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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 104/2024

SATISH KUMAR

..... Petitioner

Through: Mr.S.K.Srivastava & Ms.Shushi
Srivastava, Advs.

versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS.

..... Respondents

Through: Mr.Nitinjya Chaudhary, Mr.Rahul
Mourya, Advs., Mr.Gokul Sharma, G.P. along
with Mr.Shyam Singh Negi, Naib Subedar, HQ,
HBR.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER

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04.01.2024

CM APPL. 445/2024, CM APPL. 446/2024 & CM APPL. 447/2024

1. Exemptions allowed, subject to all just exceptions.
2. The applications stand disposed of.

**W.P.(C)104/2024, CM APPL.448/2024 (interim directions) & CM
APPL.449/2024 (stay)**

3. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 20.11.2023 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (the 'Tribunal') in OA 3279/2023. Vide the impugned order, the learned Tribunal has rejected the Original application (OA) preferred



by the petitioner by holding that the Tribunal did not have the necessary jurisdiction to entertain any application against the Border Roads Organisation (BRO) as the same has till date not been notified as one of the authorities under the Schedule to the Administrative Tribunals Act, 1985 (the 'Act').

4. In support of his petition, learned counsel for the petitioner submits that finding of the learned Tribunal that it does not have the necessary jurisdiction to entertain a petition against the BRO is perverse as not only would the petitioner be covered under Sections 14(1)(a) and 14(1)(b)(iii) of the Act, but even otherwise, no relief was being sought against the BRO, which is only the parent department of the petitioner.
5. He further submits that various other Benches of the Tribunal have been entertaining similar petitions, which is also evident from the fact that an earlier OA filed by the petitioner seeking similar relief was taken up on merits and was disposed of by directing the respondents to consider the petitioner's representation in a time bound manner. He, therefore, prays that the order dated 20.11.2023, passed by the learned Tribunal, be set aside.
6. Issue notice. Learned counsel for the respondents accepts notice and supports the impugned order. He submits that the learned Tribunal was justified in holding that it did not have the jurisdiction to entertain a petition where the BRO is arrayed as a respondent. By placing reliance on a decision of the Apex Court in ***Mohammed Ansari Vs. Union of India & Ors. (2017) SCC Online 83***, he submits that the Apex Court has, after examining the contours of Section 14 of the Act



in detail, already held that a petition, like the present, where the BRO is arrayed as a respondent, would not be maintainable before the Central Administrative Tribunal. He, therefore, prays that the present writ petition be dismissed and the petitioner be directed to file a writ petition, if any, for seeking redressal of his grievances.

7. When faced with this plea of the respondents, learned counsel for the petitioner seeks leave to withdraw the petition, with liberty to file a writ petition seeking the same relief as sought in the aforesaid OA. He further submits that as per the instructions issued by the Department of Personnel Training (the DoPT), the petitioner would be entitled to 60 days leave at the time of his repatriation to the parent department i.e. BRO, but has been granted only 30 days leave. He, therefore, prays that the respondents be directed to extend the benefit of 60 days leave to the petitioner. Learned counsel for the respondents, on instructions, assures the Court that in case the petitioner makes an appropriate representation in this regard, the respondents will expeditiously consider the same as per the applicable DoPT Office Memorandums.
8. In the light of the aforesaid, the writ petition is disposed of as not pressed with liberty to the petitioner to file a writ petition seeking the same relief as sought in the aforesaid OA. It is however made clear that this Court has not expressed any opinion on the merits of the petitioner's claim and therefore, the writ petition as may be filed by him, will be considered by the learned Single Judge on its own merits. Further, as prayed for, the petitioner is granted 3 days time to make a representation to the respondents to seek further leave with specific



reference to the DoPT's Office Memorandum in this regard. The respondents are directed to consider the said representation within a period of 7 days as per the applicable rules and DoPT Office Memorandums.

9. Before we conclude, we may observe that though the present petition is being dismissed as not pressed, taking into account the petitioner's plea that different benches of the learned Tribunal are expressing different opinions regarding the maintainability of Original Applications against the BRO, it would be appropriate that a copy of this order, alongwith a copy of the decision of the Apex Court in *Mohammed Ansari* (Supra), is forwarded to the learned Chairperson of the Tribunal for consideration.

REKHA PALLI, J

DR.SUDHIR KUMAR JAIN, J

JANUARY 4, 2024

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