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

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Date of decision: 25.01.2022+ **W.P.(C) 1504/2022**

VAIBHAV MALIK & ORS.

..... Petitioners

Through: Mr Ankur Chhibber with Mr Yogesh
K. Mahur, Advocates.

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

..... Respondents

Through: Ms Bharathi Raju, CGSC for
respondent no.1/DoPT.
Mr Sanjay Katyal, Advocate for
respondents no. 2 to 4.**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. 4290/2022**

1. Allowed, subject to just exceptions.

W.P.(C) 1504/2022 and CM APPL. 4289/2022

2. Issue notice.

2.1. Ms Bharathi Raju accepts notice on behalf of respondent no.1/DoPT, while Mr Sanjay Katyal accepts notice on behalf of respondent nos.2 to 4 i.e., the contesting respondents, in effect, Delhi Development Authority ('DDA').

3. With the consent of counsel for the parties, the writ petition is taken up for hearing and final disposal, at this stage itself.

W.P.(C) 1504/2022***1/5***



4. This writ petition is directed against an interlocutory order dated 10.01.2022, passed by the Central Administration Tribunal (in short ‘the Tribunal’) in O.A. No. 2857/2021.

4.1. The petitioners before us are aggrieved by the impugned order passed by the Tribunal on account of the fact that no substantive interim relief was granted thereby rendering its action inefficacious.

4.2. *Via* the impugned order, the Tribunal has directed, *albeit*, as an interim measure that selection(s) and appointment(s) made pursuant to the circular dated 22.11.2021, shall be subject to the final outcome in the pending OA.

5. According to the Mr Ankur Chibber, who appears for the petitioners, as well as Mr Katyal, the only issue, which arises for consideration, in the matter pending before the Tribunal concerns ascertainment of the “crucial date” which would determine as to whether or not the petitioners possess the prescribed three years experience in the feeder post. Because if the petitioners do not possess the necessary experience, they become ineligible to take the exam, which is one of the routes to attain the next higher post.

5.1. Thus, for the record, it requires to be noticed that the petitioners before us are Senior Secretariat Assistants (Upper Division Clerks) [in short “SSA(UDC)”] who are desirous of taking Limited Departmental Competitive Examination [in short “LDCE”] to be held for the post of Assistant Section Officer [in short “ASO”].

5.2. Concededly, the petitioners should have completed three years of regular service in the feeder post i.e., SSA(UDC) on or before the crucial date fixed by respondents no.2 to 4, to become eligible to appear in LDCE.

6. According to the petitioners, the crucial date for the vacancy year in



issue has to be 1st July of that year and not 1st January, as contended by respondent nos.2 to 4.

6.1 Mr Chhibber has submitted that there are several indicators, which show, that the crucial date should have been fixed as 1st July of the concerned vacancy year. In this context, he has referred to the response submitted, both by respondent no.1/DoPT as well as respondent nos.2 to 4/DDA, qua the application filed, in this behalf, under Right to Information Act, 2005. As per the response received, according to Mr Chhibber, it is clear that the crucial date would be 1st July of the vacancy year.

6.2 It is also Mr Chhibber's contention, based on the response given that :

(i) Even according to the respondents, the crucial date i.e., 1st July, emanates from the recruitment rules notified by DoPT on 24.03.2011, *albeit vis-à-vis* Central Secretariat Services. [See pages 105 to 108 of the case file.]

(ii) The recruitment rules, which respondent nos.2 to 4, in effect, DDA have framed do not specifically fix the crucial date. According to Mr Chhibber, DDA has fixed the crucial date as 1st July of the vacancy year previously. [See page 99 read with pages 120 and 121 of the case file.]

(iii) The reliance placed by respondent nos.2 to 4/DDA on the Office Memorandum (OM) dated 08.05.2017 is misplaced, as that OM relates to promotions which take place by adoption of the Departmental Promotion Committee (DPC) route. As per Mr Chhibber, the said OM will have no applicability to promotions which take place *via* LDCE route.

(iv) Given the fact that OM dated 08.05.2017 is not applicable, the OM dated 12.08.2021 can also have no applicability as it is founded on the earlier OM i.e., OM dated 08.05.2017.



7. Mr Katyal, however, emphasised that the OM dated 08.05.2017 has two components: The first component is related to promotions through DPC route, while the second component pertains to framing of model calendar.

7.1. Mr Katyal has also submitted that the gazette notification dated 24.03.2011[exemplifying recruitment rules] do not apply to DDA. According to Mr Katyal, on a mere perusal of the said notification, it would emerge that it is applicable to the Central Secretariat Services (CSS). It is, therefore, Mr Katyal's submission that the DDA therefore went by the provisions of the OMs dated 08.05.2017 and 12.08.2021.

6. We have heard the learned counsel for the parties at some length.

7. Apart from anything else, we are of the view that the Tribunal has passed the interim order without furnishing any reason(s); while dealing with the prayer made for interim relief it was required to consider, briefly, whether the petitioners had set up a prima facie case, where does the balance of convenience lie, and lastly, what harm would be caused if interim relief as sought is not granted.

7.1. As is evident from what we have recorded hereinabove, submissions and counter-submissions have been made by both sides; which require studied deliberation.

7.2. Since counsel for the parties are agreed that the matter needs to be revisited by the Tribunal, we are not, at the moment, expressing a view- one way or the other, as we do not want to prejudge as to the conclusion that the Tribunal will reach in the matter.

8. Therefore, for the moment, according to us, the best way forward is to set aside the impugned order and request the Tribunal to rehear the parties involved, qua the interim relief sought in the matter.



8.1. It is ordered accordingly.

9. Since we are told that the dates for LDCE are not fixed as yet but are likely to be notified shortly, the Tribunal is requested to take up the petitioners' cause, if not vis-à-vis the main matter, but at least, in respect of the interim relief sought by them at earliest.

9.1. Accordingly, parties and/or their counsel are directed to appear before the concerned Bench of the Tribunal on 27.01.2022.

9.2. Needless to add, nothing stated by us hereinabove will impact the merits of the case.

9.3. Parties will act on the digitally signed copy of the judgment.

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

11. The Registry will dispatch a copy of this judgment to the Tribunal, via e-mail.

(RAJIV SHAKDHER)
JUDGE

(TALWANT SINGH)
JUDGE

JANUARY 25, 2022

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Click here to check corrigendum, if any