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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Judgment : 03rd February, 2020*

+ W.P.(C) 13444/2019

BHAVNA GUPTA

..... Petitioner

Through Mr. Rajshekhar Rao, Mr. Animesh Kumar, Mr. Nishant Kumar, Mr. Ambuj Dixit and Mr. Akash Chatterjee, Advocates

versus

THE UNION OF INDIA AND ORS.

..... Respondents

Through Mr. Rajesh Gogna, CGSC with Ms. Rahela Khan, Advocate for UOI. Mr. Raja Chatterjee, Mr. Chanchal Kumar Ganguli and Mr. Adeel Ahmed, Advocates for respondent No.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present writ petition is directed against order dated 06.11.2019 passed by the Central Administrative Tribunal (the 'Tribunal') in OA No.3863/2013.
2. Mr. Rao, learned counsel for the petitioner submits that the respondents have failed to comply with the order passed by the Tribunal.
3. The facts which have led to the filing of OA No.3863/2013 are that the petitioner had made a representation to respondent No.2/State of West Bengal seeking a 'No-Objection Certificate' for change of her State

cadre. The reason for requesting the change was that the petitioner, who is an IPS Officer of 2014 batch and belongs to the West Bengal cadre, had got married to an IAS Officer of Chattisgarh cadre in the year 2017. It was after her marriage that the request for change of cadre was made.

4. In spite of having waited for two years however, no order was passed on her representation; and having faced severe problems and inconvenience by reason thereof, the petitioner approached the Tribunal. Before the Tribunal, the petitioner placed reliance on the policy of the Government framed in the year 2004, which policy is admittedly applicable to the petitioner. Relevant portions of the policy, more particularly as placed on pages 57, 58 and 59 of the paper books, are reproduced below:

"Change of Cadre of All India Service officers-Policy(2004)

Change of cadre of All India Service officers is governed by Rule 5 (2) of the IAS (Cadre) Rules, 1954 and analogous Rules in the IFS (Cadre) Rules, 1966, which is as follows:-

"5 (2)The Central Government may, with the concurrence of the State Governments concerned transfer a cadre officer from one cadre to another cadre"

2. In recent practice, this Rules has been invoked only in cases of marriage between the All India Service (s) officers. There have been cases where following marriage one officer has moved to the cadre of his or her spouse. There have also been cases where both spouses have moved to a third cadre. The policy in this matter has been reviewed in detail and a view taken, with the approval of Prime Minister, as follows:-

(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, the cadre of one of the officers accepts his or her spouse.

(iv) Only after ensuring that both States, for genuine reasons are not in position 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.

(v) Inter-cadre transfer shall not be permitted to All India Service officers on marriage to an officer serving in a Central Service/State Service/Public Sector Undertaking/any other Organization.

(vi) 'Extreme hardship' for purposes of inter-cadre transfer, should be defined to include (a) threat to the life of the officer or his/her immediate family and (b) severe health problems to the officer or his immediate due to the climate or environment of the State to which he is allotted.

(vii) In cases off request on grounds of threat or health, the Central Government shall have the genuineness of the request assessed by an independent Central agency or group of at least two independent experts.

(viii) 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 year deputation to a State of its choice. The

situation may be re-assessed after the three years period. If the situation so warrant, the Central Government may permanently transfer the officer to the State.

The State Governments shall consider all the requests for inter-cadre transfers of All India Service (s) officers in accordance with the above policy and send only those requests, which are covered under the above guidelines, for consideration of the Government of India. The requests which are not covered under the above guidelines are liable to be rejected at State level itself."

5. This policy was modified in the year 2009. Paragraph 4(i) of the modified policy placed on page 60 of the paperbook is reproduced below:

"4(i) Where the spouses belong to the same All India Service or two of the All India Services, namely IAS, IPS and Indian Forest Service (Group 'A'); The spouse may be transferred to the same cadre by providing for a cadre transfer of one spouse to the Cadre of the other spouse, on the request of the member of service subject to the member of service not being posted under this process to his/her home cadre. Postings within the Cadre will, of course, fall within the purview of the State Govt."

6. Not being convinced with the reasons set-out by the respondents the Tribunal disposed of the OA, directing the respondents to pass an order on the application submitted by the petitioner within six weeks. Despite this order made by the Tribunal 06.11.2019, no order has been passed by the respondents on the representation of the petitioner till date.

7. Mr. Rao has drawn the attention of this Court to the stand taken by the respondents before the Tribunal in their counter affidavit. Para 6 of the counter affidavit reads as under:

“6. That, it is humbly submitted that, the Applicant herein could not be considered for inter-cadre transfer from West Bengal cadre to Chattisgarh Cadre due to Administrative reason only. That there is no deliberate intention of the department to stay the grant of NOC/relieving letter of the Applicant, but due to the reason that new officers having joined the West Bengal cadre in the 2017 batch, need time to develop their skills in discharging their duties and therefore till such time, the State is constrained to hold back the NOC/release of the existing trained officers presently posted in the State.”

8. In this backdrop, the petitioner submits that the application having been made on 01.11.2017 more than two years and two months have since elapsed; and the representation has yet not been considered and no order has been passed thereon. Additionally, the order of the Tribunal has also not been complied with.
9. Mr. Chatterjee, learned counsel for the State of West Bengal on the other hand submits that the reason for not transferring the petitioner is an incident which took place in the Howrah Court at Kolkata, in relation to which a Judicial Inquiry Commission was appointed and a former High Court Judge has rendered a report in the matter, in which certain observations have been made against the petitioner.
10. We have heard learned counsel for the parties and have considered their rival contentions.

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.
12. When the matter was listed before this Court on 23.12.2019, we had also directed respondent No.2/State of West Bengal to decide the representation of the petitioner within a period of two weeks. However, the representation still remains pending.
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.
14. Some portions of the report have been pointed-out to this court, according to which, on account of the incident which took place in the Howrah Court in Kolkata, the Police had to enter the court premises and order firing of tear-gas shells. It is not for us to go into the merits of the incident except to say, as Mr. Rao points-out, that the petitioner who

was the Additional Deputy Commissioner was only performing her lawful duties; that the petitioner was the junior-most amongst the officers present at the relevant time when tear-gas was deployed since it was perceived that if timely action was not taken, it could have caused loss of life and property since the law and order situation was extremely volatile and the atmosphere was highly intimidating.

15. The petitioner, who is present in court, submits that if any direction is issued by the Calcutta High Court requiring her presence in relation to the incident, she would obey and comply with the same. However, it is prayed that on account of the couple having been forced to live apart for two-and-a-half years, serious harm is being caused to their personal life; and that the petitioner, has also suffered a miscarriage.
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.
17. The writ petition stands disposed of accordingly.

G.S.SISTANI, J

ANUP JAIRAM BHAMBHANI, J

FEBRUARY 03, 2020

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