



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

% *Date of decision: August 16, 2023*

+ W.P.(C) 10842/2023, CM APPLs. 42032/2023 & 42033/2023

STATE OF WEST BENGAL

..... Petitioner

Through: Ms. Madhumita Bhattacharjee, Adv.

versus

PARUL KUSH JAIN & ORS.

..... Respondents

Through: Mr. Ankur Chhibber, Adv. for R1 and R2.

Ms. Pratima N. Lakra, CGSC with
Ms. Vidhi Gupta, Govt. Pleader and
Ms. Akanksha Chandhok, Adv. for
R3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

V. KAMESWAR RAO, J. (ORAL)

CM APPL. 42032/2023

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C) 10842/2023

1. The challenge in this petition filed by the petitioner State of West Bengal is to the order dated April 22, 2022 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA 594/2022 whereby the Tribunal has disposed of the OA filed by the respondent Nos. 1 and 2 by stating in paragraphs 6 to 8 as under:



“6. In our considered opinion there is a violation of the policy guidelines laid down by DOP&T. The respondents could themselves have referred the case of applicant No.1 and her younger daughter to a medical board constituted by a Central Agency. Such Board should have specialists from the concerned field, as prescribed in the aforesaid Guidelines.

7. In view of the foregoing, the respondents are directed to refer the applicant No.1 and her younger daughter to a Medical Board, constituted by a Central Agency, preferably at Delhi, within a period of one month from the date of receipt of a copy of this order. On the basis of the Medical Certificate, to be issued by the Board, an appropriate decision will be taken on the inter-cadre transfer of the applicants and the same be communicated to the applicants within a period of one month thereafter.

8. With the above directions, the OA is allowed. There shall be no order as to costs.”

2. At the outset, Mr. Ankur Chhibber, learned counsel appearing for the respondent Nos. 1 and 2 states, the impugned order stands implemented inasmuch as upon communication sent by the respondent No.3 Government of India, respondent No.1 and her daughter had appeared before the Medical Board, Safdarjung Hospital, New Delhi, constituted in terms of the Rules. Mr. Chhibber has drawn our attention to an affidavit filed by respondent No.3 in a Contempt Petition before the Tribunal wherein the respondent No.3 has stated as under:

“5. That the Medical Board was held on 03.06.2022 at Safdarjung Hospital, New Delhi to examine Ms. Parul



Kush Jain and her daughter Ms. Meera Jain along with available medical records. The Medical Board was constituted comprising of ENT, Skin and respiratory medicine side. The opinion of the Medical Board is given below:

a. The ENT side has opined to avoid humid environment and stay in dry area to prevent recurrence and complication of allergic rhinitis including damage to hearing. No diagnostic test was found recorded.

b. The Skin side has opined that there is possibility that there could be some environmental factor viz allergens, high humidity levels which could be aggravating her skin condition. This side has further opined that change of environment could possibly eliminate triggers like certain allergens and high humidity levels. They have suggested to move to a place with dry air and should be helpful in improving patient's skin condition.

c. Respiratory medicine side has commented that Ms. Parul Kush Jain narrated history of cough and breathlessness after going to West Bengal. PFT, X Ray records and Total Ig E levels done in Safdarjung Hospital are normal. They opined that she appears to be benefitted after removal from that environment.”

3. According to Mr. Chibber, the State of Punjab has given its concurrence for taking the respondent No.1 on deputation for a period of three years. Further the State of Haryana has also agreed to take respondent No.2, husband of respondent No.1 on deputation for a period of three years. He submits that as per the Rules, the case of



respondent Nos. 1 and 2 are required to be reassessed after three years by respondent No.3 and till such time, State of West Bengal cannot interdict the deputation of respondent Nos. 1 and 2 to State of Punjab and State of Haryana respectively.

4. Ms. Madhumita Battacharjee, learned counsel appearing for petitioner State of West Bengal though agreeing with the Rule position would submit that the Court may give a direction that in view of the hardship faced by the State of West Bengal because of shortage of officials, that re-assessment be made after expiry of three years in terms of the Rules. Suffice to state no such direction is required to be issued when the Rule position which has been referred to by the Tribunal in paragraph 2 of the impugned order, is very clear. We reproduce the same as under:

“(iv) In cases of 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.

(v) 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 years deputation to a State of its choice. The situation may be re-assessed after the three years period. If the situation so warrants, the Central Government may permanently transfer the officer to that State.”

5. At this stage, Mr. Chhibber states, in view of the above the petitioner State of West Bengal be directed to issue NOC to respondent No.3, Ministry of Home Affairs to enable it to take further action in accordance with rules.

6. Noting the submission, we direct the petitioner to issue NOC to



the respondent No.3 with regard to deputation of respondent Nos. 1 and 2 within two weeks from today.

7. In view of this order, Mr. Chhibber states, he would not press the Contempt Petition for a period of two weeks from today.

8. The petition is disposed of.

CM APPL. 42033/2023

Dismissed as infructuous.

V. KAMESWAR RAO, J

ANOOP KUMAR MENDIRATTA, J

AUGUST 16, 2023/jg