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

+ **W.P.(C) 5158/2015 & CM No. 9353/2015**

UNION OF INDIA AND ORS.

..... Petitioners

Through: Mr.Arun Bhardwaj, CGSC with
Mr.Satya Ranjan Swain, Advocates

versus

VIJAY PRATAP SHARMA

..... Respondent

Through: Mr.Ajay Pratap Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

19.04.2017

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1. The Union of India has assailed the order dated 05.03.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A.4417/2014. By the impugned order, the Tribunal quashed the posting order issued in respect of respondent Vijay Pratap Sharma on the premise that the Director General, NIC was not competent authority to issue the said posting order. On 24.02.2016, the counsel for the petitioners, on instructions, stated that the petitioners had complied with the order passed by the Tribunal setting aside the orders Annexures A-1 and A-2 both dated 17.11.2014 in respect of respondent Vijay Pratap Sharma and H.P.Sharma. However, the petition was still pressed by the petitioners, on the ground that the question of law – Whether the Director General of National Informatics Centre (NIC) has the power to transfer/post any employee of NIC, or said

power vests in the Secretary, Department of Electronics and Information Technology, still remains to be answered.

2. Mr.Bharadwaj, learned senior standing counsel submits that the determination of the said legal issue is necessary since the same issue arising in several other cases which are pending before the Tribunal, and unless the impugned order is examined and an authoritative pronouncement made by this court, the controversy would remain unsettled.

3. Mr.Bhardwaj has pointed out that there are several aspects which the Tribunal has not considered while ruling on the authority (rather lack of it) of the Director General, NIC in the matter. He points out that the Tribunal correctly records the submission of the petitioners that the Director General is the Administrative Head of the NIC, and he discharges both financial and administrative responsibilities within the ambit of the delegated powers. The Tribunal also records the submission of the petitioners herein that the O.M. dated 20.02.2014 issued by the Department of Electronics and Information Technology is not applicable to the employees of NIC, and is applicable only to the employees of DEIT, since the NIC has its own set up with the Director General as the Head of the department. Mr.Bhardwaj submits that in the later part of the order (in para 10) the Tribunal erroneously records that the respondents i.e. NIC has not denied that the transfer and posting of scientists are governed by the provisions of O.M. dated 20.02.2014. He has drawn the attention of the court to Para 11 of the counter reply filed by the respondent (petitioner herein) under the heading “Brief Submissions”, as well as Para 1 to 1.3 under the heading “preliminary submission”, wherein it is stated that the O.M. dated 20.02.2014 is issued by DEIT and is applicable to their employees only. Mr.Bhardwaj submits that

the Office Memorandum dated 19.12.2000 issued by the Government of India, Ministry of Information and Technology - which seeks to declare the NIC is an attached office of Ministry of Information and Technology has subsequently been clarified by the Ministry of Communication and Information Technology, Department of Electronics and Information Technology on 19.06.2015, to say that the O.M. dated 20.02.2014 is not applicable to the employees of NIC. The said communication also records that the Director General, NIC has all the powers referred therein, including the power to transfer all the employees of NIC.

4. On the other hand, learned counsel for the respondent has sought to place reliance on *T.S.R. Subramanian vs. UOI & Ors.* in W.P.(C) 82/2011 decided by the Supreme Court on 31.10.2013, and in particular to the direction contained in para 29 of the said decision.

5. A perusal of the impugned judgment shows that the said aspects have not been adverted to by the Tribunal. Even though, the reliance placed by the respondent herein on judgment in *T.S.R. Subramanian* (*supra*) has been noted, the effect of the aforesaid office Memoranda/communications has not been considered. It also appears that the stand taken by the petitioner has also been misunderstood in the later part of the order.

6. Since the petitioner has accepted the impugned judgment and implemented the same, we are not inclined to interfere with the same, by recalling the order of posting in respect of the respondent i.e. Vijay Pratap Sharma and H.P.Sharma.

7. However, we make it clear that the said order shall not form a binding precedent on the Tribunal, and in case the issue with regard to the competence of the Director General, NIC to issue order of posting/transfer

arises in any other case, the same shall be independently considered, after taking into account all the material placed on record.

8. Petition stands disposed of.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 19, 2017

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