



2026:DHC:5662-DB



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ LPA 471/2026 & CM APPLs. 41161/2026, 41162/2026,  
41163/2026

LT. COL. ATUL JAIN & ORS .....Appellants

Through: Mr. Akshay Makhija, Sr. Adv.  
with Mr. Gautam Swarup, Mr. Ankur Das,  
Mr. Rudra Deosthali and Ms. Sakshi  
Pandey, Advs.

versus

DIRECTORATE GENERAL OF  
RESETTLEMENT & ORS. ....Respondents

Through: Ms. Radhika Bishwajit Dubey,  
CGSC, Ms. Gurleen Kaur Waraich, Mr  
Kritarth Upadhyay and Mr. Amulya Dev  
Mishra, Advs.

**CORAM:**  
**HON'BLE MR. JUSTICE C. HARI SHANKAR**  
**HON'BLE MR. JUSTICE VINOD KUMAR**

**JUDGMENT (ORAL)**

% **06.07.2026**

**C. HARI SHANKAR, J.**

1. This appeal, under Clause X of the Letters Patent, assails an order dated 22 June 2026 passed by a learned Single Judge of this Court, to the extent that the order does not grant the prayer of the appellants for stay of operation of clauses 2(c), 2(f), 3(a) and 3(c) of the Guidelines on Formation and Functioning of Ex-Servicemen Coal



2026:DHC:5662-DB



Loading and Transportation Companies<sup>1</sup>, as uploaded on 8 June 2026 and amended on 10 June 2026, and only issues notice on the stay application.

2. We have heard Mr. Akshay Makhija, learned Senior Counsel appearing for the appellants and Ms. Radhika Bishwajit Dubey, learned CGSC for the respondents, at length.

3. Having heard learned Counsel, we do not deem this to be a fit case for entertaining the appeal, especially as it is directed against an order which merely refuses *ad interim* relief.

## Facts

4. The 2026 Scheme was preceded by an earlier scheme on Formation and Running of Ex-Servicemen Coal Transport Companies, following a Memorandum of Understanding<sup>2</sup> dated 12 December 2013<sup>3</sup> executed between the Directorate General of Resettlement<sup>4</sup> and Coal India Ltd<sup>5</sup>. The scheme was intended to provide avenues of employment for ex-servicemen. Guidelines on Formation and Running of Ex-Servicemen Coal Transport Companies<sup>6</sup> were also issued under the 2013 Scheme.

5. For reasons which need not detain us, the 2013 Scheme remained non-operational from June 2020 to February 2025. On 14

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<sup>1</sup>“the 2026 Guidelines”, hereinafter

<sup>2</sup>“MOU” hereinafter

<sup>3</sup>“2013 Scheme”, hereinafter

<sup>4</sup>“DGR”, hereinafter

<sup>5</sup>“Coal India”, hereinafter

<sup>6</sup>“the 2013 Guidelines” hereinafter



2026:DHC:5662-DB



October 2025, pursuant to orders passed by this Court, a fresh MoU was executed between the DGR and CIL, in terms of which the 2026 Scheme came into being, which was, in turn, governed by the 2026 Guidelines, clauses 2(c), 2(f), 3(a) and 3(c) of which form subject matter of challenge in these proceedings. These clauses read thus:

“2. **Eligibility of ESM Officers:** Only Ex-Servicemen Officers (ESM (Officers)) meeting the following criteria will be considered eligible under the Scheme:

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(c) Should not be employed or self-employed at the time of selection for conducting Feasibility Study by DGR. The Officer shall be deemed to be employed if his/her latest Form 26 AS/AIS downloaded at DGR during verification before the Feasibility Study indicates income from employment/self-employment.

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(f) Should not have availed any other Scheme from DGR or any employment under DESW post retirement.

3. **Fixation of Seniority and Deferment ESM (Officers):** Seniority of ESM(Officers) under the Scheme shall be as per the seniority of registration in the Scheme at DGR. The following conditions shall apply regarding seniority and deferment:

(a) Deferment of 180 days shall be allowed to the Officer at the time of willingness being sought for the Scheme by DGR. The voluntary deferment shall be allowed to the Officer only once after which the applicant shall be struck off the seniority list if he/she is unwilling/unresponsive/ineligible at the time of second offer for selection for the Feasibility Study. In case of voluntary deferment at the first instance, the seniority of the applicant shall be adjusted and placed after the last Officer who has registered on the 180<sup>th</sup> day from date of his/her request for deferment at the time of seeking willingness. The deferment application must be submitted via email to official email id [dirdsedgr@desw.gov.in](mailto:dirdsedgr@desw.gov.in) in order to fix date and time of request.



2026:DHC:5662-DB



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(c) In case the Officer is employed/ self-employed at the time of checking of documents prior to the Feasibility Study and has not sought voluntary deferment, his/her seniority shall be relegated by 365 days, i.e. his/her seniority shall be adjusted and placed after the last Officer who has registered on the 365<sup>th</sup> day from date of his/her relegation. Absence for the documents verification, on the day when called at DGR, prior to the Feasibility Study shall count towards a relegation of seniority by 365 days.”

6. The 2026 Guidelines provided that ex-servicemen<sup>7</sup> officers who have been registered and waitlisted under the 2013 Scheme would be eligible for the 2026 Scheme, if they were covered under the 2026 Guidelines. The appellants were registered under the 2013 Scheme, but have been rendered ineligible for participation in the 2026 Scheme by reason of clauses 2(c), 2(f), 3(a) and 3(c) of the 2026 Guidelines which, therefore, have been called in question in the writ petition.

7. The writ petition was accompanied by CM APPL. 39126/2026, seeking stay of operation of Clauses 2(c), 2(f), 3(a) and 3(c) of the 2026 Guidelines.

8. It was *inter alia* sought to be submitted by the appellants, before the learned Single Judge that, though the appellants have been invited, by communication dated 5 June 2026, to submit willingness certificates and documents for verification and report with original documents between 15 and 18 June 2026, they have been rendered ineligible to participate in the 2026 Scheme on account of the 2026 Guidelines which were introduced in the interregnum on 8 June 2026

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7 “FSM” hereinafter

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KUMAR  
Signing Date: 16.07.2026  
16:18:07

Page 4 of 17



2026:DHC:5662-DB



and amended on 10 June 2026.

9. It was also sought to be contended that failure, on the part of the appellants, in satisfying Clause 2(c) of the 2026 Guidelines would result in deferment of their entitlement to participate in the 2026 Scheme by 180 to 365 days or removal from the waitlist altogether. It was further sought to be contended that clause 2(f) resulted in retrospective disqualification of the appellants absolutely from the benefit of the Scheme, which militated against the very intent of its introduction. The prejudice that would result would be irreparable. The balance of convenience was also, therefore, it was submitted, in favour of suspending the operation of Clauses 2(c), 2(f), 3(a) and 3(c) of the 2026 Guidelines, pending disposal of the writ petition, so that the appellants could participate in the 2026 Scheme.

10. An important fact which merits notice at this stage itself is that, between June 2020 and February 2025, when the 2013 Scheme remained non-operational, the appellants secured employment elsewhere. It is not, therefore, as though the appellants would remain unemployed, were they not to be entitled to the benefit of the 2026 Scheme.

11. The learned Single Judge has, noting the fact that the Clauses of the 2026 Guidelines were under challenge, and that the validity of the challenge could be examined only after addressing of arguments in the writ petition, not deemed it appropriate to grant *ad interim* relief. As a result, he has chosen only to issue notice in the interim application, and has invited reply and rejoinder therein.

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KUMAR  
Signing Date: 16.07.2026  
16:18:07

Page 5 of 17



2026:DHC:5662-DB



12. Aggrieved thereby, the appellants have preferred the present appeal.

13. The main difference between the 2026 Guidelines and the 2013 Guidelines, which essentially results in the appellants' becoming disentitled to participate in the 2026 Scheme, is that while the 2013 Guidelines only required the applicant to be unemployed at the stage of sponsorship prior to becoming entitled to the benefits of the Scheme, the 2026 Guidelines required the aspirant to be unemployed at the stage of evaluation for feasibility study, which was the initial stage of consideration of the candidature of the aspirant.

14. Mr. Makhija submits that this stipulation is contrary to Clause 25 of the 2025 MOU, which requires the ESM to be unemployed at the time of sponsorship. He submits that the appellants are willing to provide an undertaking that, at the time of sponsorship for the benefits of the 2026 Scheme, they would not remain employed. As such, the fact that they may have been unemployed at the time when their forms were verified should not, in his submission, prejudice their case for being extended the benefits of the 2026 Scheme.

15. Mr. Makhija submits that Clause 1 of the 2026 Guidelines clearly states that they were intended to take forward the MOU dated 14 October 2025. As such, the Guidelines could not contain a stipulation which was contrary to that contained in the MOU.

16. Mr. Makhija has further placed reliance on Clause 2 (c) of the

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KUMAR  
Signing Date: 16.07.2026  
16:18:07

Page 6 of 17



2026:DHC:5662-DB



2026 Guidelines, as originally issued on 8 June 2026, *vis-à-vis* the amended Guidelines, after the amendment of 10 June 2026. These Clauses reads thus:

As on 8 June 2026

“2. **Eligibility of ESM Officers:** Only Ex-Servicemen Officers (ESM (Officers)) meeting the following criteria will be considered eligible under the Scheme:

\*\*\*\*\*

(c) Should not be employed or self-employed at the time of selection for conducting Feasibility Study by DGR. The Officer shall be deemed to be employed if his/her latest Form 26 AS/AIS downloaded at DGR during verification before the Feasibility Study indicates income from employment/self-employment.”

As on 10 June 2026

2. **Eligibility of ESM Officers:** Only Ex-Servicemen Officers (ESM (Officers)) meeting the following criteria will be considered eligible under the Scheme:

\*\*\*\*\*

(c) Should not be employed or self-employed at the time of selection for conducting Feasibility Study by DGR. The Officer shall be deemed to be employed if his/her latest Form 26 AS/AIS downloaded at DGR during verification before the Feasibility Study indicates income from employment/self-employment.”

17. Thus, submits Mr. Makhija, a fundamental change in the condition for entitlement of an ex-serviceman for participating and obtaining the benefits of the 2026 Guidelines was introduced between 8 June 2026 and 10 June 2026. While Clause 2(c), as introduced on 8 June 2026, was in sync with the position as it obtained in the 2013



2026:DHC:5662-DB



Guidelines, which required the ESM to be unemployed at the time of sponsorship, Clause 2(c) of the Guidelines as amended on 10 June 2026 required the ESM to be employed at the time of selection for conducting feasibility study. He submits that, even in respect of this criterion, there is a difference in the eligibility provided for tipper ownership in Clause 4 of the 2026 Guidelines, as, in that case, Clause 4(b) requires unemployment to be established only at the time of sponsorship by the DGR.

**18.** Mr. Makhija submits that the appellants, having been registered under the 2013 Guidelines, have been remaining on the waitlist for more than nine years, in the expectation that they would be entitled to participate in the 2026 Scheme. Moreover, he submits that the change which has been introduced on 10 June 2026 amounts to changing the rules of the game after the game has commenced, which is impermissible.

**19.** In these circumstances, submits Mr. Makhija, the learned Single Judge ought to have allowed the appellant to participate in the 2026 Scheme by suspending, pending disposal of the writ petition, the operation of Clauses 2(c), 2(f), 3(a) and 3(c) thereof. Inasmuch as the learned Single Judge has not done so, he submits that a clear case for interference in appeal is made out.

**20.** Responding to Mr. Makhija, Ms. Dubey, learned CGSC for the Union of India, draws our attention to Clause 10 of the MoU dated 14 October 2025, which clearly stipulates that only those officers who were receiving no income from salary and were effectively



2026:DHC:5662-DB



unemployed would be considered for conducting feasibility study for the 2026 Scheme. She has specifically referred to Clauses 10(a) and 28 of the MoU, which read thus:

“10. Selection of ESM Officers for becoming Director of ESM Coal Company. On receipt of requisition of ESM Coal Company from the CIL Subsidiary, DGR will seek willingness from the waitlisted officers as per seniority through email. The ESM Officers will submit their willingness through email along with the required documents as required by DGR. Only those officers whose IT Returns/Form 16/ Form 26 AS confirm that no income from salary is being received by them and are effectively unemployed will be considered for conducting the Feasibility Study at the CIL Subsidiary site.

(a) The willing officers will be selected in groups of five as per their seniority. The willing officers will be called to DGR on a specified day within a fortnight of submitting the willingness along with the original documents.

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28. The ESM (0) have to submit an affidavit to the effect that they are unemployed/ not self-employed at the time of sponsorship for the scheme and have not availed any other job/ placement benefit from DESW/ DGR after retirement and prior to the date of sponsorship.”

21. Thus, Ms. Dubey submits that Clauses 10(a) and 28 of the MOU dated 14 October 2025 clearly required the candidate aspiring for the benefit of the 2026 Scheme to be unemployed on the date of verification for the purposes of feasibility study. She submits that, inasmuch as the appellants have not chosen to challenge these clauses of the MOU, no case for interference is made out.

22. Ms. Dubey also refutes the contention that the introduction of these delimiting criteria has resulted in the changing of game after the game has begun. She submits that the changed criteria were

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Digitally Signed By: AUPA 471/2026  
KUMAR  
Signing Date: 16.07.2026  
16:18:07

Page 9 of 17



2026:DHC:5662-DB



introduced within two days of the original criteria and that, therefore, this argument has no substance.

23. Ms. Dubey also seeks to place reliance on para 6 of the judgment in *Maj Gen V.N. Prasad v. Union of India*<sup>8</sup> in which, according to her, similar clauses stand upheld.

24. We have considered the submissions of learned Counsel.

25. The first hurdle that the appellant would have to surmount – and which, in our view, he has not managed to successfully negotiate – is the limited scope of LPA<sup>9</sup> jurisdiction. The position has recently been confirmed by the Supreme Court in *Bihar Industrial Area Development Authority v. Scope Scales Pvt Ltd*<sup>10</sup>:

“13. We must also bear in mind the nature and extent of jurisdiction that an intra-court appellate Bench of a high court exercise. Such appellate jurisdiction is conferred either under the Letters Patent or by the relevant statutory provisions. It is pertinent to note that both - Single Bench and Division Bench - exercise the same jurisdiction under Article 226 of the Constitution. In our view, *the exercise of intra-court appellate jurisdiction is warranted only where the judgment or order under challenge is demonstrably erroneous or suffers from perversity. Such jurisdiction ought not to be invoked merely because another view is possible on the same set of facts, particularly where the view adopted by the Single Judge is a plausible and reasonable one. In other words, an intra-court appellate Bench ought not to substitute its own view, merely because such Bench considers its view to be better than the one taken by the Single Bench; so long as the view taken by the Single Bench is a plausible one, interference should stay at a distance.*”

(Emphasis supplied)

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<sup>8</sup> 2017 SCC OnLine Del 9631

<sup>9</sup> Letters Patent Appeal

<sup>10</sup> 2026 SCC OnLine SC 112



2026:DHC:5662-DB



26. Three decades earlier, in *Baddula Lakshmaiah v. Sri Anjaneya Swami Temple*<sup>11</sup>, it was thus observed:

“A letters patent appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.”

27. Thus, absent any error, the Division Bench, in LPA jurisdiction, would not interfere with the decision of the Single Judge. Of necessity, this would imply that, where the order is discretionary in nature – such as the order before us, which refuses to grant any stay at the *ad interim* stage, and calls for a response to the stay application before taking a view in that regard – the Court would, save in the rarest of cases, hold its hands.

28. An order such as the one under challenge before us is triply insulated from interference in appeal.

29. In the first place, it is an order passed in a writ petition, and the exercise of Article 226 jurisdiction is itself discretionary.

30. Secondly, the learned Single Judge was dealing with an application for interim relief and the decision on whether to grant, or refuse, interim relief, as sought, is further discretionary. A decision in that regard has to be informed by the considerations of whether there exists a *prima facie* case, balance of convenience and the possibility of



2026:DHC:5662-DB



irreparable loss if interim relief is not granted. Even if all these factors are present, the discretion continues to vest in the Court as to whether to grant, or not to grant, interim relief.

**31.** Thirdly, the order under challenge neither allows nor dismisses CM APPL. 39126/2026, which sought interim relief. The application is still pending. The learned Single Judge has only issued notice in the application and sought for a response. The grievance of the appellant before us is not that his prayer for interim relief, as advanced in the application, has been rejected. He is aggrieved by the fact that no interim relief was granted at the very outset, before a reply was sought from the respondent. The decision of whether to grant *ad interim* relief – that is, interim relief even before the respondent files a response – incorporates yet another level of discretion, which protects it from appellate interference.

**32.** It is only, therefore, in the most exceptional cases, that a Court, exercising LPA jurisdiction, would interfere with such a decision.

**33.** The judgment in *Bihar Industrial Area Development Authority* makes it clear that the LPA Court would not substitute its discretion for that of the learned Single Judge. In other words, the LPA Court cannot hold that it would have, in the circumstances which were placed before the learned Single Judge, granted interim relief and, on that basis interfere with the decision of the learned Single Judge. There has to be manifest error in the manner in which the learned Single Judge has exercised discretion, for the LPA Court to interfere.



2026:DHC:5662-DB



34. We find no such manifest error in the impugned order.

35. As we have already noticed, grant or refusal of interim relief has to be informed by the considerations of *prima facie* case, balance of convenience and irreparable loss. We are of the opinion that even on the consideration of a *prima facie* case, the appellant has not made out a case for grant of interim relief.

36. Mr. Makhija sought to contend that the 2026 Scheme revived the 2013 Scheme. We are not prepared to accept the contention. The 2013 Scheme had ceased to be in operation between June 2020 and February 2025 and the 2026 Scheme was an outcome of a fresh MOU dated 14 October 2025 executed between DGCR and Coal India and was, therefore, a fresh Scheme altogether, even if its intent was to carry forward the beneficial dispensations in the 2013 Scheme. The terms and conditions of the 2013 Scheme cannot, therefore, be invoked to justify or not justify the 2026 Guidelines.

37. Ms. Dubey has also satisfactorily traversed Mr. Makhija's contention that the 2026 Guidelines contradict the 2025 MOU. There is in fact no such contradiction. As Ms. Dubey has pointed out, Clause 10 of the MOU of 14 October 2025 clearly stated that only officers who had no income from salary and were effectively unemployed would be considered for conducting the feasibility study at the CIL subsidiary site. As such, the requirement of being unemployed on the date when the feasibility study was conducted was incorporated even in the MOU dated 14 October 2025. In fact, it is quite possible that the necessity to amend the 2026 Guidelines on 10 June 2026, two days



2026:DHC:5662-DB



after they were issued on 8 June 2026, was in order to bring them in line with the MOU dated 14 October 2025 and ensure that there was no discrepancy between them.

**38.** Clause 28 of the MOU dated 14 October 2025 cannot be read in isolation, as contrary to Clause 10. Clause 28 refers to the date on which the affidavit has to be submitted by the ESMs, and not to the date on which the ESMs should be unemployed. All that it says is that the affidavit has to be submitted at the time of sponsorship, and not that unemployment has to be as on that date. The ESM has to be unemployed on the date when his case is considered for conducting the feasibility study, and an affidavit to that effect has to be submitted by the ESM at the time of sponsorship for the Scheme.

**39.** To our mind, Clauses 10 and 28 of the MOU dated 14 October 2025 have to be read harmoniously, thus, and, so read, there is no discrepancy between clauses of the MOU and the clauses of the 2026 Guidelines with which the appellants are aggrieved.

**40.** This also answers the contention that the respondents changed the rules of the game after the game had begun. Inasmuch the MOU dated 14 October 2025 itself required the ESM to be unemployed as on the date when his case was considered for feasibility study, the amendment of Clause 2(c) of the 2026 Guidelines on 10 June 2026 has not resulted in any change of the rules of the game.

**41.** The issue of the employment status of an ESM, in order to entitle him to the benefit of the Scheme, is fundamentally one of



2026:DHC:5662-DB



executive policy. The Scheme is intended to provide avenues of employment for persons who have served in the Armed Forces. It is one of many such Scheme which are in existence. Several considerations have to be kept in mind by taking a decision on the employment status of applicants who seek the benefit of the Scheme. A court cannot, therefore, sit in appeal over the decision of the executive in that regard.

42. Inasmuch as the 2026 Scheme is a new Scheme, distinct from the 2013 Scheme the appellants cannot plead that, by virtue of being in the waitlist in the 2013 Scheme, they had a legitimate expectation of being entitled to the benefits of the 2026 Scheme. The terms and conditions of the 2026 Scheme, and the Guidelines under which it operated, were distinct and different from those which governed the 2013 Scheme. There is no law which requires the terms and conditions of the 2026 Scheme to be informed by those of the 2013 Scheme; nor has Mr. Makhija been able to cite any law in that regard.

43. Apart from the fact that there is no *prima facie* case in favour of the appellants, as would justify grant of interim relief, we are also of the opinion that the prayer for interim relief does not satisfy the considerations of balance of convenience and irreparable loss. The appellants, as Mr. Makhija acknowledges, have resorted to alternate modes of employment during the period 2013 Scheme ceased to operate. They have not, therefore, been subjected to lasting prejudice as a result of their not being entitled to the benefit of 2026 Scheme. Besides, entitlement to the benefit of 2026 Scheme – or, for that matter, even the 2013 Scheme – is not a fundamental, or, for that



2026:DHC:5662-DB



matter, even a legal, right. Any right to the benefit of the Scheme has to emanate from the covenants of the scheme and not innocent thereof. If an applicant does not satisfy the conditions set out in the 2026 Guidelines, she, or he would not be entitled to the benefit of the 2026 Scheme. Court cannot compel the authorities administering the Scheme to extend its benefits to those who do not satisfy its indicia.

44. Viewed any which way, we are of the opinion that no error can be discerned in the refusal of the learned Single Judge to grant any *ad interim* relief to the appellants.

45. We are conscious that the observations contained in this order may influence the decision on the appellants' application for interim relief, which is presently pending before the learned Single Judge. That, however, is a risk that the appellants have taken by choosing to challenge an *ad interim* order even while their stay application is pending. We had brought this position to the notice of Mr. Makhija at the very commencement of hearing. He, nonetheless, chose to press this appeal. We have, therefore, considered the submissions advanced by him.

46. All that we can do is to enter a disclaimer to the effect that this order adjudicates the issue of whether the learned Single Judge could be said to have erred in refusing to grant *ad interim* relief and, instead, choosing to issue notice on the stay application filed by the appellants.

47. We find no cause to interfere with the impugned order of the learned Single Judge, which is affirmed.

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Signing Date: 16.07.2026  
16:18:07

Page 16 of 17



2026:DHC:5662-DB



48. The appeal is dismissed in *limine*.

C. HARI SHANKAR, J.

VINOD KUMAR, J.

**JULY 6, 2026**

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