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ORISSA HIGH COURT: CUTTACK

W.P.(C) No. 32662 of 2021

In the matter of an application under Articles 226 and 227
of the Constitution of India

Pratima Dash Petitioner

-Versus-

Union of India and others Opp. Parties

Advocates appeared through Hybrid Mode:

For Petitioner : Mr. S.K. Ojha

For Opp. Parties : Mr. D.R. Mohapatra (CGC)

P R E S E N T:

THE HONOURABLE MR. JUSTICE SANJAY KUMAR MISHRA

Date of Hearing and Judgment: 09.09.2022

Mr. S.K. Mishra, J. The present Writ Petition has been filed by the Petitioner to quash the Order of rejection dated 05.08.2021, as at Annexure-9, so far as the Petitioner is concerned, with further prayer to issue writ in the nature of certiorari directing the Opposite Parties to accept the request of the Petitioner for her posting at Bhubaneswar on the basis of policy decision taken vide Orders dated 06.10.2020, as at Annexure-4 and dated 14.01.2021, as at Annexure-5, respectively.

2. The factual matrix leading to filing of the present Writ Petition is that being recruited through direct recruitment, the Petitioner joined in the C.R.P.F. as Constable/GD (MAH) on 02.03.1995. On being deputed for training and completion thereof, she was posted in various parts in India except Odisha Zone. However, for the first time, acceding her request, the Petitioner was posted at Odisha in 2008.

In the meantime, after ten year of her marriage, the Petitioner was blessed with a male mentally retarded child in the year, 2011. As per assessment made, the child is 90% mentally disabled and requires frequent medical care and attention. Accordingly, looking into his infirmities, he has been admitted in the Centre for Autism Therapy Counseling and Help, shortly, 'CATCH', Bhubaneswar.

It is further case of the Petitioner is that in the year, 2015, when the child was only 4 years old, vide Office Order dated 08.05.2015, she was transferred to 232(M) Battalion, Base Camp at Ajmer, Rajasthan. Challenging the said Order of transfer, the Petitioner approached this Court in W.P.(C) No.9808/2015, which was disposed of vide Order dated 21.05.2015 directing the present Opposite Parties to consider the grievance of the Petitioner. Despite such direction, since her representation was rejected, she was again constrained to approach this Court in W.P.(C) No.12873/2015, which was disposed of on 03.12.2015 with the following observations:

“...The petitioner having blessed with a mentally retarded child, her transfer should be regulated by the DoP & T Circular vide Annexure-5 and transfer policy framed by the Director General of C.R.P.F. vide Annexure-6 mentioned (supra) and she may be posted anywhere against the available vacancy in the State of Orissa enabling her to give attention as well as better treatment to her mentally retarded child....”

3. In terms of the Order of this Court, the Order of transfer was modified and she was posted under the newly created Group Centre, shortly, GC at Sambalpur vide Office Order dated 09.02.2016. After continuing for about 4 months at Sambalpur, once again the Petitioner was transferred vide Office Order dated 20.06.2016 in the guise of promotion to the earlier place of transfer i.e. 232 (M) Battalion. However, as the Petitioner refused to accept the said promotion, she was allowed to continue at Sambalpur.

In the year, 2018, the Petitioner was again blessed with a female child and as per procedure, she was allowed maternity leave as well as child care leave for a period of one year. However, despite her refusal to accept promotion, after one year, once again the Petitioner was promoted to the next higher Grade and also posted in 232(M) Battalion. However, in view of such refusal of promotion, warranting in the Departmental Proceedings against her, finding no other alternative, she made a request to the Authority for her posting within the State of Odisha. Though her application was forwarded to the Competent Authority, vide letter dated 10.04.2018, no decision was taken in the said regard. After availing the maternity and child care

leave, the Petitioner submitted her joining report on 02.05.2019 at GC, Sambalpur. While accepting joining report by the Centre In-charge, she was handed over the Order of promotion and transfer to 232(M) Battalion and without allowing her to stay with her family, she was relieved forthwith with some caution and was directed to report at the new place of posting on 12.05.2019. It has also been stated in the Writ Petition that though the decision of the Authority was arbitrary and against the decision of this Court, but the attitude of the relieving Authority created fear in the mind of the Petitioner to approach the Court of law once again and hence, in obedience of the said Office Order, the Petitioner joined in her new place of posting on 12.05.2019 with much difficulty.

It is the further case of the Petitioner that she has completed two years of mandatory field duty as per the Standing Order No.3/2015 issued by the Department. The Petitioner is unable to keep the newly born baby with her and even unable to meet the family members intermittently.

It is also the case of the Petitioner that to facilitate the transfer of employees, those who are care giver to the disabled child, DoP & T issued O.M. dated 08.10.2018 exempting the tenure restriction of such employees. In consonance with the DoP & T instruction issued, the Department accepted the same and took a policy decision

that the employees, those who are care giver, may be posted in the areas indicated in the Order dated 06.10.2020.

Looking into the prevailing situation and condition of her family, the Petitioner, vide her representation dated 21.04.2021, requested the Authority concerned for her transfer to Bhubaneswar as per the Circulars/Policy decisions taken in the said regard. She also submitted all the relevant Medical Certificates, so also Order passed by this Court in W.P.(C) No.12873/2015 appended to the said representation for necessary consideration of the Authority, which was duly forwarded by the Opposite Party No.5 to the concerned Authority, vide letter dated 17.05.2021, as at Annexure-7 and 8, respectively.

However, the said representation of the Petitioner was turned down by the concerned Authority, vide Order dated 05.08.2021, as at Annexure-9, without assigning any reason though in case of another employee, namely, Jyoti Pal, a similar request was acceded to by the Authority concerned on the plea of her minor child and treatment of Mother-In-Law. Being aggrieved by such communication dated 05.08.2021, as at Annexure-9, the Petitioner has preferred the present Writ Petition.

4. Being noticed, the Opposite Parties appeared and filed their Counter, wherein, apart from reiterating the facts pleaded in the Writ Petition, a stand has been taken that

the Petitioner was posted in her home State i.e. Odisha, near about 11 years, out of her 27 years of service. Her posting to GC, C.R.P.F Bhubaneswar and GC, C.R.P.F., Sambalpur were ordered on her request by the competent transferring Authority in spite of non-completion of her 20 years of service. It has further been stated in the said Counter that in view of the Standing Order No.SO-07/2015, the extract of which has been annexed to the Counter as Annexure-J/5, i.e. Transfer of Mahila Personnel, since the Petitioner has not completed a tenure of 4 years in the present place of posting in terms of Clause-h of the Standing Order, her request for transfer to Bhubaneswar (Odisha Zone) could not be considered and because of the administrative constraints, the Authority was justify to reject her prayer vide Order dated 05.08.2021, as at Annexure-9.

5. This Court heard Mr. S. K. Ojha, learned Counsel for the Petitioner and Mr. D.R. Mohapatra, learned Central Government Counsel for the Opposite Parties and perused the record. Pleading having been exchanged between the Parties, with the consent of learned Counsel for the Parties, this Writ Petition is being disposed of finally at the stage of admission.

6. Learned Counsel for the Petitioner contended that in view of the Order of this Court dated 03.12.2015, passed in W.P.(C) No.12873 of 2015, wherein there is a reference to the Office Order dated 05.01.1993 of Ministry of Personnel,

Public Grievance, Department of Personnel and Training, so also in view of the Clause-XV of the Transfer Policy framed by the Director General of C.R.P.F., the Petitioner should be kept at the place of her choice to facilitate specialized treatment to her child. Further, earlier, a coordinate Bench has rightly interfered with the Order of transfer passed earlier by the said Authority and matter was remanded back to the Authority concerned for reconsideration of her case in accordance with law. Learned Counsel for the Petitioner further submits that in view of the Office Memorandum dated 08.10.2018, as at Annexure-3, Clause-h of the Standing Order, as at Annexure-J/5, with regard to tenure of Mahila personnel in Mahila BNs and RAF, is not applicable to the case of the Petitioner.

7. Learned Counsel for the Petitioner submitted that the Order of rejection dated 05.08.2021 is clearly illegal and arbitrary, so also bears no reason. Even though the discretionary power is available with the Authority to take a decision, but the same has to be exercised in an indiscriminatory manner. However, in the present case, the Order of rejection was passed in a discriminatory manner and the said Order of rejection also bears no reason for which the same needs to be scrutinized by this Court.

8. It is also contended by the learned Counsel for the Petitioner that since the said decision of the Authority is against the policy/guidelines issued by the appropriate

Government in subordinate legislation, the said policy/guidelines, so also beneficiary clauses therein is enforceable under the law as the same is the subordinate legislation framed by the Government and implementing Authority cannot go beyond the same and are estopped to take any such action prejudice to the interest of the beneficiary.

9. Learned Counsel for the Opposite Parties submitted that though the Office Memorandum dated 08.10.2018, as at Annexure-3, entitles a person for exemption from routine exercise of transfer/rotational transfer, but the same is subject to the administrative constraints, so also administrative feasibility and the Authority concerned was justified to reject the representation of the Petitioner vide Order dated 05.08.2021.

10. Para-2 and 3(i) of the Office Memorandum dated 08.10.2018 read as follows:

“2. The scope of disability initially had covered (i) blindness or low vision (ii) hearing impairment (iii) locomotor disability or cerebral Palsy (iv) leprosy cured (v) mental retardation (vi) mental illness and (vii) multiple disabilities, which subsequently, vide OMs of even number dated November 17, 2014 and January 5, 2016, was further extended to include ‘Autism’, ‘Thalassemia’ and ‘Haemophilia’.

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 OMs 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 Disability Act, 2016 may be exempted from the routine exercise of transfer/ rotational transfer subject to the administrative constraints.”

Emphasis supplied

11. In pursuance of the Office Memorandum dated 08.10.2018, Order dated 06.10.2020, as at Annexure-4, was issued by the Directorate General, CRPF ordering therein as follows:

“ Of late it is seen that a large number of officers and personnel are requesting for transfer to any specific place or retention at their present place of posting due to disability of their children. The case has been examined in this Directorate with DOP&T guidelines on the matter.

2. DOP&T vide OM dated 08/10/2018 has stipulated that a Govt. employee who is a care-giver of deponent daughter/son/ parents spouse/brother/sister with specified disability, as certified by the certifying authority as a Person with Benchmarks 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 administrative constraints. The term of specified disability has also been defined in para 3(ii) of aforesaid OM. ‘Autism is one of the disability comes under the said clause.

3. After considering all aspects of the matter, now the following locations of CRPF have been declared as Hubs for Autistic child so that posting of CRPF employees having such child can be considered sympathetically at these places on the basis of production of medical certificate issued by the appropriate medical authority subject to administrative feasibility :-

- (a) GC Bangalore
- (b) GC Hyderabad
- (c) GC G/Noida
- (d) GC Lucknow
- (e) GC Pinjore
- (f) GC Pune
- (g) GC Ranchi
- (h) GC Durgapur
- (i) GC Bhopal
- (j) GC Guwahati

4. This has the approval of DG.

Sd/-- 06/10/2020
(Vitual Kumar)
IG (Pers)”

Emphasis supplied

12. Admittedly, vide subsequent Order dated 14.01.2021, as at Annexure-5, the effect of the said Order, as at Annexure-4, was extended to GC, CRPF, Bhubaneswar, which was also declared as Hub for autistic children.

13. As is revealed from the communication dated 05.08.2021, which is impugned in this Writ Petition, the Authority concerned entertained the request of a co-employee, namely, Jyoti Pal to transfer her to her place of choice on the ground of care of her minor child and treatment of Mother-in-law. But in case of the present Petitioner, where a request was made to transfer her to GC Bhubaneswar, has been turned down without assigning any reason and that too, contrary to the observations made by this Court in the earlier Order dated 03.12.2015 passed in W.P.(C) No.12873 of 2015 and the DoP & T Circular in terms of the Office Order dated 05.01.1993 of Ministry of

Personnel, Public Grievance, Department of Personnel and Training, so also Clause-XV of Transfer Policy framed by the Director General of C.R.P.F. vide Annexure-6, as has been referred to in the said Order dated 03.12.2015, passed in W.P.(C) No.12873 of 2015.

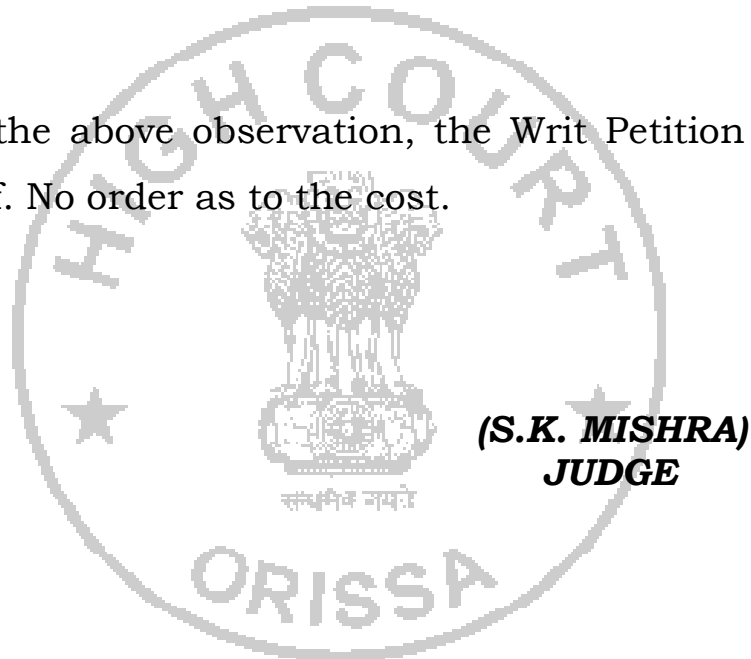
14. Further, law is well settled that the issue once decided by the Court of law, is also binding on the administrative and executive Authorities until and unless the same is modified and varied by the higher judiciary or by way of making appropriate legislation, it is made inoperative. Admittedly, a coordinate Bench vide Order dated 03.12.2015, passed in W.P.(C) No.12873 of 2015, has held the Order of transfer dated 30.04.2015 and consequential Order of relieve dated 08.05.2015, so also the Order of rejection of the representation of the Petitioner dated 18.06.2015 to be illegal, which were set aside vide the said judgment relying on the Office Order dated 05.01.1993 (supra), so also Transfer Policy framed by the Director General of Police, CRPF, New Delhi.

15. In view of such observation made above, this Court is of the view that the impugned Order dated 05.08.2021, as at Annexure-9, is illegal, arbitrary and discriminatory and deserves to be set aside.

16. Accordingly, the impugned communication dated 05.08.2021, as at Annexure-9, so far as the present Petitioner is concerned, is set aside.

17. The matter is remitted back to the Opposite Party No.2-Director General of Police, CRPF, New Delhi, with a direction to reconsider the case of the present Petitioner for her posting at GC, Bhubaneswar in terms of the observations made hereinabove, so also keeping in mind the previous Order passed by this Court in W.P.(C) No.12873/2015. The entire exercise shall be completed within a period of six weeks from the date of communication/production of the certified copy of this Order.

18. With the above observation, the Writ Petition stands disposed of. No order as to the cost.



Orissa High Court, Cuttack
The 9th September, 2022/PCD