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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 17.02.2022

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W.P.(C) 1338/2022 & CM No.3863/2022**SRAVAN BAGARIA AND ANR**

.....Petitioners

Through : Mr M.K. Bhardwaj, Advocate.

*versus***UNION OF INDIA AND ORS**

.....Respondents

Through : Mr Vikram Jetly, Adv. for R-1 & R-2.

CORAM:**HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE TALWANT SINGH****[Physical Court Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):-**

1. Pursuant to our last order dated 21.01.2022, Mr Vikram Jetly, who appears on behalf of respondent nos.1 and 2/UOI, has reverted with instructions.

1.1 Mr Jetly says that he would have no objection, if the matter is remanded to the Central Administrative Tribunal [in short “the Tribunal”] for a decision on merits.

1.2. For the purposes of convenience and completeness, the order dated 21.01.2022 is extracted hereafter:

“1. This writ petition is directed against an interlocutory order dated 24.12.2021, passed by the Central Administrative Tribunal [in short, the “Tribunal”] in OA No.2978/2021.

1.1. Concededly, the aforesaid order is passed qua the interim relief that the petitioners had sought in the O.A.

1.2. A perusal of the impugned order shows that, in the first instance i.e., on 22.12.2021, the Tribunal had directed maintenance of status quo vis-a-vis the petitioners. This order was, however, vacated, via the impugned order.

1.3. The observations recorded in the impugned order, which



led to the Tribunal vacating its earlier order dated 22.12.2021, read as follows :

“...Sh. Gyanendra Singh, learned counsel for Respondent Nos. 1 and 2 submits that the continuance of the interim order would be adverse to public interest.

In view of the submissions made by the learned counsels for the parties and the facts and circumstances, the continuance of the interim order is no longer required. The same is accordingly vacated...”

2. According to us, a bare perusal of the impugned order of the Tribunal shows that there is no discussion on various issues raised by the petitioners.

2.1. Before us, Mr M K Bhardwaj, who appears on behalf of the petitioners, has raised several issues, which, broadly, can be paraphrased as follows:

(i) Firstly, there are 20 officers in the seniority list, who have not done hard posting.

(ii) The petitioner no.1, who belongs to 2001 batch of Delhi, Andaman & Nicobar, Lakshadweep, Daman and Diu, Dadra and Nagar Haveli Civil Services (DANICS) officers, has done a stint at Lakshadweep between February 2003 and February 2006. Likewise, petitioner no.2, who, belongs to 2010 batch of DANICS officers, has also done his stint at Lakshadweep, which spanned between March 2013 and May 2016.

(iii) Rule 12 of the National Capital Territory of Delhi, Andaman and Nicobar Islands, Lakshadweep, Daman & Diu and Dadra & Nagar Haveli (Civil Service) Rules, 2003(“ 2003 Rules”), contained in notification dated 6.8.2003, issued by the Ministry of Home Affairs [“MHA”], notified the following concerning posting:

“12. Posting:-

Every member of the Service allocated to an Administration shall, unless he is appointed to an ex-cadre post, or is otherwise not available for holding a



duty post owing to the exigencies of the public service, be posted against a duty post under the Administration by the Administrator concerned.”

(iiia) Based on the aforementioned Rule, the submission made is that a person could be transferred to a place only if a post was available. In conjunction with this, our attention has been drawn to the counter-affidavit filed on behalf of the respondents in another O.A. i.e., O.A. No.404/2021. The relevant paragraph of the said counter-affidavit i.e., paragraph 11 is extracted hereafter:

“11. That as per the provisions of the DANICS Rules, 2003 (as amended in 2009 and further amended in 2015), the total number of identified posts and number of officers presently posted in each UT segment, is furnished as under:

Sl. No.	Union Territories	JAG-I + JAG-II		SG + EG	
		Total Identified Posts	Number of officers presently working	Total Identified Posts	Number of officers presently working
1	Delhi	83	45	226	84
2	A&NI	06	01	22	21
3	Lakshadweep	01	02	13	09
4	DNH&DD	00	02	16	14
	Total	90	50	277	128

(iiib) It is argued that, in Lakshadweep, only one [1] post of JAG-I and JAG-II is identified, and as per the above table, two [2] officers were detailed against said post. Insofar as Selection Grade and Entry Grade posts were concerned, thirteen [13] posts were identified, against which nine [9] officers were slotted.

2.2 It is contended by Mr Bhardwaj that apart from this aspect, other aspects had to be taken into account as well as articulated in the OA.

3. On the other hand, Mr Vikram Jetly, who appears on behalf



of respondent nos.1 and 2/UOI, has drawn our attention to the order dated 9.12.2021 passed by the MHA, Government of India. In particular, our attention has been drawn to paragraphs 7 and 9.

3.1 Mr Jetly says that the rules provide that a transfer can be made in the interest of administration and in furtherance of public interest, notwithstanding the provision made in Rule 12 of the 2003 Rules.

3.2. It is Mr Jetly's contention that the order dated 9.12.2021 was passed keeping these aspects in mind.

4. Having heard learned counsel for the parties, prima facie, we are of the view that the submissions and counter-submissions, which have been advanced before us require consideration by the Tribunal.

4.1. The Tribunal has passed a cryptic order, which does not discuss or deal with any of the issues that have been raised before us and are embedded in the OA filed by the petitioner.

4.2. Mr Jetly says that he will require two weeks to revert with instructions.

4.3. We have indicated to Mr Jetly that we are, prima facie, of the view that the matter needs to be remitted to the Tribunal.

5. At request of Mr Jetly, list the matter on 17.2.2022.

6. In the meanwhile, the respondents will maintain status quo vis.-s.-vis. the petitioners."

2. Accordingly, the interlocutory order dated 24.12.2021 passed by the Tribunal is set aside, and the matter is remanded to the Tribunal for a fresh decision.

2.1 The parties and/or their counsels will appear before the concerned



bench of the Tribunal on 25.02.2022.

2.2. The Tribunal will endeavour to dispose of the petitioners' O.A. i.e., O.A. No.2978/2021, at the earliest. In the meanwhile, status quo directed by us on 21.01.2022 during the pendency of the writ petition, will continue to operate.

2.3 In case the Tribunal is not able to dispose of the petitioners' O.A. at the earliest, the respondents will have the liberty to approach the Tribunal for modifying, varying or vacating the aforementioned *status quo* order dated 21.01.2022.

2.4. Needless to add, the observations made by us in our order dated 21.01.2022 will not impact the merits of the case. The parties will be free to raise their contentions before the Tribunal.

3. In the meanwhile, to hasten the proceedings, Mr Jetly says that he will file a reply to the O.A. i.e., O.A. No.2978/2021, filed before the Tribunal.

4. Furthermore, for the purposes of record, we may indicate that on 21.01.2022, Mr Vikram Jetly's name was inadvertently recorded in the cause title as 'Girish Jetly'.

4.1 The record will stand corrected to this extent.

5. Parties will act based on the digitally signed copy of this order.

6. The writ petition is disposed of in the aforesaid terms. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

FEBRUARY 17, 2022

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[Click here to check corrigendum, if any](#)