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

% *Date of Decision: August 23, 2013*

+ **W.P.(C) 6313/2012**

RAJ KUMAR JHA AND ORS Petitioners
Represented by: Mr.A.K.Behera, Advocate

versus

UNION OF INDIA AND ORS Respondents
Represented by: Mr.Himanshu Bajaj, Advocate
for R-1 & R-2
Ms.Megha Bharara, Advocate
for Ms.Ruchi Sindhwani,
Advocate for GNCTD

W.P.(C) 6366/2012

RAVINDER KUMAR PANDEY Petitioner
Represented by: Mr.A.K.Behera, Advocate

versus

UOI & ORS. Respondents
Represented by: Mr.Himanshu Bajaj, Advocate
for R-1 & R-2
Ms.Sana Ansari, Advocate for
Ms.Zubeda Begum, Advocate
for R-3

W.P.(C) 6365/2012

RAJVEER SINGH Petitioner
Represented by: Mr.A.K.Behera, Advocate

versus

UOI & ORS.

..... Respondents

Represented by: Mr.Himanshu Bajaj, Advocate
for R-1 & R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE V. KAMESWAR RAO

V. KAMESWAR RAO, J. (Oral)

1. Three Original Application Nos.2367/2012, 2368/2012 and 2369/2012 filed by three individual applicants were disposed of by the Central Administrative Tribunal by a common order dated September 21, 2012.
2. Against the common order, one writ petition bearing No.6313/2012 was initially filed by all the three writ petitioners. Subsequently the other two writ petitioners namely Ravinder Kumar Pandey and Rajveer Singh have filed separate writ petitions which are numbered as W.P(C) 6365/2012 and W.P(C) 6366/2012. They have not got their names deleted in W.P.(C) 6313/2012. Be that as it may, since the issue involved in the three writ petitions is common, with identical facts, they are being disposed of by this common order.
3. The petitioners herein are officers working in Junior Administrative Grade-I of the Delhi Andaman and Nicobar Island Police Service (DANIPS) and are posted as Deputy Commissioners of Police under the Government of NCT of Delhi.
4. Vide order dated June 25, 2012, issued by the Ministry of Home Affairs, Government of India, petitioner No.1 Raj Kumar Jha was

transferred to Daman, Diu, Dadar and Nagar Haveli, petitioner No.2 Sh.Rajveer Singh Chauhan was transferred to Lakshadweep and petitioner No.3 Ravinder Kumar Pandey was transferred to Andaman and Nicobar Island.

5. They challenged the transfer on various counts and the respondents defended the action by relying upon Rule 4(ii) of the '*National Capital Territory of Delhi, Andaman and Nicobar Island, Lakshwadeep, Daman and Diu and Dadar and Nagar Haveli Police Service Rules, 2003*' (hereinafter referred to as the Rules of 2003) with reference to a transfer policy framed.

6. The Tribunal dismissed the Original Applications by inter alia holding that a DANIPS Officer in Junior Administrative Grade are liable to be transferred from one administration to the another. Further, it has been held that it is for the Competent Authority to take a view regarding utilization of the services of the employee/officer subjected to its command and control.

7. Even though the Tribunal has upheld the transfer order June 25, 2012, it has directed the Secretary, Ministry of Home Affairs, to examine and consider the following factual position and communicate the decision to the petitioners:-

- (i) the transfer and posting of DANIPS Officer in JAG Grade-1 to outline segment is not routine and normal phenomenon;
- (ii) the letter of the administration of Daman and Diu which has expressed that it is difficult for the administration to pay salary to the JAG level officer;
- (iii) the letter of the Lakshadweep Administration which indicated that the Ministry of Finance has not agreed for creation of the post of Additional Superintendent of Police.

8. Mr.A.K.Behera, learned counsel for the petitioners would submit that the impugned order of the Tribunal is liable to be set aside on three counts, one of which is purely legal and would urge that if this Court were to agree with the first contention urged, he may not even be called upon or required to urge the second and the third. It is thus agreed that at the first instance we would hear arguments on the first point and if we find no merit therein only then would we be hearing the other two points.

9. The point urged is with reference to Rule 2(j), 12 and 13 read with Schedule I of the Rules of 2003. Accordingly, we note Rule 2(j), 12 and 13 as also Schedule I to the Rules; and simultaneously we would also note Rule 4 for the reason learned counsel for the respondents relied upon the said Rule. They read as under:-

“Rule 2(j) “duty post” means any post included in Schedule 1.

Rule 4(1) The duty posts included in the various grades, their number and the scales of pay on the date of commencement of these rules shall be as specified in Schedule 1.

Provided that ten per cent and twenty per cent of the sanctioned strength of the posts in the service shall be non functional grades of Junior Administrative Grade-1 and Selection Grade respectively, and these shall be operated within the respective number of posts specified in Parts B and C of Schedule 1.

Provided further that the number of posts in Junior Administrative Grade 1 shall not exceed the total number of sanctioned posts in the Junior Administrative Grade in the scale of pay of Rs.12,000-16,500.

4(2) Notwithstanding anything contained in sub-rule(1), the Government may:

(a) *from time to time, make temporary additions or alterations to the duty posts in various grades;*

(b) *in consultation with the Commission include in the Service such posts as are be deemed to be equivalent to the posts included in the Service in status, grade, scale of pay and professional content or exclude from the Service a duty post already included in the Service, and in consultation with the Commission appoint the regular incumbent of the post which has been included in the Service as a duty post to the appropriate grade of the Service and fix his seniority taking into account the regular service rendered by him in the said post or analogous grade.*

Rule 12: Every member of the Service allocated to an Administration shall unless he is appointed to an ex-cadre post, or is otherwise not available for holding a duty post owing to the exigencies of the public service, be posted against a duty post under the Administration by the Administrator concerned.

Rule 13: The government shall, from time to time, allocate a member of the Service to any Administration for posting in terms of rule 12.”

10. The Schedule I to the Rules of 2003 as amended in the year 2009 reads as under :-

“SCHEDULE 1”

{see rule 4(1)}

Name, number and scale of pay of duty posts in the various grades of the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman and Diu and Dadra and Nagar Haveli Police Service.

Part A Grades and sanctioned strength of the service

<i>(a)</i>	<i>Grades of the service</i>	<i>Pay Band</i>	<i>Scale of Pay</i>	<i>Grade Pay</i>
<i>(1)</i>	<i>Junior Administrative</i>	<i>PB-4</i>	<i>Rs.37400-67000</i>	<i>8700</i>
	<i>Grade-I (Group A)</i>			

(2)	<i>Junior Administrative Grade-II (Group A)</i>	<i>PB-3</i>	<i>Rs.15600-39100</i>	<i>7600</i>
(3)	<i>Selection Grade Grade-1 (Group A)</i>	<i>PB-3</i>	<i>Rs.15600-39100</i>	<i>6600</i>
(4)	<i>Entry Grade (Group A)</i>	<i>PB-2</i>	<i>Rs.9300-34800</i>	<i>4800</i>
			<i>(on initial appointment)</i>	
		<i>PB-3</i>	<i>Rs.15600-39100</i>	<i>5400</i>
			<i>(on completion of four years approved service subject to vigilance and integrity clearance)</i>	

(b) Sanctioned strength

(1)	<i>Specific posts under Government of the National Capital Territory of Delhi</i>	<i>315</i>
(2)	<i>Specific posts under Andaman and Nicobar Islands Administration</i>	<i>10</i>
(3)	<i>Specific posts under Lakshadweep Administration</i>	<i>01</i>
(4)	<i>Specific posts under Daman and Diu Administration</i>	<i>02</i>
(5)	<i>Specific posts under Dadra and Nagar Haveli Administration</i>	<i>01</i>
(6)	<i>Deputation Leave and Training Reserve</i>	<i>105</i>
	<i>Total (1 to 6)</i>	<i>434</i>

(c) Reserves

(1)	<i>Deputation reserve at 12% of 329</i>	39
(2)	<i>Leave reserve at 10% of 329</i>	33
(3)	<i>Training reserve at 10% of 329</i>	33

Total	105
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Part B Posts in the Junior Administrative Grade I and Junior Administrative Grade II

*Posts under Government of the
National Capital Territory of Delhi*

(i)	<i>Additional Deputy Commissioner of Police (Indian Reserve Battalion)</i>	15
(ii)	<i>Additional Deputy Commissioner of Police (Delhi Armed Police Battalion)</i>	10
(iii)	<i>Additional Deputy Commissioner of Police (District Headquarters)</i>	13
(iv)	<i>Additional Deputy Commissioner of Police (Crime and Railway)</i>	2
(v)	<i>Vice-Principal, Police Training College</i>	1
(vi)	<i>Additional Deputy Commissioner of Police (Police Control Room)</i>	2
(vii)	<i>Additional Deputy Commissioner of Police (Provision and Lines)</i>	1
(viii)	<i>Additional Deputy Commissioner of Police (Special Branch)</i>	1
(ix)	<i>Additional Deputy Commissioner of Police</i>	

<i>(Traffic)</i>	<i>2</i>
<i>(x) Additional Deputy Commissioner of Police (Vigilance)</i>	<i>2</i>
<i>(xi) Additional Deputy Commissioner of Police (Licensing)</i>	<i>1</i>
<i>(xii) Additional Deputy Commissioner of Police (Special Task Force)</i>	<i>1</i>
<i>(xiii) Additional Deputy Commissioner of Police (Economic Offences Wing)</i>	<i>2</i>
<i>(xiv) Additional Deputy Commissioner of Police (Crime against Women Cell)</i>	<i>1</i>
Total	54

x x x x

Part C Posts in Entry Grade and Selection Grade

<i>(a) Posts under the Government of National Capital Territory of Delhi Assistant Commissioner of Police</i>	<i>261</i>
<i>(b) Posts under the Andaman and Nicobar Administration Deputy Superintendent of Police</i>	<i>10</i>
<i>(c) Posts under the Lakshadweep Administration Deputy Superintendent of Police</i>	<i>1</i>
<i>(d) Posts-under the Daman and Diu Administration Chiefs of Police, Daman and Diu</i>	<i>2</i>
<i>(e) Posts under the Dadra and Nagar Haveli Administration</i>	

<i>Chiefs of Police, Dadra and Nagar Haveli</i>	275
<i>Total of (a), (b), (c), (d) and (e) of Part C</i>	
<i>Total of Parts B and C</i>	329
<i>Deputation, Leave and Training Reserves</i>	105
 GRAND TOTAL	 434”

11. According to Mr.A.K.Behera, learned counsel for the petitioners, in the absence of any corresponding duty post earmarked in the other administrations, the petitioners could not have been transferred to any other administration for the reason Rule 2 (j) defines a duty post to mean any post included in Schedule I and a perusal of Schedule I would reveal that pertaining to Junior Administrative Grade I and Junior Administrative Grade II which are Group A posts allocation only is under the Government of National Capital Territory of Delhi and no other administration and thus counsel urges that petitioners being officers in the Junior Administrative Grade I cannot be sent to the places where they have been transferred. He would further state that the reliance placed by the respondents on the transfer policy which at the most is in the nature of administrative guidelines cannot supersede the statutory rules.

12. Mr.Himanshu Bajaj, learned counsel appearing for respondent Nos.1 and 2 would justify the transfer by placing reliance on Rule 4(2) which is an enabling provision empowers the Government to make temporary additions, alterations to the duty post in various grades in consultation with the Commission.

13. On a specific query by us, whether the power under Rule 4 has been

exercised by the Government in this case, Mr.Bajaj would answer in the negative.

14. A conjoint reading of Rule 2(j), Rule 12 & Schedule 1 of the Rules would reveal that every member of the service allocated to the Administration shall be posted against a duty post under the administration by the Administrator concerned. The only exception being, if a member is posted :

- (i) to an ex-cadre post;
- (ii) or not available owing to exigencies of the public service;

15. It is seen that there are no duty post of the level of Junior Administrative Grade-1 and Junior Administrative Grade-II (prescribed in the Schedule to the Rules) with regard to the other administrations i.e. Lakshadweep, Andaman and Nicobar Islands, Daman and Diu and Dadra and Nagar Haveli. A perusal of schedule 1, noted in para 10 above, would reveal that only in Delhi, post in JAG-I and JAG-II are enlisted. That pertaining to duty post, JAG-I and JAG-II level officers can be posted only in Delhi.

16. We agree with the submissions made by Mr.A.K.Behera, learned counsel for the petitioners that the Rules being statutory in nature and governing the appointment, posting, allocation, disqualification of a member of DANIPS, the transfer must be regulated under the Rules of 2003. Nothing has been shown to us from Schedule I of the Rules of 2003 that a corresponding/equivalent duty post of the level of Junior Administrative Grade-I or Junior Administrative Grade-II exist at the places where the petitioners have been transferred. It is a settled position in service jurisprudence that appointment pre-supposes existence of a post. It is noted

that while exercising power under Rule 4(2) by the Government the relevant considerations for making any temporary addition or alteration to the duty posts in various grades are status, scale of pay and professional content.

17. In the absence of a corresponding equivalent duty post would make the transfer of the petitioners to the places as referred to in the transfer order as illegal and contrary to the rules. We hold so.

18. Now, the contention that sub Rule (2) of Rule 4 empowers the Government to make additions or alterations to the duty post in various grades, does not take the respondents to any where for the reason nothing has been shown to us that exercising power under the said sub Rule the Government has made temporary additions or alterations to the duty posts by amending Schedule I, which as of today continues to list duty post in Junior Administrative Grade I and Junior Administrative Grade II only under the Government of NCT Delhi. Of course, if the Government were to amend the Schedule by exercising the power under sub Rule (2) of Rule 4 and would create/list duty post in other Union Territories, the position would be entirely different. But then the Government has to exercise said power.

19. The submission of Mr.Bajaj that the pay and other conditions of service of the petitioners would not be effected does not appeal us. What is of relevance is whether any duty post exist at the places where the petitioners have been transferred, to post them, the answer way to is 'No'.

20. The reliance placed by Mr.Bajaj on the policy also does not appeal us since the same cannot supersede the Rules of 2003 which govern the posting and other conditions of service of a DANIPS Officer. We find that the Tribunal has totally erred in upholding the transfer order.

21. We set aside the order of the Tribunal dated September 21, 2012 in Original Application Nos.2367/2012, 2368/2012 and 2369/2012 and allow the Original Applications and set aside the orders of transfer dated June 25, 2012. We make it clear that since the writ petitions have been decided only on one ground as urged by Mr.A.K.Behera, the other grounds are left open to be urged if the occasion arises.

22. The writ petitions are accordingly disposed of.

23. No costs.

C.M No.5753/2013 in W.P.(C) 6313/2012

C.M No.5754/2013 in W.P.(C) 6365/2012

C.M No.5783/2013 in W.P.(C) 6366/2012

Dismissed as infructuous.

**(V.KAMESWAR RAO)
JUDGE**

**(PRADEEP NANDRAJOG)
JUDGE**

AUGUST 23, 2013
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