services(Army), 3rd Floor, 'A' Block, Def. Officers Complex, KG Marg, New Delhi, Pin-110001.
3. Commanding Officer, 182 Military Hospital, Salbagan, Agartala, Pin-799012.
4. Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, (Department of Personnel and Training, 5th Floor, Saradar Patel Bhavan, New Delhi, Pin-110001.

.....Appellant(s).

V E R S U S

Major Ankita Tiwari, W/O. Dr. Siddharth Shiv Jaiswal, Resident of 5/3 Military Hospital, Salbagan, Agartala, Pin-7990012.

.....Respondent(s).

For Appellant(s) : Mr. Biswanath Majumder, CGC.

For Respondent(s) : Mr. S.S. Dey, Sr. Advocate,
Ms. Ayantika Chakraborty, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD**

Date of hearing and judgment: **10th October, 2023.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Biswanath Majumder, learned Central Government Counsel appearing for the appellants-Union of India and Mr. S.S. Dey, learned senior counsel assisted by Ms. Ayantika Chakraborty, learned counsel appearing for the writ petitioner/respondent.

2. The appellant is the Union of India being aggrieved by the order dated 16.12.2022 whereby the interim order dated 28.07.2022 has been made absolute. The matter relates to a transfer of the writ petitioner, a Major under the Military Nursing Service of Indian Army at 182 Military Hospital at Salbagan where she has been serving since 2017. Her husband is an IAS

Officer serving in the State of Tripura and belongs to 2016 batch of the IAS cadre. Petitioner was transferred to Pathankot (Punjab) by a message dated 14.07.2022 and asked to join her duty at Pathankot Military Hospital. Relying upon Clause 21 of the policy dated 25.04.2018 issued by the Integrated Headquarters of Ministry of Defence (Army) which is a posting policy of MNS Officers, the learned Writ Court stayed the operation of the message dated 14.07.2022 and the order dated 27.10.2021. The Clause 21 of the posting policy provides as under:

"21. In case of husband who is a Central Govt. Employee and transferrable throughout India, the posting request of the MNS officer will be considered and granted wherever feasible. As a guideline, when a married MNS officer has been accommodated once with her husband, the next tenure should be accommodated by the husband's directorate/Employer. Ordinarily in 10 years span two spouse co-locations posting will only be entertained for a MNS officer."

3. This writ petitioner has remained in the present place of posting for one more tenure i.e. total of 5(five) years. The Clause-21 of the policy provides that a married MNS officer can be accommodated once with her husband and the next tenure should be accommodated by the husband's Directorate/Employer. Ordinarily in ten years span two spouse co-location posting will only be entertained for an MNS officer. Clause-26 of the same posting policy reads as under:

"26. Request for retention in field area/HAA/CI Ops area will be considered only on exceptional cases as it may be at the detriment to the career profile or the health of the officer. The officer will submit reasons for requesting continuation/reposting to a field station along with the under taking that she is aware of and responsible for the implications/adverse effects on health in case of acceptance of her application for retention in/posting to a field station for more than the stipulated tenure."

The learned Writ Court had also taken note of Clause-26 of the same policy and taken a view that considering the spirit of the Clause-21 of the policy, the petitioner is entitled to live with her spouse at the same station.

4. The appellant-Union of India has in the present appeal questioned the reasons recorded by the learned Writ Court, *inter alia*, on the ground that the posting policy for MNS officers has been duly taken into consideration by granting one accommodation to the writ petitioner. For both operational and administrative requirements on completion of tenure from one theater the officer should be posted to another theater to ensure rotation of personnel on completion of tenure. Petitioner has not been able to make out any *mala fide* against the respondents. Transfer is an incidence of service and petitioner cannot claim a legal right to remain in a particular place of posting. Interference by the Writ Court in the matter of transfer/posting is not in consonance with the statutory rules and administrative instructions and/or posting policy of the officers of MNS service. It is also submitted that the plea raised by the petitioner in the additional affidavit dated 07.10.2023 regarding the tenure of her husband at Tripura and eligibility for deputation outside parent cadre only after he has served at least 9(nine) years in the parent cadre cannot be a ground for the petitioner to resist the transfer as an officer of the MNS. The other plea relating to the education of two minor children can also not be tenable ground. Captain Tanmayesh Kohli, AAG (Legal), Headquarter 59 Mountain Brigade, an officer of the JAG Branch posted at Manipur, who has appeared to assist the learned counsel for the Union of India has with the leave of the Court made categorical statements, on instruction, that the admission of the minor children of the petitioner is not an issue as such accommodations/adjustments even

during mid of the academic session are made in routine course whenever an officer is transferred to another station. Based on this contention, learned counsel for the appellant-Union of India has prayed that the appeal may be allowed by setting aside the impugned order and directing the petitioner to join her place of posting on transfer at Pathankot.

5. Mr. S.S. Dey, learned senior counsel assisted by Ms. Ayantika Chakraborty, learned counsel appearing for the writ petitioner, has besides relying upon the posting policy dated 25.04.2018 and the relevant clauses referred to hereinabove also referred to the two grounds taken by the writ petitioner as mentioned above, i.e. (i) the eligibility of her husband for deputation outside parent cadre only after 9(nine) years of service in parent cadre in the year 2025 in terms of Rule 6(2)(ii) of the IAS (Cadre) Rules, 2006; and (ii) the education of her two minor children who are aged 4 years 9 months and 3 years respectively. However, learned senior counsel for the writ petitioner has submitted that the statement made by the officer of the JAG Branch regarding admission of her minor children is reassuring.

6. We have considered the submissions of learned counsel for the parties and taken note of the pleadings on record and gone through the impugned judgment as well. We have also taken note of the posting policy dated 25.04.2018 relied upon by both the parties and taken note of by the learned Single Judge as well. The petitioner has availed of one accommodation since her posting at the present place in consonance with Clause-21 of the posting policy and it is for the husband's Directorate/Employer to accommodate the spouses in the next tenure. The posting policy of MNS officers framed by the Ministry of Defence (Army) applies uniformly to all Military Nursing

Officers. It has been framed taking into regard the organizational requirements and exigencies and also need for rotation of the officers for administrative and operational requirements. Since the petitioner has already been accommodated once in terms of Clause-21 of the policy, it is incumbent upon her to join the place of posting on transfer as per the impugned order dated 27.10.2021 and the posting order vide message dated 14.07.2022. We also find that the humanitarian grounds regarding the education of her minor children can be properly taken care of at the transferred place of posting at Pathankot in Punjab as also stated on instructions by the officer of the JAG Branch Captain Tanmayesh Kohli, AAG (Legal), Headquarter 59 Mountain Brigade. As such, we are satisfied that interference is called for in the order of the learned Writ Court. Accordingly, the impugned orders dated 28.07.2022 and 16.12.2022 are set aside.

7. At the end, learned senior counsel for the writ petitioner has prayed for some time for the petitioner to join her place of posting at Pathankot. Taking into consideration the aforesaid submission, we make it clear that the petitioner should join transferred place of posting on or before **31.12.2023**.

8. With the aforesaid observations and directions, the writ appeal is allowed and stands disposed of.

Pending application(s), if any, also stands disposed of.

(T. AMARNATH GOUD), J

(APARESH KUMAR SINGH), CJ