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

+ **W.P.(C) 5666/2018**

SHAMMI & ORS

..... Petitioners

Through: Mr. Rahul Rohtagi, Advocate with
Mr. Syed Ajmal Hasan, Advocate.

versus

E.S.I.C. THROUGH THE DIRECTOR GENERAL & ORS

..... Respondents

Through: Mr. Murari Kumar and Mr. Abhinav
Kumar, Advocates for R1 to R3.

Mr. Ripu Daman Bhardwaj, CGSC with
Mr. T.P. Singh, Advocate for R4/UOI.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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24.05.2018

CM APPL. 22075/2018 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 5666/2018 and CM APPL. 22074/2018 (stay)

1. The present petition has been filed by 24 petitioners, working on the post of Nursing Orderly with the ESIC, who are aggrieved by an interim order dated 14.05.2018, passed by the Central Administrative Tribunal, rejecting an interim application filed by them for permission to participate in the LDCE, being conducted by the respondents No.1 to 3 /ESIC on 26/27.05.2018 i.e. on the last Saturday and Sunday of May, 2018 for promotion to the post of Assistant.

2. In the impugned order, the Tribunal has observed that no challenge has been laid by the petitioners to any rule or order in the main O.A. and

therefore, the relief in the interim application, which is identical to the relief prayed for in the O.A. cannot be considered at the interlocutory stage.

3. Learned counsel for the petitioners relies on an order dated 09.01.2018 passed by the very same Bench of the Tribunal in O.A. No.97/2018, which notes that the respondents have declined to entertain their applications for participating in the LDCE for promotion to the post of Assistant on the ground of not fulfilling the qualifying service. A copy of the order dated 09.01.2018 has been enclosed with the present petition and is marked as Annexure B. In the said order, while issuing notice to the respondents, the Tribunal has directed the applicants to participate in the LDCE alongwith others on the condition that their results shall not be declared until further orders are passed.

4. Learned counsel for the respondents No.1 to 3/ESIC explains that unlike O.A. No.97/2018 wherein, the petitioners have taken a specific plea that the services rendered by them in the previous region should have been taken into consideration by the ESIC for promotion to the next higher grade, in the present case, no such plea has been taken by the petitioners, nor have they assailed the Revised Inter Regional Transfer Policy in respect of Ministerial Staff upto Assistant Cadre of the ESIC declared under cover of letter dated 05.03.2013. The said Policy declares that the qualifying service condition for the purpose of granting promotion to the next post would be counted from the date of the officers joining the new region and he/she will not be entitled to claim seniority in respect of the services rendered by him/her in the earlier region.

5. At this stage, learned counsel for the petitioners states that he may be

permitted to take immediate steps to file an application amending the O.A. No.253/2018, pending consideration before the Tribunal and listed on 07.09.2018, so as to lay a challenge to the Revised Inter Regional Transfer Policy and the consequential orders passed by the respondents, disqualifying the petitioners from participating in the LDCE and subject to the same, as an interim measure, the petitioners may be permitted to participate in the LDCE that is scheduled on 26/27.05.2018.

6. Learned counsel for the respondents states on instructions that the said Examination has been rescheduled and shall now be conducted from 06.06.2018 onwards.

7. The petitioners are granted a period of one week to file an application for seeking amendments in O.A. No.253/2018, in terms of the statement made hereinabove. Subject to filing such an application within the stipulated timeline with an advance copy to the counsel for the respondents, the petitioners are permitted to participate in the LDCE alongwith others, proposed to be conducted by the respondents No.1 to 3/ESIC in June, 2018. However, the results of the petitioners shall be kept in a sealed cover and shall abide by the final orders to be passed by the Tribunal in the pending original application.

8. The petition is disposed of alongwith the pending application.

DASIT to the counsels for the parties under the signatures of the Court Master.

HIMA KOHLI, J

PRATIBHA RANI, J

MAY 24, 2018/na
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