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

+ W.P.(C) 9093/2008 & CM No. 9272/2009

Date of decision: 29th July, 2009

ASHOK ADHIKARY Petitioner
Through Mr. M. Tarique Siddiqui, Advocate.

versus

UNION OF INDIA & ORS. Respondents
Through Ms. Shilpa Singh & Mr. Victor Vaibhav
Tandon, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

O R D E R

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1. The petitioner, Mr. Ashok Adhikary, is an approved Tourist Guide in Western Region. He had successfully completed the Western Region Guide Training Course and had cleared the written examination in 1996-97. On 7th January, 1997, petitioner was issued a licence as a Western Region Approved Tourist Guide.
2. On 29th April, 2006, the petitioner moved an application with the Director General, Department of Tourism, Government of India for transfer to Northern Region. The said application was transferred to Regional

Director (North India). By letter dated 9th February, 2007, Regional

Director (North India) informed the petitioner as under:-

“ Mr. Adhikary, French speaking guide, had undergone the Regional Guide Training Course conducted by this office in 1996 and since then he was working as guide in Gujarat.

As per the Ministry's letter No.5.TT.I/GD/21/2003 dated 7th June, 2005- “all transfers from one region to another region would be considered after the applicant guide has attended the refresher course and cleared the exam conducted by the Regional Office to which the transfer is sought” (copy enclosed)

Therefore, Mr. Adhikary is advised to liaise with your office in regard to refresher course.”

3. As is clear from the aforesaid letter, the petitioner was required to attend a refresher course and clear the examination conducted by Regional Office before his request for transfer to Northern Region could be considered. The petitioner was advised to get in touch with Regional Director, India Tourism, for the refresher course.

4. The petitioner approached the said respondents number of times and took up the matter to allow him to participate in a refresher course, but without result. Left with no choice, on 18th December, 2008, the petitioner filed the present writ petition for directing the respondents to transfer the tourist guide licence issued for the petitioner from Western Region to Northern Region.

5. Ministry of Tourism, Government of India has issued guidelines for selection of Regional level Guides 2007. Paragraph 12 of the said guidelines, which relate to transfer, read as under:-

"12. Transfer of Guides

No transfer will be permitted for a period of 5 years after completing the course. Thereafter, the request for transfer from one region to another can be considered only when they undergo a refresher course and pass the written examination conducted by the Director, IITTM, for the region to which transfer is sought.

The guides will not be required to seek transfer from one place to another within the same region as they will be eligible to operate in the entire designated region irrespective of the place where they have been issued guide licence. However, they will be eligible to pick up assignments only from the place/state mentioned in the guide licence issued to them.

The number of transfers from one region to another would be limited to two in the entire life time."

6. Paragraph 12 permits a tourist guide to request for transfer from one region to the other after five years of completing the course. A request for transfer can be considered only after the tourist guide has undergone a refresher course and passes a written examination conducted by the Director, IITTM of the Region in which transfer is sought. Paragraph 12 further states that number of transfers from one region to the other, would be limited to two in the entire life time of the tourist guide. In view of the aforesaid guidelines, the contention of the learned

counsel for the respondents that the petitioner has no right to ask for transfer to Northern Region has to be rejected. The guidelines give an option to a tourist guide to request for transfer. Of course, he has to meet and satisfy the requirements prescribed. Paragraph 12 further stipulates that only two such requests for transfer will be entertained during the life time of a tourist guide. The petitioner does not breach the said requirement. A guide's claim to transfer is accepted in paragraph 12 and can be rejected or kept in abeyance for valid and good reasons.

7. Learned counsel for the respondent has relied upon judgment of High Court of Rajasthan in W.P. (C) No. 5607/2004 titled ***Bhagwat Singh Ranawat versus Union of India and Others***. Before the Rajasthan High Court notification dated 21st January, 2003 issued under Section 29(a) of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 appointing Additional Director General (Department of Tourism) as a statutory authority for framing and issue guidelines for issue of guide licence was challenged. By the said judgment, the challenge was upheld and notification dated 21st January, 2003 was declared to be without jurisdiction. It was held that in view of the provisions of the aforesaid Act the power to regulate and grant of licences can be given to an Archaeological officer and then the same could have been delegated to the Regional Director (Tourism), Government of India.

8. The aforesaid judgment of Rajasthan High Court has been considered by this Court in the case of ***Rajesh Sharma and Others versus Union of India and Others***, W.P. (C) No. 128/2008 decided on 1st April, 2009. Learned single Judge of this Court noticed judgment of the Supreme Court in the case of ***B.P. Sharma versus Union of India and Others***, (2003) 7 SCC 309 , a Division Bench decision of Allahabad High Court in ***Virendra Kumar Chadda versus Union of India and Others***, (1992) 2 UPLBEC 1307 and interim decision of Allahabad High Court in ***Government Approved Tourist Guide Association versus State of U.P.*** (Civil Miscellaneous Writ No. 52805/2007) decided on 27th February, 2009. The learned single Judge referred to the decision of this Court in ***Anuj Johri versus Union of India and Others***, 118 (2005) DLT 418, where the challenge to the guidelines was rejected with the following direction:-

"36. For facility of reference the conclusions reached, directions given, observations made for review of Guidelines are summarized below:-

(i) Petitioners challenge to the validity and vires of Rule 8(d) of the AMSR Rules and to the framing of Guidelines for grant of Guide Licences to Regional Level (Guides) thereunder is held to be devoid of merit and fails.
(para 18)

(ii) Even otherwise, petitioners during the course of proceedings for all practical purposes had given up the challenge to Rule 8(d) and framing of Guidelines for issuance of Guide Licences and prayed for equitable reliefs seeking amelioration

of difficulties and hardships encountered by them in the wake of amended Guidelines, prescribing eligibility conditions and examinations. (para 19)

(iii) Power of Union to regulate and limit the number of licenced/Regional Tourist Guides upheld based on flow of tourists, number of monuments, available Guides, growth potential and other relevant factors. In case determination is done in an irrational manner or arbitrary manner in disregard of relevant factors, it would be subject to challenge as not falling within reasonable restriction to practice profession. (para 27)

(iv) Revision in conditions of eligibility and qualifications for Regional Level Tourist Guides. Government has the power to revise eligibility criteria for grant of licence to Tourist Guides including Enhancing educational qualifications to strive for better quality of guides. As no examination held since 1996 and the minimum requirement of being a graduate introduced by 2003 guidelines, it prejudices all those who did not enrol or acquire higher qualification because of being eligible under 1996 criteria of 10 + 2 with two years foreign language course. Such persons in the absence of tests from 1996 were not granted licence and now find themselves ineligible under 2003 Guidelines. UOI is directed as a one time exemption to permit those Guides eligible under 1996 criteria and carrying on profession to appear in Stage II examination/Screening test. In case, they qualify in Screening test and Final examination, licence be granted subject to their obtaining requisite educational qualification as per eligibility criteria in 4-5 years.

(v) Plea of State Level Licenced Guides for exemption from Screening test and final examination based on their experience and qualifications is not accepted. Criteria,

qualifications prescribed by State are different from Regional Level Guides. State Level Guides are not feeder posts to Regional Level Guides. Difficulty is arising from competing with younger persons, slowing of reflexes etc. Syllabus prescribes History and General knowledge and knowledge of monuments around the area as essential. No case made out for general exemption. Respondents to consider emphasis on making entrance and screening test and final examination as far as possible with objective questions, giving options of answers or a mix of objective and descriptive question. This would enable those who have withered with age to effectively compete with younger lot.

(vi) Government to hold a preparatory course of 4-6 weeks duration to enable refreshing knowledge and for acquiring requisite orientation to sufficiently equip candidates to take up entrance examination. Such course to be a paid optional Course. Fee/charges based on recovery of cost. Respondents to extend the date of holding of examination at stage II so as to absorb period of preparatory refresher course.

(vii) Intervenor's applications misconceived and not entertained for reasons set out in para 20-22.

(viii) Cases of transfer from one region to another- to be considered individually. Similarly cases of recognition of language courses-Tourist Guides training courses to be individually considered.

(ix) Petitioner's grievance regarding licences being granted to employees of Tourism Department without examinations stands redressed- Provision excluded from Guidelines.

(x) Age restriction on entry and compulsory exit from profession were unwarranted. Following judgment in B.P.Sharma Vs UOI (Supra)-

Provision amended. Any person above age of 21 years is eligible to get licence.

(xi) Government may consider a provision in the Guidelines for grant of Licence on preferential basis to the kins of those Licensed Guides who die in harness, if otherwise eligible.

(xii) The interim protection granted by court to enure to the benefit of the petitioners if they take the Screening test and Final examination and upto the declaration of result.

Writ petition stands disposed of with the above directions and observations." (emphasis supplied)

9. Noticing the aforesaid facts, the learned single Judge of this Court in Rajesh Sharma's case reached the following conclusion and issued directions:-

"12. Evident from the preceding discussion, is that though the guidelines for conducting examinations to issue licenses to tourist guides, were framed long ago, as a matter of fact, the authorities were not holding examinations for a long time; this inaction led to attack to the *vires* of the Rules itself, on the ground that they impeded the right of tourist guides to carry on business or profession. The challenge was negatived, in *Anuj Johri's case*, which also issued elaborate directions to the Central Government and ASI, in regard to holding of periodical tests, and issuance of licenses, after training the interested tourist guides. There is also no dispute that several tourist guides did complete the procedure, and were issued with licenses. At this stage, the Rajasthan High Court, at the behest of some Regional guides, declared that the Central Government lacked the power to hold such

examination, since there was improper delegation.

15. The above extracts would show that though the issue was different, and concerned the prescription of an age cut off, for the purpose of issuing licenses, the Supreme Court acknowledged the Union Government 's interest and involvement in regard to regulation of the activity, and prescribing of standards, as well as evolving conditions (of license). This obviously is because of the exclusive rule making power, conferred upon the central Government, by virtue of Section 38. This aspect as well as the judgment of the Division Bench, were not considered in such perspective, by the Rajasthan High Court. This court is not persuaded to accept its reasoning. Moreover, the court is also bound by the previous ruling in *Anuj Johri* as well as *J.K. Agarwal*, which have upheld the Central Government 's legitimate concern in regard to evolution of conditions of license, which can be issued to tourist guides, due to Section 38."

10. In these circumstances, reliance placed by the respondents on the decision of Rajasthan High Court in the case of ***Bhagwat Singh Ranawat*** (supra) cannot be accepted. The respondents are accordingly directed to hold a refresher course and permit the petitioner to participate in the said refresher course. The respondents will also hold an examination. While doing so, the respondents will keep in mind the directions and observations of the learned Single Judge of this Court in the case of ***Rajesh Sharma*** (supra) with regard to the course material as stipulated in paragraphs 16 to 18 of the said judgment. In case the petitioner successfully completes the refresher course and clears the

written test, his application for transfer will be considered. While considering the said application, the respondents will keep in mind the observations made by this Court in the case of **Anuj Johri** (supra), which has been quoted above including the observations made in paragraph Nos. (iii) and (viii). In case for any reason the petitioner's transfer is not permitted by the respondents, petitioner will be entitled to take appropriate remedial measures. The petitioner has already waited for refresher course for about three years. It is directed that the refresher course should be held expeditiously and preferably within a period of four months.

11. The writ petition is disposed of. All pending applications are also disposed of.

JULY 29, 2009
VKR

SANJIV KHANNA, J.