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

+ W.P.(C) 5390/2015

**SOCIETY FOR VOICE OF HUMAN
RIGHTS & JUSTICE**

..... Petitioner

Through : Mr. M. Dutta, Adv.
versus

UNION OF INDIA

..... Respondent

Through : Mr. Sanjay Jain, ASG and Mr.
Akshay Makhija, CGSC with Mr.
Vidur Mohan, Ms. Pallavi and Mr.
Shivi Sangam, Advs. for UOI.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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17.05.2017

The petitioner challenges the policy of the Central Government embodied in its office memorandum dated 19.06.2014 clarified on 08.07.2014. It is stated that these documents in effect 'politicise' the bureaucracy inasmuch as the 10 years' period considered to be disqualifying, is with specific reference to the previous government.

The first notification of 19.06.2014 stated in fact that an officer, who worked "earlier in the personal staff of a Minister in any capacity for any duration" would not be appointed in the personal staff of Ministers in the present Government. It was later clarified on 08.07.2014 as follows :

"i) The OM shall apply only in respect of Private Secretaries who had worked in the personal staff of any Minister for any duration in the last 10-years;

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- ii) *The OM shall not apply to a person who was a Private Secretary to the Leader of the Opposition in the Lok Sabha/Rajya Sabha;*
- iii) *The OM shall also not be applicable to such lower personal staff in class 3 and class 4 (now designated as MTS) such as Drivers/Attendants/Peons.”*

It is submitted that the refusal of the Central Government to consider officers and other employees, who had previously and for 10 years taken up positions as Private Secretaries with Ministers, and continue them as was such posting, regardless of individual merit etc, is an arbitrary one.

The respondents point out that an earlier writ petition had been preferred i.e. W.P.(C) 4910/2014, which was disposed of on 18.11.2014. This court had required the respondents to consider the representation that could be preferred in line with the liberty granted by the Central Government.

It is stated that the petitioner's representation was thereafter considered and disposed of on 23.01.2015. The justification given for rejecting the representation is contained in para 2 to 4 of the rejection order of 23.01.2015. The same is extracted below :

“2. It is informed that detailed instructions have been issued by the Government from time to time regarding appointment of personal staff to the Ministers, such as entitlement, scale of pay, skill and educational qualification etc. Since the personal staff of the Minister works under the direct supervision of the Minister, i.e. the political executive, it is considered essential to regulate the tenure keeping in view the sensitive nature of the posts.

3. Ministers have discretion in the matter of selection of persons, serving officers or outsiders, for appointment in their personal staff and such appointments are co-terminus with the office of the Ministers. The PS and other staff members are identified by the
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Minister concerned and then laid down procedures are required to be followed before their appointment. The Government has regulated the services of the PS and other staff members on the analogy that long continuance of their service may lead to vested interests which is undesirable.

4. *Correspondingly, the persons eligible for such appointments have no vested or inherent right to be so appointed. These posts are not filled on the basis of any promotion mechanism. These posts do not constitute a separate classified service for which any examinations are held. There is no search committee or selection panel to shortlist or select such persons. As stated above, the process begins with the identification of a person by the concerned Minister. The entire process is completely immuned from affecting any person's legal rights."*

This court has heard the submissions.

The respondents had relied upon another judgment of this court in ***Ashok Kumar Bansal v. UOI & Ors.***, 212 (2014) DLT 308. In that, the Division Bench has relied upon some Supreme Court Judgments, including ***Girjesh Shrivastava & Ors. v. State of Madhya Pradesh & Ors.***, (2010) 10 SCC 707. The Division Bench also noted ***Dr. Duryodhan Sahu & Ors. v. Jitender Kumar Mishra & Ors.***, (1998) 7 SCC 273 and other judgments which stated that public interest litigation in respect of service matters ought not to be entertained.

Apart from the decision in ***Ashok Kumar Bansal (supra)***, this court is of the opinion that in matters of policy and that too concerning personal staff to be deployed to assist the Ministers, the discretion of the Central Government, unless shown to be clearly arbitrary in the sense that they contain harshly discriminating schemes, should not be interfered with at

least in such general proceedings.

It was never pointed out during the course of hearing as to which Officer or employee or individual having obtained the expertise or with the requisite talent would be 'wasted' in otherwise any posting that would also be of use to the general public.

For the foregoing reasons, the court finds no merit in the petition and is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATHIBA M. SINGH, J

MAY 17, 2017/dk