

CASE NO.:
Appeal (civil) 6281-6282 of 2001

PETITIONER:
UNION OF INDIA

RESPONDENT:
MAMTA ANURAG SHARMA AND ANR.

DATE OF JUDGMENT: 05/09/2001

BENCH:
M.B. SHAH & R.P. SETHI

JUDGMENT:
JUDGMENT

2001 Supp(2) SCR 571

The following Order of the Court was delivered:

Leave granted Heard the learned counsel for the parties.

The Union of India has challenged the orders dated 20th December, 1999 in Writ Petition No. 21818 of 1999 and dated 15th March, 2000 in Review WPMP No. 4223 of 2000 passed by the High Court of Andhra Pradesh at Hyderabad.

By the impugned orders the High Court has directed as under:-

"Learned counsel for the petitioner, however, brought to our notice that the petitioner's husband has not been relieved by the State of Andhra Pradesh who has been transferred to West Bengal cadre. Under these circumstances, considering the fact that the petitioner's husband has not been relieved by the State of Andhra Pradesh, and in the light of the new guide-lines issued, we direct the respondents to consider the request of the petitioner for her transfer to the State of Andhra Pradesh, within four months from the date of receipt of a copy of this order."

It is the contention of the learned Additional Solicitor General appearing for the Union of India that the impugned order passed by the High Court, on the face of it, is illegal and total misconstruction of the new guidelines framed by the Government of India on Inter-Cadre transfer of All India Services Officers. As against this, the learned counsel for the respondents submitted that the impugned order passed by the High Court is only for the implementation of the new guide-lines which permit inter-cadre transfer to home-State in the case of marriage.

Before appreciating the contentions, we would first refer to the facts of the present case, which are-Respondent Smt. Mamta Anurag Sharma joined the Indian Police Service w.e.f. 1.9.1982 and was allocated to I.P.S. Cadre of West Bengal. Her home-State was Andhra Pradesh. In the year 1985, she got married to Mr. Anurag Sharma who was also an IPS Officer of Andhra Pradesh cadre. After marriage, respondent no. 1 requested for change of her cadre from West Bengal to Andhra Pradesh on the ground of marriage with an IPS Officer of the Cadre of Andhra Pradesh. Her request for transfer to Andhra Pradesh was rejected but thereafter both respondent no. 1 and her husband were transferred to IPS Cadre of Karnataka vide order date 2nd February, 1994. It appears that some IPS Officers objected to that order and an application was filed before the Central Administrative Tribunal (for short the 'CAT') at Bangalore for setting aside the allocation of the respondent and her husband to IPS Cadre at Karnataka. On 2.2.1994, the order passed by the Government of India was stayed by the CAT. Later on the Government of Karnataka withdrew its concurrence to the allocation of the respondent and her husband to the IPS Cadre at Karnataka. Thereafter, the Government of

India sought further option from the respondent and her husband but they declined to indicate any option and insisted for change of IPS Cadre of respondent no. 1 from West Bengal to Andhra Pradesh only. Further to see that respondent no. 1 lives in the company of her husband, the Government of India on 10th March, 1998 permitted Inter-Cadre transfer of her husband from Andhra Pradesh Cadre to West Bengal IPS Cadre. The Government of Andhra Pradesh was requested to release husband of respondent no.1. However, it appears that he was not willing to be considered for the IPS Cadre of West Bengal and, therefore, he declined the said offer by his letter dated 12th December, 1998. He emphatically stated that he was not willing for a cadre transfer from Andhra Pradesh to any other State including the State of West Bengal.

Thereafter, respondent no. 1 filed OA No. 1198 of 1998 before the CAT at Hyderabad challenging the order dated 10th March, 1998 on the ground that it was bad in law and that she should be transferred to Andhra Pradesh IPS Cadre, which was dismissed on 15th September, 1999. That order was challenged before the High Court by filing the aforesaid writ petition. The High Court by the impugned order directed the Central Government to consider the request of the respondent for her transfer to the State of Andhra Pradesh within four months from the date of receipt of the copy of the order.

In our view, there is much substance in the contention raised by the learned Additional Solicitor General appearing for the appellant - Union of India as it appears that the High Court has not considered the new guidelines of Inter-Cadre transfers of All India Services Officers in the proper perspective. In the guide-lines, after narrating the existing policy, transfer policy prescribed is as under :-

"The communication received from the PMO about framing draft guidelines on certain issues dwelling on inter-cadre deputation, inter-cadre transfers, extension of services and incentives to officers in the North-eastern Cadres may please be seen. This note deals with item (a) in FR i.e. guidelines in regard to inter-cadre transfers."

The present policy on inter-cadre transfers adopted in the case of All India Service officers may please be seen at F/A.

At present the approved policy guidelines permit intercadre transfers only on marriage to another All India Service Officers. Cadre transfers have also been allowed on compassionate/medical grounds.

To ensure a truly All India character to the three services, transfer on grounds of marriage between two members All India Service Officers, allotted different Cadres, subject to the condition that the transfers is not to the home State of the spouse who is given such a transfer, is allowed.

In the light of the directions of the PMO (FR) draft guidelines on inter-cadre transfers has been attempted and is placed below.

(A) Inter-Cadre Transfer of All India services officers The present guidelines may be revised as follows:

Inter-cadre transfers will continue to be permitted only for members of All India Service Officers on marriage to another member of an All India Service.

Cadre transfers shall not be permitted to All India Service Officers on marriage to an officer serving in a Central Service/State Service/ Public Service Undertaking/any other organisation.

Generally, no cadre transfer should be permitted on medical grounds/personal reasons. However, for extreme hardship cases, the

following criteria shall be applied before considering and deciding on the request for cadre change:

- (i) the nature of the problem (s) to be assessed by Government of India in each case, on merits; and
- (ii) the problem should be of such a nature that inter-cadre deputation will not solve the officer's problems.

All requests for inter-cadre transfers will be approved by the Minister-in-charge i.e. MOS (PP) in the case of IAS Officers, Home Minister in the case of IPS Officers and Minister of environment and Forest in the case of IPS officers, in the first instance. Thereafter, all such requests for inter-cadre transfer shall be processed and submitted for the orders of the Appointment Committee of the Cabinet. "

It appears that the High Court has not taken into consideration first part which is the Preamble of the aforesaid policy which specifically provides that the transfer of any spouse of the All India Services Officers should not be allowed to the Home State. Subject to this condition, inter-cadre transfer of officers is to be considered on the ground (a) marriage, or (b) extreme hardship. Negative provision is also made to the effect that generally no cadre transfer should be permitted on medical ground/personal reasons and also on the ground of marriage to an officer serving in a Central Service/State Service/ Public Service Undertaking/any other organization.

This aspect is reiterated in the counter affidavit filed by the Director (Police), Ministry of Home Affairs, Government of India, New Delhi. In paragraph 15 of the affidavit, it has been specifically stated as under"-

".....Under the extant policy, that at least 66.2/3% of the members of the All India Service in a State Cadre should be from outside the State inter-cadre transfer of All India Service Officers to their Home State is not allowed on the ground of marriage. To the respondent's knowledge no AH India Service Officer has been transferred to his/her Home State on the ground of marriage after coming into effect the revised guidelines dated 19.9.1995 relating to inter-cadre transfer of All India Service Officers."

In paragraph 16, it is further reiterated that no All India Services Officers have been allowed inter-cadre transfer to his/her Home-State on the ground of marriage. Further, it has been pointed out that policy of the Central Government with regard to inter cadre transfer of All India Services Officers does not permit inter cadre transfer to home state on ground of marriage and the said policy has not been reviewed and revised vide communication dated 19.9.95; the guidelines relating to inter cadre transfer of All India Service Officer reviewed and revised by the communication dated 19.9.95 only provide for grounds on which the All India Service officers are allowed inter cadre transfers.

In view of this policy there was no question of directing the Central Government to consider the case of respondent no. 1 to transfer her to Andhra Pradesh IPS Cadre. Therefore, the impugned direction issued by the High Court requires to be set aside and is hereby set aside.

Hence, the order passed in Review WPMP No. 4223 of 2000 also would not survive.

However, learned Additional Solicitor General appearing for the Union of India states that if husband of respondent no.1 files any application within two months from today for being transferred and posted in IPS Cadre in West Bengal, the same would be granted and appropriate orders would be passed.

The appeal are allowed accordingly. There shall be no order as to costs.

JUDIS