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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10502/2015 & C.M. No.26461/2015**

Date of Decision: 29th September, 2016

UNION OF INDIA & ORS

..... Petitioners

Through: Mr. Ruchir Mishra & Mr. Mukesh Kumar
Tiwari, Advocates.

versus

SOHAN SINGH KANAWAT

..... Respondent

Through: Mr. A.K. Babbar & Mr. Surinder Kumar,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J: (ORAL)

1. Union of India and Government of NCT of Delhi have filed the present writ petition challenging order dated 29.5.2015 of the Central Administrative Tribunal, Principal Bench, New Delhi whereby OA No.1373/2015 has been allowed and the order dated 27.02.2015 (Annexure A1) transferring Sohan Singh Kanawat and four others to Andaman and Nicobar Islands has been set aside as suffering from legal malice, mala fides, extraneous considerations, illegality and being unjust and arbitrary.

2. The Tribunal had directed that a committee shall be set up to form a new set of guidelines on the issue of transfer and postings of DANICS/DANIPS officers. The transfer scheme adopted in the case of IAS/IPS officers described as expressively more fair was to be followed till the new set of guidelines were formulated. Instructions

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were to be issued that none from DANICS/DANIPS cadre should be inducted into IAS/IPS without undergoing the two mandatory spells as provided under the policy dated 10.2.2011.

3. Paragraph 18 of the impugned order records the reasoning and grounds for setting aside the transfer order dated 27.2.2015 and reads:-

"18. Therefore, for the following many reasons, the issue appears to be clouded:

- a) The non-application of mind before issuing the transfer order with particular reference to the ability or the inability of the transferee to join the new place of transfer and the resultant cancellation later, being the three out of five of these orders, is glaring in itself and, therefore, it is crystal clear that the authorities have not applied their mind to the issue at all, if 60% of an order is obviously the result of non application of mind, there is something really wrong.*
- b) The non-posting of Ms. Rashmi Singh and Shri Sushil Singh even for their first posting, in a difficult area, is so glaring and prejudicial as to destroy the element of fairness in Annexure A1 order. This is particularly so in the face of the admission in the reply and the explanation at hearing of the applicant.*
- c) The fact that applicant had served at Car Nicobar, and the fact that, apparently no one else had been sent before to a difficult station twice, is so glaring but it escaped the application of mind of the concerned authority. It speaks volumes.*
- d) That a Coordinate Bench of this Tribunal had*

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already found that the elements of consideration for the concerned authorities had been supplied by one Section Officer whose credibility was under scrutiny at the level of the Bench, and it ought to be under scrutiny at the administrative level also but it is unfortunate that such salient features have even now escaped the minds of the concerned. Therefore, the Annexure A1 order is vitiated as being arbitrary, unfair and pervaded by non application of mind.

- e) The applicant has only three years time to retire and therefore, if going by the guidelines, within a year, may have to be brought back to Delhi. The resultant dislocation in his life and career may not be sufficient enough to warrant the one year posting, especially in the light of the fact that there are many persons, who have not been touched by the sword of transfer at all. This is particularly so, as even people who have been found deficient had been allowed to stay in Delhi, in flagrant violation of all principles of propriety.
- f) The applicant is an insulin dependant, diabetic patient with beginnings of diabetic retinopathy and diabetic neuropathy in him, as disclosed by his medical records and medicines, and his wife is apparently on medication for depression, but none of these matters are seem to be considered, at the time of passing Annexure A1 or thereafter along with other cancellations, one begins to wonder, what is happening? Are extraneous inputs necessary?

4. The Delhi, Andaman and Nicobar, Daman and Diu and Dadra and Nagar Haveli (Civil) Services (DANICS) and The Delhi, Andaman and Nicobar, Daman and Diu and Dadra and Nagar Haveli

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(Police) Services (DANIPS) have 5 administrative units/segments, namely, Government of NCT of Delhi, Union Territory of Andaman and Nicobar, Union Territory of Lakshadweep Island, Union Territory of Daman and Diu and Union Territory of Dadra and Nagar Haveli. The latter 4 units are the outlying segments.

5. The transfer policy governing DANICS and DANIPS officers was issued by the Ministry of Home Affairs vide communication dated 10.02.2011. With regard to posting in Delhi and outlying segments, the relevant portion of Clause (2) of the policy dated 10.2.2011 read as under :-

"2. It has to be ensured that no constituent segment serviced by the Cadre remains starved of Cadre officers and that onus to serve in the constituents outside Delhi and also in Delhi is shared among the officers equitably. In the interest of cadre management and transparency in transfer/posting of the DANICS/DANIPS officers, following guidelines for transfer/posting of DANICS/DANIPS officers are framed.

(i) *The tenure of the DANICS/DANIPS officers in the 'outlying segments' will be as follows:*

The promotee DANICS/DANIPS officers will have to serve in one of the outlying segments for a minimum period of 2 years. The direct recruit officers are required to serve in the outlying segments in two spells – the first spell will be of minimum 3 years and the second will be of minimum 2 years. However, the number of stints and duration in outlying segments may vary subject to availability of suitable officers.

(ii) *The following periods will be excluded from the*

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calculation of tenure spent in outlying segments:

- (a) *Period spent on long leave, including study leave.*
- (b) *Period spent on a training course of duration longer than six weeks."*

6. Pursuant to the directions issued by the Tribunal in the impugned order, a Committee was setup and thereafter the new revised guidelines for transfer and postings of DANICS/DANIPS officers were published on 27.8.2015. In the policy dated 27.8.2015, sub-clause (c) has been added to sub para (ii) to clause 2 for excluding from the calculation of tenure spent in outlying segments, the duration of posting as Deputy Resident Commissioner etc. or any administrative duty in outlying duty administration post in Delhi for a period of 15 days or more. This has a salutary purpose. The respondent, however, has reservations about the other clauses of the policy on the ground that the same suffers from earlier faults and defects. For the sake of clarity, the relevant portion of paragraph 2 of the revised policy dated 27.8.2015 is reproduced below and reads as under :-

"2. It has to be ensured that no constituent segment serviced by the Cadre remains starved of Cadre officers and that onus to serve in the constituents outside Delhi and also in Delhi is shared among the officers equitably. In the interest of cadre management and transparency in transfer/posting of the DANICS/DANIPS officers, following guidelines for transfer/posting of DANICS/DANIPS officers are framed.

- (i) *The tenure of the DANICS/DANIPS officers in the 'outlying segments' will be as follows:*

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- (ii) *The following periods will be excluded from the calculation of tenure spent in outlying segments:*

- (a) Period spent on long leave, including study leave.*
- (b) Period spent on a training course of duration longer than six weeks.*
- (c) Duration of posting as Deputy Resident Commissioner etc. or any administrative duty of the outlying UT administration based in Delhi for a period of 15 days or more."*

7. As per the former and the revised policy, officers appointed to DANICS/DANIPS cadre through direct recruitment shall have to serve two spells in the outlying segment. The first spell shall be for a minimum of three years and the second spell will be for a minimum of two years. What has been highlighted before us is the discretion given in the last sentence of sub para (i) which is identically worded in both policies, stipulates that the number of stints and duration in the outlying segment may vary subject to availability of suitable officers. The contention of the respondent is that the last sentence of

sub-para (i) of paragraph (2) is invariably used as an excuse and pretext to exercise discretion and grant benefit to some and transfer others. This is primarily an issue for the administration to ponder over and consider. They must take objective and fair decisions in terms of the said policy. It does raise concern and consideration when a large number of original applications and writ petitions are filed by officers belonging to DANICS/DANIPS cadre alleging that some persons were able to manage their postings because of the discretion given in sub-para (i) of the Clause 2.

8. The impugned order makes specific reference to two cases where officers had never been posted outside of Delhi. The said persons are not parties before us and we would not make any comment lest an adverse observation may cause prejudice. However, we would not hesitate in restating and emphasising that such assertions are a matter of concern for the administration as any deviation from the policy or misuse of discretionary power could reflect on the administration, the persons taking the decisions and those who benefit.

9. As per the writ petition filed before us, the total number of sanctioned posts in both DANICS and DANIPS is as under :-

DANICS

	EG+SG	JAG-II+JAG-I	Total
Delhi	226	83	309
Daman and Diu	16	0	16

& Dadra And Nagar Haveli			
Lakshadweep	13	01	14
Andaman & Nicobar	26	06	32

DANIPS

	EG+SG	JAG-II+JAG-I	Total
Delhi	261	54	315
Daman and Diu & Dadra And Nagar Haveli	03	0	03
Lakshadweep	01	0	01
Andaman & Nicobar	10	0	10

A reading of the aforesaid table would indicate that for officers belonging to DANICS/DANIPS cadre, the maximum number of sanctioned posts ~~is~~ are in Delhi and therefore, necessarily, most of the DANICS/DANIPS officers would get posted in Delhi. However, some postings outside Delhi in the outlying segments is inevitable.

10. The 2011 policy and 2015 policy stipulate that the officers would be posted to outlying segments on the basis of station seniority. As per the 2011 policy, seniority is determined on the basis of the

total period that has been spent by the officers in Delhi from the date of appointment as an DANICS/DANIPS officer. The revised policy dated 27.8.2015 in sub para (iv) stipulates that seniority list of officers in each grade will be prepared and officers would be posted to the outlying segments on the basis of seniority.

11. We would not like to comment on the change made in sub para (iv) directing the seniority list of officers would be maintained in each grade for this is not the subject matter before us. We are primarily concerned with the 2011 policy, for the transfer was made under the said policy. However, we trust and believe that the aforesaid change would be in consonance with the principle that the seniority list should be based upon the total period of time spent by a particular officer in Delhi from the date of appointment, i.e. the total tenure in Delhi.

12. The reason why we have quoted and referred to both the policies is to highlight and assure the objective and purpose. The stipulations mandate that the transfers outside Delhi to the outlying segments are done objectively and on the basis of the fixed criteria. The employees do not feel discriminated and approach Courts or Tribunals seeking redressal and challenge the order of transfer as vitiated on the ground of mala fides or arbitrariness.

13. The courts and tribunals are reluctant and do not like to interfere with the transfer order as this can effect administrative and day to day working. Officers have to be posted in the outlying segments. The petitioners, we would and law expects, are maintaining and will continue to maintain proper record and data regarding the

seniority and the administrative decisions relating to transfer postings are taken in a fair, objective and transparent manner. The data must reflect the true and correct factual position.

14. The learned counsels for the petitioners have produced before us a seniority chart and have stated why the respondent was due and should have been transferred :-

“DANICS officers are entitled to be inducted into IAS as per the IAS (appointment by induction) Regulations 1955, and after the induction they are governed by IAS Rules.

5. JAG level officers posted at A&N were inducted to IAS vide DoPT's notification dated 31.01.2015 and as result same number of JAG level officers of DANICS were required to be posted there.

Accordingly, the Ministry with approval of the competent authority decided to posts 5 JAG officers of DANICS to A&N. The officers were selected strictly on the basis of Seniority list of DANICS and in terms of the prevailing transfer policy. For more clarity, the name and particulars of top 12 officers, among which the 5 officers were selected for transfer to A&N, are mentioned as follows:

Sl. No.	Name of Officer Sh./Smt.	Remarks
1.	Rajiv Kale	Less than 2 years in retirement
2.	Achla Singh	Less than 2 years in retirement
3.	M.S. Chauhan	Less than 2 years in retirement
4.	B.R.S. Rathore	Under suspension
5.	Tarseem Kumar	
6.	R.N. Mangla	

7.	<i>P.C. Jain</i>	
8.	<i>S.K.S. Yadav</i>	
9.	<i>Rakesh Bhatnagar</i>	<i>Posted at A&N</i>
10.	<i>S.S. Siddhu</i>	<i>Less than 2 years in retirement</i>
11.	<i>B.R. Singh</i>	<i>Was being considered by the DPC for IAS induction and finally inducted.</i>
12.	<i>S.S. Kanawat</i>	

The petitioners, in the last column of the aforesaid table, have given remarks as to why the officers – except the 5 officers mentioned at Sl. No.5, 6, 7, 8 & 12 – could not be posted against the 5 vacancies at A&N.”

A reading of the aforesaid paragraph would show that as a result of induction of DANICS officers into IAS, there were vacancies in the outlying segments. Five JAG level officers posted at Andaman and Nicobar Islands had been inducted into the IAS and the posts held by them had to be filled. As per seniority list maintained, depending upon the tenure of the DANICS officers posted in Delhi, the respondent Sohan Singh Kanawat was at serial No.12. Four officers had less than two years to retire and therefore, they could not be posted in the outlying segments. One officer was under suspension and another officer was already posted and serving in Andaman and Nicobar Islands. One officer was to be considered by the DPC for induction into IAS and was finally inducted and therefore, had to be excluded. This had left five officers. By order dated 27.2.2015, the said five officers, including the respondent, were transferred to

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Andaman and Nicobar Island. This transfer order (Annexure A1) reads as under :-

"The following transfers/postings of NCT of Delhi, Andaman & Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli Civil Service (DANICS) officers shall take place with immediate effect:

Sl. No.	Name of the officer (S/Shri/Smt./Ms.)	Grade	From	To
1.	Tarsem Kumar	JAG-I	Delhi	A&N
2.	R.M. Mangla	JAG-II	Delhi	A&N
3.	P.C. Jain	JAG-I	Delhi	A&N
4.	S.K.S. Yadav	JAG-II	Delhi	A&N
5.	S.S. Kanawat	JAG-I	Delhi	A&N

2. This issues with approval of the competent authority."

15. The respondent in the counter affidavit has challenged the aforesaid seniority list. Our attention was drawn to paragraphs 7 of the counter affidavit which contains a table or a chart. As per the said list, the respondent Sohan Singh Kanawat would be at serial No.13 and the six vacancies at Andaman and Nicobar Islands should be filled up by Ram Chander, Jitender Aggarwal, Rashmi Singh, Shalini, Tarsem Kumar and R.N. Mangla.

16. The learned counsel for the petitioners has disputed the said chart and it is pointed out that this chart was not filed before the Tribunal. We have examined this aspect in paragraph 17, with reference to the names of the two officers mentioned in paragraph 2B.

17. With regard to the reasoning given by the Tribunal, we would observe that the transfer order need not record the application of mind and specify why a transfer posting has been made. These aspects

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have to be examined with reference to the file wherein the seniority position of the officers was considered and thereafter transfer orders were passed. Non posting of two officers mentioned in paragraph 2B is a matter of grave concern. It is stated that one officer was on study leave when the transfer order dated 27.2.2015 was passed. The officer, on joining, has been transferred to Andaman and Nicobar Island. As far as the second officer is concerned, the respondent, who is present in person, has stated that transfer and relieving orders have been issued. In case there is a violation of the transfer policy, the petitioners would face similar difficulties and suffer adverse orders. As far as reason (c) is concerned, it is pointed out that the respondent has been in Delhi since 1991, The respondent has been in Delhi for last about 25 years. The other two grounds are of general nature. The respondent has about three years before he would retire. We do not think the period of two years as fixed in the guidelines can be ignored or substituted by three years. We would not, therefore, agree that the respondent could not have been transferred because he had three years to retire. The fact that the respondent is diabetic patient, cannot be a ground not to transfer. It is not the case of the respondent that his medical condition was serious or the adequate and required medical facilities in his case will not be available in the Andaman and Nicobar Islands.

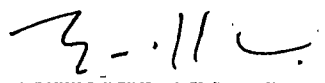
18. The learned counsel for the respondent submits that the respondent presently has about one year and ten months to go before he retires. In view of our order, the respondent must join the transfer posting within a period of 15 days from today. If there is any policy

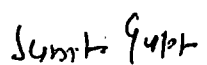
under which the respondent can seek retransfer before his retirement, it would be open to the said respondent to make the said request and if any such request is made, the same would be considered in accordance with law.

19. The transfer order dated 27.2.2015 was only challenged by Sohan Singh Kanawat and not by four other officers. The Tribunal in the impugned order has quashed the said order in entirety, meaning thereby that the transfer of the four other officers, who had not challenged the transfer was also quashed. The learned counsel for the petitioner has stated that the transfer orders have therefore not been implemented even in the case of four others. This, it appears is an unintended fall out of the order passed by the tribunal, which was only to be applicable in the case of the respondent, i.e. Sohan Singh Kanawat and not in the case of other four officers. No such prayer was made and the relevant facts pertaining to the other officers were not on record.

20. In the view of the aforesaid discussion, we would partly set aside the impugned order passed by the tribunal and uphold the transfer order dated 27.2.2015 in the case of the respondent and others.

21. The writ petition is accordingly disposed of. No order as to costs.


SANJIV KHANNA, J


SUNITA GUPTA, J

SEPTEMBER 29, 2016
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