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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 19.01.2022**+ **W.P.(C) 1178/2022**

MANISH KUMAR & ORS.

.....Petitioners

Through

Mr A K Behera Sr. Advocate with Mr
A P Singh Adv.*versus*

UNION PUBLIC SERVICE COMMISSION & ORS.....Respondents

Through

Mr Naresh Kaushik, Adv. for R-1.
Ms Suparna Srivastava, CGSC with
Ms Soumya Singh, Adv. for R-2
& 3.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH**[Court hearing convened *via* video-conferencing on account of COVID-19]**RAJIV SHAKDHER, J. (ORAL):-****CM APPL. 3399/2022**

1. Allowed, subject to just exceptions.

W.P.(C) 1178/2022**CM APPL. 3400/2022** [*Application filed on behalf of the petitioners for taking on record additional documents*]**CM APPL. 3401/2022** [*Application filed on behalf of the petitioners for ad-interim ex-parte stay*]

2. We have heard Mr AK Behera, learned senior counsel, who appears for the petitioners, Mr Naresh Kaushik, who appears for respondent no.1/Union Public Service Commission (UPSC), and Ms Suparna Srivastava who appears on behalf of respondent nos. 2/Ministry of External Affairs (MEA) & 3/ Department of Personnel and Training (DoPT).



3. What has emerged during the course of the hearing is that the document, which is appended on page 32 of the case file and marked as Annexure P-2, was not made available to the Central Administrative Tribunal [in short “the Tribunal”], when the impugned order dated 22.04.2021 was passed. The impugned order was passed by the Tribunal in O.A. No.876/2021.

3.1. The aforesaid document, in fact, etches out the controversy in the matter. The controversy etched out in the document which, according to the parties is the heart of the matter, is set forth in paragraph 2 of the said document. For the sake of convenience, the same is extracted hereinafter:

"2. Estt.(RR) Section has referred the above file to CS.I Division, wherein the MEA has sought clarification on the following point in connection with the LDCE 2015:

"whether in case of a Direct Recruit ASO of 2010 batch having four years of approved service as on the crucial date i.e. 1st July 2015, the requisite period of 5 years is to be counted from the date of Tier I examination which also counted towards preparation of final merit list or that of Tier-2 Examination."

(emphasis is ours)

3.2. The aforesaid issue has been analysed by C.S.I.(A) Division of the DoPT, in the aforementioned document. The analysis has narrowed down to the following, as recorded in paragraph 6.3 of the very same document. For the sake of convenience, the same is extracted hereafter:

"6.3 In this regard, the relevant quote "Keeping in view the fact that the preliminary examination is only a qualifying examination/ screening test to eliminate the less meritorious candidates....." in the above said O.M. of DoPT appears to be not matching the present criteria (2010 onwards) of CGL Examination scheme and needs suitable modification. As such, a policy decision is required



to be taken on whether the requisite period of 5 years, for appearing in the SO LDCE, be counted from the date of Tier-I examination of CGLE (which is no longer a qualifying paper)."

(emphasis is ours)

3.3. Mr Behera says that the aforesaid document was made available to the petitioners only after they had taken recourse to the Right to Information (RTI) route. Mr Behera emphasises that this document was not available with the petitioners before, and, therefore, has now been placed before this Court.

4. Given this position, counsels for the parties are agreed that the matter requires consideration by the Tribunal.

4.1. Therefore, the writ petition is disposed of with liberty to the petitioners to file a review petition before the Tribunal.

4.2. The review petition will be filed by the petitioners at the earliest, though not later than four weeks from today.

4.3. Once the review petition is filed, the same will be dealt with on merits by the Tribunal.

5. Both Ms Srivastava and Mr Kaushik say that, if a review petition is preferred by the petitioners, they will not oppose the same on the ground of limitation, in view of the fact that a final decision seems to have not been taken in the matter.

5.1 We may add that, besides this, it has to be borne in mind that the case set by the petitioners is that the said document was not within their knowledge and possession. That said, as to what impact it would have, is a matter which the Tribunal may have to consider, albeit, as per law.

5.2. It is ordered accordingly.



6. Consequently, pending applications shall also stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JANUARY 19, 2022/rb

Click here to check corrigendum, if any