

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

% **Date of decision: 8th September, 2020.**

+ **W.P.(C) 4372/2020 & CM No.15743/2020 (for stay and directions)**

KIRAN POOJA

..... Petitioner

Through: Mr. K.C. Mittal, Ms. Ruchika Mittal
and Mr. Yugansh Mittal, Advocates

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Vikrant N. Goyal, Advocate for
R/UOI.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a Sub-Inspector with the respondents CISF and posted at Nasik, has filed this petition seeking transfer to NLC, Barsingsar, Bikaner, Rajasthan where her husband, a Major in the Indian Army, is posted since 30th June, 2019.

2. It is the plea of the petitioner that the petitioner has an elderly mother suffering from 80% disability and a seven year old son and both of whom are staying with her husband at Bikaner and both of whom require the care and attention of the petitioner.

3. It is the case of the petitioner, (i) that she has been in the rank of Sub-Inspector, since 8th December, 2010 and has been transferred to different postings including at Rajkot Airport, Jorhat Airport (Assam), Joshimath and is now at Nasik since 30th June, 2019; (ii) that the petitioner married in February, 2012; the husband of the petitioner, a Major in the Indian Army, has been posted in different places including hard postings such as Uri (Jammu & Kashmir), Tuting (Arunachal Pradesh), Joshimath and is posted at Bikaner since June, 2019; (iii) that the petitioner is the only child of her parents and lost her father about 17 years back; (iv) that the petitioner has been brought up by her mother who has 80% disability and has been suffering from mental retardation and locomotor disability; (v) that the mother of the petitioner lives with the husband of the petitioner in Bikaner; (vi) that the petitioner has a 7 years old son who is also living with the husband of the petitioner in Bikaner and the husband of the petitioner alone is taking care of both, the mother of the petitioner as well as the son; (vii) that the petitioner's mother as well as son need full time care and attention; (viii) that thus the petitioner requested a posting at the place of posting of her husband i.e. spouse posting, on compassionate grounds; (ix) that the Office Memorandum (OM) dated 8th October, 2018 of the Department of Personnel and Training (DoPT), Ministry of Personnel, Public Grievances and Pensions, Government of India, on the subject of "Exemption from the routine exercise of transfer/rotational transfer", in paragraph 3 provides as under:

"3. With the enactment of the Rights of Persons with Disabilities Act, 2016 on April 17, 2017, the following instructions are issued in supersession of the above-mentioned OM's of even number dated June 6, 2014, November 17, 2014

and January 5, 2016 with regard to the eligibility for seeking exemption from routine exercise of transfer/rotational transfer:

- (i) A Government employee who is a care-giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disability as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints.*
- (ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disabilities Act, 2016, covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness (iii) Low-vision (iv) Deaf (v) Hard of hearing (vi) Speech and language disabilities (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability caused due to: (a) Neurological conditions such as Multiple sclerosis and Parkinson's disease (b) Blood disorder – Haemophilia, Thalassemia and Sickle cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.*
- (iii) The term 'Specified Disability' as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Government employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/sister as stated in Para 3(i) above.";*

(x) that DoPT has also issued various OMs from time to time regarding postings of husband and wife at the same station including the OM

dated 12th June, 1997, requiring all Ministries to adhere to the guidelines laid down in the OM dated 3rd April, 1986; (xi) that OM dated 30th September, 2009 provides that the spouse having longer service at a station, may apply for transfer; (xii) that the representation of the petitioner for being posted at the place of her husband's posting at Bikaner has been rejected on 18th February, 2020 and the Ministry of Home Affairs vide communication dated 12th June, 2020 has informed that the request of the petitioner is not justifiable and she may make the request during the next year i.e. 2021-2022; (xiii) that Clause 19 of the Guidelines for Posting/Transfer of CISF Personnel (NGOs-Constables, Head Constables, Assistant Sub-Inspectors, Sub-Inspectors & Inspectors) in various sectors of CISF, being Circular No.22/2017 dated 25th September, 2017, also provides that women personnel, on compassionate grounds, will be posted to Home Sector during their entire service; (xiv) that all the said OMs/Circulars/Policies have been given a go-by in rejecting the representation of the petitioner; (xv) that the petitioner has learnt that there are two or three vacancies in CISF facility near Bikaner, being NLC Barsingsar, one being in the rank of Inspector; one such vacancy has arisen on dismissal (since the filing of this petition) of W.P.(C) No.3697/2020 of one Raj Kumar Singh challenging his transfer from NLC Barsingsar to Tapovan, Uttarakhand; and, (xvi) that such requests of others have been accepted.

4. The petition came up before this Court first on 21st July, 2020 when the counsel for the respondents CISF appearing on advance notice stated that the petitioner though had preferred the petition on the ground of couples posting policy but in her representation had sought transfer on compassionate ground, of her mother's health and to take care of her son.

5. While issuing notice of the petition, the respondents CISF were directed to sympathetically consider the request of the petitioner for transfer to NLC Barsingsar, Bikaner, under whichever policy is best suitable to the request of the petitioner and if benefit of more than one policy could be given to the petitioner, to confer the said benefit on the petitioner.

6. The respondents CISF have filed a counter affidavit pleading, (a) that the petitioner, on joining the CISF as Sub-Inspector, on 8th December, 2010 and after completion of her training, remained posted at Rajkot with effect from 1st February, 2012 to 31st May, 2012, at Jorhat with effect from 1st June, 2012 to 31st December, 2014, at Jaipur with effect from 1st January, 2005 to 1st September, 2016 and at Joshimath/Tapovan from 2nd September, 2016 to 31st May, 2019; (b) that as per Inter-Sector Transfer-2018 dated 16th February, 2018, the petitioner had been earmarked for posting to West Sector and was posted with effect from 28th February, 2018; (c) that however the petitioner requested for deferment of her posting for one year and considering her case sympathetically, her Inter-Sector posting to West Sector deferred till 31st March, 2019; (d) that the petitioner requested for further deferment till 31st May, 2019 and which also on sympathetic consideration was granted; (e) that the petitioner joined at Nasik on 1st June, 2019; (f) that the petitioner, even before joining at Nasik, had requested for posting at Barsingsar, to take care of her child and mother but after examination, the request was declined; (g) that subsequent representations of the petitioner were also examined but not acceded to because as per the CISF posting policy, women personnel are required to complete six years service in out of Home Sector and the petitioner had done only three years ten months service in out of Home Sector and was not due for posting to Home Sector;

Barsingsar is in her Home Sector; (h) that the petitioner has neither completed her tenure of posting in the Unit, of three years, nor is due for Home Sector posting as per policies; (i) that in the past, (1) on the request of her husband, the petitioner was posted from Jorhat to Jaipur, by granting out of Home Sector relaxation; (2) the petitioner was again posted from Jaipur to Tapovan, within the Home Sector of the petitioner, on request of her husband; (3) as aforesaid, the posting out of the petitioner from Tapovan was also deferred, first by one year and thereafter by two months, on the request of the petitioner; (j) that the petitioner thus has been given sufficient latitude to look after her family; (k) that as far as posting of married couple at the same station is concerned, the Government of India's Policy thereon shall be followed, subject to availability of vacancies and subject to compliance of out of Home Sector policy, without disturbing the tenure of other personnel; (l) that there is no vacancy of Sub-Inspector, at Barsingsar; (m) that the petitioner has already been advised that her request will be considered in 2021-2022; and, (n) that paragraph 19 of the posting policy relied upon in the petition, is applicable to those women personnel who are appointed on compassionate grounds only and the petitioner has not been appointed on compassionate grounds.

7. Though the petitioner has filed a rejoinder to the counter affidavit aforesaid but since no reference thereto was made during the hearing, need to refer thereto is not felt.

8. The petition came up for hearing on 28th August, 2020, when the counsel for the petitioner drew attention to the OM dated 30th September, 2009 governing posting of husband and wife at the same station. In the

order dated 28th August, 2020, it was noted that the said OM was applicable to not only Central Government servants, who belong to the same service, but also to spouses, who belong to different Central Services, including All India Service or employed even in a Public Sector Undertaking and the relevant portion thereof is as under:

“4. The consolidate guidelines will now be as follows: -

(i) xxxxx

(ii) xxxxx

(iii) xxxx

(iv) Where the spouse belongs to one Central Service and the other spouse belong to another Central Service: -

- The spouse with the longer service at a station may apply to his/her appropriate cadre controlling authority and the said authority may post the said officer to the station or if there is no post in that station to the nearest station where the post exists. In case that authority, after consideration of the request, is not in a position to accede to the request, on the basis of non-availability of vacant post, the spouse with lesser service may apply to the appropriate cadre authority accordingly, and that authority will consider such requests for posting the said officer to the station or if there is no post in that station to the nearest station where the post exists.”

9. It was the contention of the counsel for the petitioner on 28th August, 2020 that under the policy contained in the OM dated 30th September, 2009 aforesaid, the only reason to deny the petitioner a posting along with her husband could be the absence of a vacancy and which ground, owing to dismissal on 21st July, 2020 of W.P.(C) No.3697/2020 titled **Raj Kumar Singh v. Union of India & Ors.**, was not available to the respondents CISF. Per contra, the counsel for the respondents CISF referred to Circular

No.22/2017 dated 25th September, 2017, being the 'Guidelines for posting/transfer of CISF Personnel (NGOs-Constables, Head Constables, ASIs, SIs and Inspectors) in various Sectors of CISF', to contend that the petitioner had to complete 'six years' in units in out of Home Sector, before she could be transferred back to the Home Sector; attention was also invited to paragraph 25 thereof relating to tenure of posting in the unit/station being 'three years' and to paragraph 38 relating to husband/wife, to contend that posting of spouses at the same place is subject to availability of vacancies and other administrative/operational needs.

10. During the hearing on 28th August, 2020, we drew attention of the counsel for the respondents CISF to paragraph 19 of the guidelines, referred to in the petition also, and which provides that women personnel, on compassionate grounds, will be posted to Home Sector, during their entire service. It was enquired, whether not the same emphasizes the policy of the Government not to disrupt family life and to show greater accommodation to women personnel, so as to permit them to join their husbands and take care of family exigencies.

11. The counsel for the respondents CISF, drew attention to the entire paragraph 19 aforesaid to demonstrate that the provision of posting women personnel, on compassionate ground, in Home Sector only was only for those appointed on compassionate ground i.e. owing to the death in harness of the husband or father, etc.

12. However, on 28th August, 2020, on request of the counsel for the respondents to check the vacancy position, the matter was adjourned to today.

13. Today, the counsel for the respondents CISF states that he has obtained instructions; there is no vacancy at NLC Barsingsar; it is pointed out that immediately after dismissal of W.P.(C) No.3697/2020 filed by Raj Kumar Singh against his transfer from NLC Barsingsar to Tapovan, some other person was appointed to the said vacancy and is under movement.

14. We have no reason to doubt the aforesaid statement, made under instruction.

15. The counsel for the respondents CISF further states that the petitioner, after finishing her out of Home Sector posting, will again be considered for posting along with her husband.

16. With respect to OM dated 30th September, 2009, it is argued that for women constables, six years in units of out of Home Sector, is necessary and the petitioner, since the year 2014 has been seeking relaxation with respect thereto and on compassionate grounds, to be with her husband, has been granted the said relaxation. It is contended that the petitioner cannot be permitted to defeat the requirement of doing six years in units in out of Home Sector and has to necessarily do the same. It is explained that Barsingsar is again in the Home Sector of the petitioner and the petitioner, after sufficient latitude has been shown to her since the year 2014, cannot be accommodated any further.

17. Per contra, the counsel for the petitioner today has again drawn our attention to the OM dated 8th October, 2018 supra with respect to care givers of persons with disability and has contended that on account of the petitioner being a care-giver of her mother suffering from disability, as borne out from

the documents filed with the petition, and herself as a mother of a child less than ten years, is entitled to relaxation.

18. We have enquired from the counsel for the petitioner, why the mother and child of the petitioner cannot remain with the petitioner, wherever she is posted, instead of being with the husband of the petitioner.

19. The counsel for the petitioner has contended that the petitioner has no accommodation available to her at Nasik where she is presently posted and on further enquiry with respect to official accommodation at Nasik, has drawn our attention to Annexure R-1 to the rejoinder to the counter affidavit filed by the respondents CISF, being the photographs thereof, to contend that the same is not habitable.

20. Though our sympathy is with the petitioner, as also indicated in the order dated 21st July, 2020 directing the respondents CISF to sympathetically consider the case of the petitioner, giving advantage of whichever policies the petitioner was entitled to benefit of, but from the counter affidavit of the respondents CISF and the contentions made by their counsel, it is clear that it is not as if the respondents CISF has been unkind to the petitioner; the respondents CISF have from time to time, since after the marriage of the petitioner, been accommodating the petitioner. Once it is so, the question of the petitioner being entitled to two rounds of sympathy, first by her employer and after the sympathy of the employer is exhausted, then by the Court, does not arise. We also cannot lose sight of the fact that while respondents CISF, in the matter of postings of its personnel, by a micro view to take, of all its personnel, before us, only one of them that is the petitioner is present. In a matter of posting of the petitioner, the micro view

concerning the facts and circumstances of the petitioner alone cannot be taken; taking such a view by us, affects not only the petitioner but has cascading effect on others too. After all, the vacancies at different stations are limited and directing the petitioner to fill up one of such vacancies will necessarily be at the cost of others who may have sought such posting and in spite of being entitled thereto, will be deprived thereof. It is not as if the petitioner is the only personnel in her Home Sector. There will be thousands more, who though entitled to Home Sector posting, would necessarily have to be denied the same for the reason of the petitioner being directed by the Court to be so posted.

21. The matter thus has to be adjudicated as per law.

22. The legal question which arises is, whether the OM dated 8th October, 2018 with respect to care-givers of persons with disability and the OM dated 30th September, 2009 with respect to couples postings, supersede/override the, or are to be given more weightage than the, Circular dated 25th September, 2017 providing for out of Home Sector posting.

23. The Disability Certificate of Smt. Kusham Lata, mother of the petitioner, describes her as a case of locomotor disability and mental retardation. The OM dated 8th October, 2018 on the subject of 'Exception from routine exercise of transfer/rotational transfer', in paragraph 3(ii) thereof, while defining the scope of specified disability, includes locomotor disability and exempts from routine exercise of transfer, a government employee who is care-giver of a parent with specified disability, subject of course to administrative constraints.

24. A reading of the aforesaid OM dated 8th October, 2018 exempting employees who are care-givers of persons with disability, from routine exercise of transfer/rotational transfer, envisages a person with disability having a fixed place of residence and which, axiomatically has to be in the Home Sector of the employee. It is for the reason of, the employee being not forced to either cart the person with disability from place to place where the employee may be transferred or to abandon the person in disability and in need of care, and either way to the prejudice of the person with disability, that the exemption from routine exercise of transfer/rotational transfer has been given. The said exemption is for the benefit of the person with disability and not for the benefit of the care-giver employee. The petitioner however has not pleaded any fixed abode of her mother, wherefrom the petitioner can be exempted from routine transfer/rotational transfer. The case of the petitioner on the contrary is that since the disabled mother of the petitioner is residing with the husband of the petitioner, the petitioner, to be able to give requisite care to her mother, is required vide the said OM to be posted wherever the husband of the petitioner is posted. The same would result in the petitioner, from time to time, under the OM dated 8th October, 2018, being transferred to wheresoever the husband of the petitioner is posted. This, from a reading of the OM dated 8th October, 2018, does not appear to be the purport thereof. Rather it appears that the petitioner is using the excuse of her disabled mother residing with her husband to seek posting, for all times, to wherever her husband is posted.

25. In the said vein, the claim of the petitioner, of her mother residing with her husband, indeed appears to us to be out of the ordinary. Ordinarily, when the petitioner was transferred from Tapovan, in her Home Sector, and

joined at Nasik, the mother of the petitioner would have accompanied the petitioner, if the petitioner were to be her main care-giver, and not shifted to Bikaner along with the husband of the petitioner. Though of course the respondents CISF in their counter affidavit have not controverted the said fact but again circumstantially, it can be well believed that the same is not by way of an admission but for lack of diligence in making proper enquiries. In this respect the explanation given by the counsel for the petitioner to our pointed queries, and as recorded above, also does not inspire confidence. The only reason given is of the official accommodation available to the petitioner at Nasik being not habitable. However, it is not the case of the petitioner that even if the official accommodation is inhabitable, no other accommodation could be hired by the petitioner at Nasik, to house herself and her mother and son. It is also not pleaded, where the mother and son of the petitioner were residing, when the petitioner was posted at Tapovan and/or where the petitioner and her husband, along with their son and mother of the petitioner, were residing. All these lacunas confirm our doubt that the petitioner is using the disability of her mother to seek posting at all times along with her husband.

26. We thus hold that the case of the petitioner is not covered by the OM dated 8th October, 2018 applicable to care-givers of disabled persons and the petitioner cannot seek exemption from out of Home Sector posting owing to the OM dated 8th October, 2018. The question, whether the needs of persons with disability are to have precedence over the rules relating to out of Home Sector posting, is left open for consideration in an appropriate case.

27. We have next examined the OM dated 30th September, 2009 on the subject of "Posting of husband and wife at the same station". The same is "in view of the utmost importance attached to the enhancement of women's status in all walks of life and to enable them to lead a normal family life as also to ensure the education and welfare of the children". The same, in the context of where the spouse belongs to one Central Service and the another spouse belongs to other Central Service, enables the spouse with the longer service at a station to apply for transfer subject to availability of posts and advises the Cadre Controlling Authority to strive to post the spouses at the same station. The very language of the same shows that the same is not mandatory and only requires an endeavour to be made therefor. In our opinion, the same cannot override the guidelines for posting/transfer of CISF personnel including the mandatory posting in out of Home Sector. The posting in out of Home Sectors has been deemed to be necessary in the career path of a personnel, to enable that personnel to discharge requirements/functions of the next higher rank. We are of the opinion that the said career development of the petitioner cannot be affected by giving precedence to the posting at the same station as the husband of the petitioner, especially when the respondents CISF have already stated that the petitioner's request will be sympathetically considered in the next routine transfer due in the year 2021-2022.

28. We are now in the Month of September of this year and more than half of the year has already passed and we are of the opinion that once the respondents CISF, in Court and on affidavit, have assured that the case of the petitioner will be sympathetically considered in 2021-2022 which is but a few months away, we ought not to disturb the existing position. Moreover,

the respondents CISF have categorically stated that there is no vacancy available at Barsingsar, where the petitioner is seeking transfer to.

29. We had in the very first hearing also enquired the effect of the husband of the petitioner being transferred out of Bikaner, by the time this petition were to be taken up for consideration. No proper reply to the said question has been given. In the circumstances, all we can say is that the respondents CISF, while considering the transfer of the petitioner in the next year, to take into consideration the then posting/likely posting of the husband of the petitioner. We may also mention that if the husband of the petitioner subsequently is posted to a place which is out of the Home Sector of the petitioner, the petitioner on being posted at such place can complete her tenure of out of Home Sector posting.

30. We therefore dispose of this petition binding the respondents CISF to their statement, to sympathetically consider the case of the petitioner in the year 2021-2022, also taking into consideration our observations hereinabove.

31. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

SEPTEMBER 08, 2020

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