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

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Decided on: 12.10.2021

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CONT.CAS(C) 293/2021

NIDHI MALIK

.... Petitioner

Through: Mr. Zoheb Hossain, Mr. Ashutosh Ghade
and Mr. Vivek Gumani, Advocates.

Versus

SH. ALAPAN BANDYOPADHYAY

.....Respondent

Through: Ms. Madhumita Bhattacharjee, Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This contempt petition has been filed by the petitioner under Sections 11 and 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India, 1949, seeking, *inter alia*, the following reliefs:-

"(i) Initiate contempt proceedings against the alleged contemnor for willfully and deliberately disobeying the judgment and Order dated 06.01.2021 of this Hon'ble Court passed in the W.P.(C) No.10874 of 2020 and further direct the Respondent to pass a fresh order in compliance of the said Order;"

2. The learned counsel for the petitioner submits that the order dated 06.01.2021 passed by the Division Bench in W.P.(C) No. 10874/2020 leaves no scope for the State of West Bengal to consider the matter on merits but to

issue a release order in view of the two orders as mentioned by the Division Bench in its aforesaid order, which is reproduced as under:

“...Present writ petition has been filed with the following prayer:

“1. Allow the present Petition and pass an appropriate writ, order or direction to set aside the impugned Order dated 01.12.2020 passed by the Ld. Central Administrative, Principal bench, New Delhi in MA/100/2252/2020;

2. Consequently, direct that the prayer (s) made in the Original Application of the Petitioner as filed before the Ld. CAT, Principal bench, New Delhi be allowed;

3. Consequently, direct the Respondent no. 1 to grant No objection/approval to the Petitioner for transfer of her cadre from West Bengal cadre to AGMUT Cadre and accordingly direct for passing of relieving orders in favour of the petitioner in a time bound manner;

4. Any other relief which this Hon'ble Court may deem fit in the interest of justice.”

2. However, after some arguments, learned counsel for petitioner confines his prayer to prayer (ii) made in the OA filed along with M.A.No. 100/2252/2020. The said prayer clause is reproduced hereinbelow:-

(ii.) In the alternative, issue an appropriate order directing the Respondent no. 2 to act on the Application of the Applicant dated 10.08.2020 (Annexure A-18) and grant consent/letter of No objection and consequential relieving order for the Transfer of cadre of the Applicant from West Bengal cadre to AGMUT Cadre;

3. Issue notice.

4. Mr. Vijay Joshi, Advocate accepts notice on behalf of

respondent No. 1 and Ms. Madhumita Bhattacharjee, Advocate accepts notice on behalf of respondent No. 2.

5. They state that in view of the limited prayer now sought before this Court, they do not wish to file any counter affidavit.

6. It is pertinent to mention that the Tribunal by way of the impugned order has dismissed the petitioner's O.A. on the ground of delay as far as challenge to order dated 25th May, 2016 of the respondent No.2 is concerned. However, the petitioner had been given liberty to pursue her fresh application seeking transfer of the cadre.

7. Keeping in view the aforesaid, the present writ petition is disposed of with a direction to the respondent No. 2 to decide the petitioner's second representation dated 10th August, 2020 within eight weeks in accordance with the order dated 06th November, 2019 passed by the Central Administrative Tribunal (CAT), Principal Bench in O.A.3863/2018 as well as order dated 04th December, 2020 passed by the Central Administrative Tribunal (CAT), Principal Bench in O.A. No.3579/2019 and the judgment and order dated 03rd February, 2020 passed by this Court in W.P.(C) No. 13444/2020.

8. It is clarified that the dismissal of the petitioner's O.A. on the ground of limitation shall not come in the way of disposal of the petitioner's second representation dated 10th August, 2020. Accordingly, the respondents are directed to decide the petitioner's second representation uninfluenced by the impugned order passed by the CAT..."

3. The order dated 03.02.2020 passed in W.P.(C) No. 13444/2019, as mentioned by the Division Bench in the aforesaid order, granted the following reliefs:

"...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, 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..."

4. Subsequently, another Division Bench of this Court on 28.05.2021 in W.P.(C) No. 4048/2021 (***State Of West Bengal v. Gandharva Rathore & Ors.***) also issued similar directions, *inter alia*, as under:

“...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 bearing.

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 ease 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 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."

(2) Ms. Loganayagi Divya 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 - 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 UP."

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..."

(emphasis supplied)

5. SLP No.7986/2021 preferred by the State of West Bengal against the aforesaid order dated 28.05.2021 passed by the Division Bench of this court

was dismissed by the Supreme Court on 16.07.2021 (Annexure-A2 page 262).

6. The learned counsel for the petitioner further relies upon judgments of the Supreme Court which have held *inter alia* as under: -

(a) ***Kshiti Goswami and Others vs. Subrata Kundu and Others*** (2013) 11 SCC 618:-

"11.He made strenuous effort to persuade us to take the view in exercise of contempt jurisdiction the High Court cannot issue direction for implementation of the order, violation of which led to the initiation of the contempt proceedings, but we have not felt persuaded to agree with him. Rather, we are in complete agreement with the High Court that one of the objects of the contempt jurisdiction which is exercised by the High Court under Article 215 of the Constitution read with the Contempt of Courts Act, 1971 is to ensure faithful implementation of the direction given by it. This is precisely what the Division Bench of the High Court has done in this case. Therefore, we do not find any valid ground or justification to entertain the petitioners' challenge to the impugned order....."

(b) ***Maninderjit Singh Bitta vs. Union Of India And Others*** (2012) 1 Supreme Court Cases 273:

"20. In exercise of its contempt jurisdiction, the courts are primarily concerned with enquiring whether the contemnor is guilty of intentional and wilful violation of the orders of the court, even to constitute a civil contempt. Every party to lis before the court, and even otherwise, is expected to obey the orders of the court in its true spirit and substance. Every person, is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to.

Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the party concerned to undermine the authority of the courts, its dignity and the administration of justice.

21. In *Vinay Chandra Mishra*, (1995) 2 SCC 584, this Court held that: (SCC p. 617, para 39)

"39. ... judiciary has a special and additional duty to perform viz. to oversee that all individuals and institutions including the executive and the legislature act within the framework of not only the law but also the fundamental law of the land. This duty is apart from the function of adjudicating the disputes between the parties which is essential to peaceful and orderly development of the society. ... dignity and authority of the courts have to be respected and protected at all costs."

22. Another very important aspect even of the civil contempt is, "what is the attribution of the contemnor?" There may be cases of disobedience where the respondent commits acts and deeds leading to actual disobedience of the orders of the court. Such contemnor may flout the orders of the court openly, intentionally and with no respect for the rule of law. While in some other cases of civil contempt, disobedience is the consequence or inference of a dormant or passive behaviour on the part of the contemnor. Such would be the case where the contemnor does not take steps and just remains unmoved by the directions of the court. As such, even in cases where no positive/active role is directly attributable to a person, still, his passive and dormant attitude of inaction may result in violation of the orders of the court and may render him liable for an action of contempt.

26. *It is also of some relevance to note that disobedience of court orders by positive or active contribution or non-obedience by a passive and dormant conduct leads to the same result. Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs (refer T.N. Godavarnam Thirumulpad (102) v. Ashok Khot (2006) 5 SCC 1, SCC p. 6, para 5). The proceedings before the highest court of the land in a public interest litigation, attain even more significance. These are the cases which come up for hearing before the court on a grievance raised by the public at large or public-spirited persons. The State itself places matters before the Court for determination which would fall, statutorily or otherwise, in the domain of the executive authority.*

27. *It is where the State and its instrumentalities have failed to discharge its statutory functions or have acted adversely to the larger public interest that the courts are called upon to interfere in exercise of their extraordinary jurisdiction to ensure maintenance of the rule of law. These are the cases which have impact in rem or on larger section of the society and not in personam simpliciter. Courts are called upon to exercise jurisdiction with twin objects in mind. Firstly, to punish the persons who have disobeyed or not carried out orders of the court i.e. for their past conduct. Secondly, to pass such orders, including imprisonment and use the contempt jurisdiction as a tool for compliance with its orders in future. This principle has been applied in the United States and Australia as well.*

28. *For execution of the orders of the court even committal for an indefinite term has been accepted under Australian law [Australasian Meat Industry Employees' Union v. Mudginberri Station (Pty) Ltd.¹⁰] and American law, though this is no longer permissible under English law. While referring to detention of a*

person for a long period to ensure execution of the orders in Nevitt, In re, 117 F448 (1902) at p. 461, Sanborn, J. observed that the person subjected to such a term "carries the keys of his prison in his own pocket".

29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. It is inappropriate for the parties concerned to keep the execution of the court's orders in abeyance for an inordinate period. Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. Inordinate delay of years in complying with the orders of the court or in complying with the directed stipulations within the prescribed time, has been viewed by this Court seriously and held to be the contempt of court, as it undermines the dignity of the court. Reference in this regard can be made to Maniyeri Madhavan v. Inspector of Police¹² and Anil Ratan Sarkar v. Hirak Ghosh¹³. Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period."

7. The learned counsel for the respondent has refuted the aforesaid contentions primarily on the following grounds:

- (i) that no contempt is made out because the order dated 06.01.2021 in W.P.(C) No. 10874/2020 passed by the Division Bench of this Court, directing the State of West Bengal to take a decision within four weeks, has already been complied with, and it would now be open to the petitioner to pursue her remedies as may be available to her in law, in case she is aggrieved by the said decision;

- (ii) that the Division Bench order does not direct the State to necessarily relieve her from the West Bengal cadre but to consider her representation; the same has been considered, and an order has been passed on 22.02.2021 by the DoPT. A subsequent order was passed by the State Government on 20.07.2021, declining the relief sought by the petitioner on the ground that there was acute shortage of IAS Officers in the State. Furthermore, because of the pandemic the State administrative machinery was already stretched, therefore, the State was not in a position to relieve the petitioner from the administrative set up.
- (iii) The learned counsel for the respondent further submitted that the petitioner is bound by the doctrine of aprobate and reprobate, whereby once she has taken the benefit of her matrimonial case being HMA No.148/2018 pending before the Court of the Principal Judge, Family Court, Patiala House Courts, New Delhi, transferred to the Family Court, Krishnanagar, West Bengal, for her own convenience, therefore, she is now estopped from denying the validity of the binding effect of the same; it shows that she intended to stay and serve in West Bengal.

8. The learned counsel for the respondent also referred to the decision of the Supreme Court in Special Leave Petition No.36717/2017(***Namrata Verma vs. The State of Uttar Pradesh and Others***) in which on 06.09.2021 the Supreme Court held that “...*It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the*

employer to transfer an employee considering the requirement...”

9. The respondent states that dismissal of MA No.2252/2020 by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi, vide its order dated 01.12.2020 was because of a delay of 3½ years.

10. In the first instance, the court would note that it is not in dispute that the Government of India has given the ‘NoC’ for cadre transfer from the AGMUT Cadre way back in June, 2015 and it was so averred in the OA filed before the Central Administrative Tribunal (‘CAT’). Furthermore, the DoPT, Government of India has written to the State of West Bengal for inter-cadre transfer of the petitioner in terms of the above NoC. Therefore, the willingness of the recipient/ receiving Department is clear; once the officer is released from West Bengal, she will join another cadre with the concurrence of the Union of India.

11. The learned counsel for the respondent, referring to Rule 5(2) of the Indian Administrative Service (Cadre) Rules, 1954, submits that the change can only be done, with the consent of the State Government concerned.

12. This contention is promptly refuted by the learned counsel for the petitioner who submits that the issue is no more *res integra*. Indeed in the judgment cited hereinabove, the Supreme Court has clearly dealt with the issue of inter-cadre transfer and held that on account of family exigency, inter-cadre transfer would be allowed.

13. On 28.05.2021, this Court had passed the following order:-

“...1. The learned counsel for the petitioner submits that the spirit of the order dated 06.01.2021 passed by a Division Bench of this in WP(C)10874/2020 has to be respected and adhered to, therefore the respondent may review and reconsider the

petitioner's case, especially in view of the fact that the petitioner and her husband - who also is a government servant, have been living separately for more than four years. They and their children have not lived together as a family for that duration. The children are in school, they need equal and constant guidance of both parents. He submits that interactions through video mode or the telephone, can never replace the reassurance and confidence a child get by the mere presence of both parents under the same roof. It adds to their healthy emotional growth. The learned counsel emphasizes that the rights of the children are a fundamental issue and ought to be amongst the foremost factors to be considered by the government.

2. The learned counsel for the petitioner further submits that similarly situated government servants have been granted relief. Therefore, the petitioner would once again request the State of West Bengal to look into the issue favourably.

3. The learned counsel for the State of West Bengal seeks and is granted three weeks' time to file an affidavit with better particulars, particularly in terms of the of the Division Bench.

4. List on 13.07.2021 ...”

14. Further, on 13.07.2021, this Court passed the following order:

“...1. Reply has not been filed by the respondent, despite acceptance of notice on 24.3.2021 and further time having been and time having been granted on 28th May 2021 for filing a reply. The right to file a reply on behalf of the respondent stands closed.

2. The learned counsel for the petitioner submits that in an identical matter being W.P.(C) No.9793/2019, a Division Bench of this Court on 13.09.2019 directed, inter alia as under:

“...10... and if for any reason this order is not complied with, respondent no. 1 shall stand relieved from the IPS cadre of the

State of West Bengal w.e.f. 01.11.2019 and shall join the services of the Rajasthan Cadre... "

3. The Court has noted that the petitioner has been making persistent endeavours to save her matrimony and to secure for her school-going children and for herself a complete family unit — with both parents under one roof. The children have been deprived of their father's affection, who is posted in Delhi, while the petitioner and the children live in the State of West Bengal.

4. The learned counsel for respondent submits that a divorce petition was filed by the husband and it is not known if the marriage still subsists. The learned counsel for the petitioner submits that the marriage subsists. Referring to pdf page 141, he further submits that in the OA filed before the Central Administrative Tribunal, Principal Bench, Delhi ('CAT'), the petitioner inter alia has duly disclosed in para (B) that, "...the applicant's husband has filed a divorce petition (being HMA No. 148 of 2018 in Family Court, Patiala House Courts, New Delhi/now transferred to Kolkata) and the Applicant, in an all-out effort to save her marriage is opposing such application. For the well-being of her very small children (both living with the applicant) and in all-out effort to save her marriage, the applicant has requested the West Bengal Government to grant consent for her Inter-Cadre transfer, which the applicant believes that she is entitled to in terms of the instructions issued by the DoPT. "

5. The reasons seeking for inter cadre transfer is clearly disclosed by the petitioner in the aforesaid OA.

6. Two aspects are apparent from the above (i) the petitioner's conduct as a conscientious and responsible parent and spouse is clear, also the fact that she wants to save her marriage and (ii) she wishes that her children must get simultaneous love and affection of both their parents under one roof.

7. The learned counsel for the petitioner submits that the

petitioner would be entitled to the identical relief as has been granted by the Division Bench of this Court in two petitions - one of which has been quoted hereinabove.

8. Ex facie the respondent is in contempt of the Court's directions. However, the learned counsel for the respondent seeks some time to obtain instructions and to file an affidavit on or before the next date, let her do so.

9. At her request, renotify on 22.07.2021 ... ”

15. The Court is of the view that the dismissal of the aforesaid OA was not to be considered by the respondent. The Division Bench, in its order dated 06.01.2021 had directed that the order of dismissal dated 01.12.2020 passed by the CAT, shall not come in the way of disposal of the petitioner's second representation dated 10.08.2020 and it was to be decided uninfluenced by the impugned order passed by the CAT.

16. In terms of the directions of the Division Bench, the respondent was to decide the petitioner's said representation within eight weeks, “***in accordance with***”:

- (i) the order dated 06.11.2019 passed in OA No. 3863/2018 by the CAT, Principal Bench, New Delhi;
- (ii) the order dated 04.12.2020 passed in OA No. 3579/2019 by the CAT, Principal Bench, New; and
- (iii) the judgment and order dated 03.02.2020 passed by this Court in W.P.(C) No.13444/2020.

17. The order dated 06.11.2019 passed by the CAT in OA No. 3863/2018, dealt with the issue of cadre transfer, which held, *inter alia*, as under:

"6. The question as to whether the request made by an officer

for cadre transfer can be rejected by citing the reasons of shortage of officers was dealt with by Guwahati Bench of this Tribunal in OA Nos.2/2010 and 120/2010 through separate orders dated 29.04.2010 and 02.08.2010, and OA No.218/2010 decided through order dated 29.10.2010 by Principal Bench of this Tribunal. It was mentioned that the grounds such as the shortage of staff cannot constitute the basis to reject the request made by an officer for cadre transfer on the ground of marriage. In the policy framed in the year 2009, the importance to be given to the convenience of the woman officers was reiterated. This was taken note of and the plea of State Government therein that the officers can seek for transfer of the other spouse to the cadre of that State was also not accepted. Though specific directions were issued in those two OAs directing the issuance of letters of "No Objection", we do not propose to do that. The matter has to be left with the State Government, even by requiring them to keep in view the purport of the policy guidelines as well as the law laid down by this Tribunal.

7. We, therefore, dispose of the OA directing the 2nd respondent to pass an order on the application submitted by the applicant within six weeks from the date of receipt of copy of this order, duly taking into account, the policy guidelines issued in the year 2004 and 2009 as well as the law laid down by the Guwahati Bench of this Tribunal in OA Nos.2/2010 & 120/2010, and of the Principal Bench in OA No.218/2010. There shall be no order as to costs."

18. The issue of inter-cadre transfer was again considered by the CAT, Principal Bench in its order dated 04.12.2010 passed in OA No. 3579/2019, which held, *inter alia*, as under:

"10. When the matter came up for final hearing, it was found that the issue raised in the present OA is identical to that in the aforesaid OA 218/2010 and also in OA 3863/2018 and that judgments of this Tribunal have attained finality. In view thereof, the time was granted to the learned counsel appearing for the Respondent No.2 to take fresh instructions as to whether

the Respondent No.2 may re-visit its decision in the matter. However, no specific instructions could be received by the learned counsel appearing for the Respondent No.2.

11. In view of the aforesaid facts, the issue arises as to whether the request made by an All India Service Officer for cadre transfer on the ground of marriage can be rejected by citing the reasons of shortage of officers or it is open for concerned State cadre to require such officer to ask his/her spouse to seek cadre transfer. Both the issues are no more res integra in view of the aforesaid judgments of this Tribunal in Dr. Adarsh Singh (supra) and further Order/Judgment dated 6.11.2019 in Smt. Bhavna Gupta's case (supra) which has been affirmed by the Hon'ble High Court of Delhi vide Order/Judgment dated 3.2.2020.

12. Ordinarily, we would have remitted the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 and take a fresh decision in the matter, however, in view of the fact that in spite of the issue already settled in a number of cases, the Respondent No.2 has failed and neglected to follow the Order/Judgment of this Tribunal upheld by the Hon'ble High Court of Delhi (supra) and they have taken the same defence as taken by them in previous litigations referred to hereinabove, we are of the considered view that no useful purpose would be served by remitting the matter to the Respondent No.2 to re-visit their aforesaid decision dated 06.02.2020 in the matter.

13. In view of the aforesaid, the present OA is allowed with direction to the Respondent No.2 to issue 'No Objection Certificate'/consent for cadre transfer of the applicant from State of West Bengal to State of Himachal Pradesh on the ground of her marriage to Shri Anurag Chander, IAS (HP;2016) as expeditiously as possible and in any case within four weeks' of receipt of a copy of this Order."

19. A Division Bench of this Court in its order dated 03.02.2020 passed in

W.P.(C) No. 13444/2019, ***Bhavna Gupta vs. The Union of India & Ors.***, had considered, *inter alia*, that the government policy, apropos inter-cadre transfer cited before the court 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; only after having received no response she approached the Tribunal, which directed the State to consider her representation within six weeks. However, no response was received. Subsequently, the Court directed the petitioner therein to be relieved within two weeks from the date of receipt of a copy of the said order.

20. Interestingly, as noted hereinabove, a Division Bench of this Court on 28.05.2021, in W.P.(C) No.4048/2021, ***State of West Bengal vs. Gandharva Rathore & Ors.***, has held, that the issue that there is an extreme shortage of officers, as a number of officers had sought transfer from the West Bengal Cadre on account of their marriage to officers belonging to other State cadres, is no longer *res integra* and the same stands decided against the said State. It relied upon the decisions of ***Bhavna Gupta vs. The Union of India & Ors.***, W.P.(C) No.13444/2019 as well as ***Ms.Loganayagi Divya V. vs. Union of India & Ors.***, W.P.(C) No.3927/2020, in which the officers of the IPS Cadre of the State of West Bengal stood relieved to join the IPS Cadre in the State of Odisha in terms of the said orders.

21. A similar was the order passed in ***The State of West Bengal vs. Raj Karan Nayyar & Anr.***, W.P.(C) No. 11966/2018, which had directed that the respondent No.1 be relieved within eight weeks and in case the officer was not so relieved, she would be deemed to have been relieved by virtue of the Court order.

22. Therefore, the issue raised by the respondent about the extreme shortage of the officers or their deployment for election duty was not an issue to be examined by the State Government. The respondent could not have avoided the clear directions of the Division Bench of this Court dated 06.01.2021 in W.P.(C) No.10874/2020 apropos deciding the petitioner's representation dated 10.08.2020 within eight weeks in accordance with the orders cited therein. Having not done so, the respondent has acted contumaciously and in breach of the directions; the non-compliance amounts to contempt of court.

23. Reference to the subsistence of the petitioner's marriage and the transfer of a matrimonial case to the Kolkata jurisdiction is inelegant and could have been avoided, as this has nothing to do with the decision making process, as directed by the Division Bench of this Court.

24. In the circumstances, non-issuance of a relieving order is of no consequence to the petitioner. As noted hereinabove, a corollary relieving order can be issued by this Court in exercise of its powers under Article 215 of the Constitution of India read with the provisions of the Contempt of Courts Act, 1971. In ***Kshiti Goswami's case (supra)*** and in of ***Dr. Subhash Chandra Pratihari vs. Ms. Veena Chakraborty, 1994 SCC OnLine CAL226***, it has been held, *inter alia* that:

"24. In view of the contempt alleged, the Petitioner had prayed the Court, during the hearing, for passing appropriate direction upon the Contemner for compliance with the aforesaid relevant order dated 10th January, 1992 and for passing such necessary penal orders against her, as the Court may deem fit and proper. A question naturally arises as to whether in Contempt Proceedings the Contemner could only be punished or let off,

and whether there is any other way out. The point may somewhat differently be posed as to whether any consequential relief could be given on a Contempt Application. A Division Bench of this Court in Dulal Chandra Bhar v. Sukumar Banerjee, AIR 1958 Cal 474 : (1958 Cri LJ. 1162), has held that in a civil contempt when the party in whose interest the order was made moved the Court for action to be taken in contempt against the Contemner with a view to enforcement of his right, the proceeding is only a form of execution. Another Division Bench of this Court in Saibal Kumar Gupta v. B.K. Sen, AIR 1959 Cal 106 : (1959 Cri U 172), has held that when an order made for the benefit of a party is disregarded or violated and the Court enforces the order by punishing the delinquent for contempt, it is said that such proceedings is a form of execution. The Supreme Court in Md. Idris v. Rustam Jehangir Bapuji, (1984) 4 SCC 216 : AIR 1984 SC 1826 : (1985 Cri U 353), has held that a single Judge of the High Court was justified in giving appropriate direction in addition to punishing the party for contempt of Court. The High Court can, accordingly, pass direction on Contempt Application for implementation of its order. The Supreme Court in Noorali Babul Thanewaia v. Sh. K.M.M. Setty, (1990) 1 SCC 259 : AIR 1990 SC 464 : (1990 Cri U 316), has clearly held that in a Contempt Application arising out of a civil proceeding the Court is competent to issue necessary further and consequential direction for enforcing the order. The aforesaid decisions' had been followed by a learned Single Judge of this Court in Hindustan Lever Sramik Karmachari Congress v. Ashis Chakraborty, (1991) 1 Cal U 502 : (1991 Cri U 2890). There is nothing to depart from the aforesaid decisions. That being so, there could clearly be no mistaking that in a Contempt Application the Court is competent to issue necessary further and consequential directions for enforcing its order. In the nature of

the matter, I, accordingly, direct the Contemner Mrs. Leena Chakraborty to comply with the orders dated 25th March, 1991 and 10th January, 1992 passed in the relevant Writ Application, being C.O. No. 3386 (W) of 1991, within two months from this date. I further direct her to cancel or withdraw the order of suspension dated 19th August, 1994 passed on the Petitioner to give effect to the aforesaid orders passed by the Court on the said Writ Application. This order shall not, however, debar the Contemner to initiate Departmental Proceedings against the Petitioner hereafter on specific article/s of charge, if there be any, and from suspending him during the pendency of the Departmental Proceedings, if so required for the purpose of proceeding with the same. But the Petitioner shall not be suspended without initiating any Departmental Proceedings against him on specific article/s of charge, and before complying with the aforesaid orders of this Court dated 25th March, 1991 and 10th January, 1992. If the Petitioner feels aggrieved against any such Departmental Proceedings; it would also be open to him to seek appropriate redress before the appropriate forum, as the law permits."

25. In view of the preceding discussion, the petitioner is entitled to consequential orders, as not doing so, will only further the act of contempt by the respondent. The relief directed by the Division Bench to be granted to petitioner is evident. Therefore, all orders passed by the State of West Bengal, denying the relieving order are of no consequence, and are set aside. Accordingly, the petitioner shall stand relieved within one week from the IAS Cadre of the State of West Bengal. No further orders are required to be passed by the said State in this regard. The DoPT shall consider/treat this order as the relieving order of the petitioner to enable her to join her post in the AGMUT Cadre in Delhi.

26. Since, at the first instance, the incumbent respondent has already tendered his unconditional apology for any unintentional breach of the directions of this Court, the apology is accepted. No further order is required. The petition is disposed-off in terms of the above.

NAJMI WAZIRI, J.

October 12, 2021/rd/sb

