

(2023) 02 DEL CK 0169

In the Delhi High Court

Case No : Civil Writ Petition No. 974 Of 2023

Arvin Kumar & Ors

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 24-02-2023

Acts Referred:

Citation : (2023) 02 DEL CK 0169

Hon'ble Judges : Suresh Kumar Kait, J;Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Abhinav Garg, Anshul Kumar, Bhanu Pratap, Ajay Jain, Chetanya Puri, Keshav Ahuja, Shivali Sharma, Anand Awasthi

Final Decision : Disposed Of

Judgement

CM APPL. 9228/2023 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

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3. With the consent of the counsel for the parties, the present petition has been taken up for consideration today.

4. Vide the present petition, the petitioners are seeking following reliefs:

"a.) issue a writ in the nature of mandamus, directing the Respondents to include the names of petitioners in SCT 2023 who have completed their prescribed tenure as per policy i.e. S.O. 03/2016.

b.) issue the writ in nature of mandamus, directing the respondents to transfer the petitioners to the soft area following the policy as per S.O. 03/2016 which was prevailing at the time of transfer of Petitioners."

5. It is not in dispute that vide Summer Chain Transfer Order dated 15.05.2020,

the petitioners were posted 222 Battalion, Bijapur, Chhattisgarh, the petitioner No. 1 was posted on 04.09.2020, the petitioner No. 2 on 04.12.2020 and the petitioner No. 3 on 14.02.2021 and they were posted for two years as per the Policy bearing No. S.O.03/2016 dated 29.12.2016 which was then existent. As per the aforementioned policy, the period for soft-area posting is 3 years and for hard-area posting is 2 years. Accordingly, all the petitioners went to join their new posting with the legitimate expectation that as per the Policy bearing No. S.O. 03/2016 dated 29.12.2016, they would be transferred after two years to a soft-area posting since the current posting of the petitioners is a hard-area posting.

6. However, the respondent No. 2 vide Order dated 27.09.2022 issued a new Policy bearing No. S.O. 04/2022, whereby the tenure of hard-area posting were increased from two years to three years, superseding all classifications of posting of the earlier Policy bearing No. S.O. 03/2016 dated 29.12.2016.

7. It is not in dispute that the respondents have every right to make new policy and the same is not interfered normally by the Court, however, the new policy is not applicable to the persons who have already been posted, therefore, certainly, the duty comes upon the Court to interfere in the said new policy.

8. Learned counsel for the petitioners submits that the cut-off date as per the Policy of 2016 is 31st May of that particular year. As on date, all the petitioners have completed two years in the said posting and further transfers of the petitioners should be considered as per the Policy bearing No. S.O. 03/2016 dated 29.12.2016 which is applicable to the petitioners.

9. To this effect, the petitioners have made the Representations dated 14.10.2022 and 20.10.2022 which are Annexures-P8 and P9 to the respondent No. 2, however, till date the said representations have not yet been decided by the respondent No. 2.

10. Accordingly, we hereby dispose of the present petition directing the respondent No. 2 to decide the aforementioned representations of the petitioners within four weeks from today, and the decision so taken, shall be communicated to the petitioners in writing.

11. We make it clear that the respondent No. 2, while deciding the representations of the petitioners, shall take into consideration the Policy bearing No. S.O.03/2016 dated 29.12.2016 and not the new Policy bearing No. S.O. 04/2022 dated 27.09.2022 which is not applicable on the petitioners.

12. Accordingly, the present petition is disposed of.

13. The next date of hearing i.e., 06.04.2023 is hereby cancelled.

CM APPL. 9227/2023

14. In view of the order passed in the present writ petition, the present application is dismissed as infructuous.