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Central Administrative Tribunal, Principal Bench

Original Application No.2014 of 2002

New Delhi, this the 5th day of August, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman  
Hon'ble Mr. S.K. Naik, Member (A)

Karnail Chand  
S/o late Shri Nand Lal  
R/o WZ-107, Street No.14  
Krishna Puri,  
P.O. Tilak Nagar,  
Delhi-18

.... Applicant

(By Advocate: Shri A.K. Behera)

Versus

1. Union of India  
Through The Secretary  
Ministry of Home Affairs,  
North Block,  
New Delhi-1
2. The Govt. of NCT of Delhi,  
Through Secretary (Services)  
Delhi Administration,  
Players Building, I.P. Stadium  
New Delhi-2

.... Respondents

(By Advocate: Shri R.N. Singh, proxy for Shri R.V. Sinha,  
for respondent 1  
Shri Ajesh Luthra, for respondent 2)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

The applicant had earlier filed O.A. 1476/98. He was aggrieved by the fact that while issuing the notification dated 4.9.90, the respondents had not followed the instructions issued by the Government of India providing for reservation in promotion to be given to Scheduled Caste/Scheduled Tribe candidates from the feeder cadre. The said application was disposed of by this Tribunal and the seniority list dated 28.4.94 was quashed. The operative part of the order passed by this Tribunal reads:

"In view of the above, the impugned order so far it concerns applicant is quashed and the respondents are directed to re-fix the seniority in the



Grade-II of DANI Civil Service w.e.f. 1985 and consequently he will also be entitled to next promotion on the basis of re-fixation of his seniority for which he may have become eligible. These benefits have to be given notionally and his retiral benefits are to be re-fixed accordingly. These directions should be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs."

2. It is not in dispute that thereafter the applicant had preferred a petition complaining disobedience of the directions of this Tribunal. While contempt petition was pending, the present impugned order dated 6.8.2001 had been passed. Resultantly the Tribunal discharged the rule ~~rule~~.

3. By virtue of the present application, the applicant seeks setting aside of the order dated 6.8.2001 with a further direction to give him next promotion to the selection grade on basis of his seniority refixed from 1985.

4. It becomes unnecessary for us to dwell into all the detailed controversies, reason being that the impugned order which has been passed after the decision of the earlier O.A. referred to above reads as under:

"(i) To appoint the said Shri Karnail Chand to Grade-II of Delhi and Andaman & Nicobar Islands Civil Service with effect from the year 1985 as directed by the Hon'ble Tribunal.

(ii) The seniority of the said Shri Karnail Chand in Grade-II of the Delhi and Andaman & Nicobar Islands Civil Service having already been fixed in terms of rule 29 of the Delhi and Andaman & Nicobar Islands Civil Service Rules, 1971 with reference to the year 1985, in which year the relevant promotion vacancy had occurred, there is no case for further revision of his seniority merely on the ground that he has now been formally approved for appointment to Grade-II of the Service with effect from the

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same year i.e. 1985; and

(iii) The immediate seniors and juniors of the said Shri Karnail Chand were considered for the first time for appointment to the Selection Grade of the Service by a DPC held on 15.12.1997 and were promoted earliest w.e.f. 1.5.1995 or thereafter and as such there is no case for considering him for promotion to Selection Grade of the Service, he having already retired from Service i.e. 30.4.1994 on a date prior to 1.5.95."

5. On behalf of the respondents, it has been pointed that once the contempt petition has been dismissed, the present application will be of no consequence and it cannot be termed that the earlier order passed by this Tribunal has not been complied with.

6. We have no hesitation in rejecting the said contention. The reasons are obvious. It is not far to fetch. As already mentioned above and re-mentioned at the risk of repetition, the earlier contempt petition failed because of the present impugned order having come into being. It is stated to be in compliance of the earlier directions of this Tribunal. When such is the situation, the applicant has only got a new right to challenge the present order. It cannot in that backdrop be termed that there was due compliance of the earlier order of this Tribunal or that seniority had been fixed properly.

7. We have already reproduced the order passed by the respondents which is being challenged afresh. The flaws are noticeable and it obviously indicates that the exercise that was required to be done in pursuance of the directions given by this Tribunal has not been taken.

8. The principle of law is well settled. What a

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person does is indicated in the reasons given. Herein the impugned order gives the reason and while doing so, it is not indicated as to from which date of the year 1985, the applicant has been appointed to Delhi and Andaman & Nicobar Islands Civil Service Grade-II. In paragraph 6.2 of the impugned order, the respondents indicate that seniority of the applicant has already been fixed with reference to the year 1985. We are at a loss to understand as to when that was done. Our attention was drawn towards the seniority list dated 28.4.94 which has already been set aside. There is no fresh seniority list that has been drawn and we have no hesitation thus in concluding that the required exercise to re-fix the seniority has not been done. Seemingly in pursuance of the orders passed by this Tribunal, once the Tribunal directed that seniority of the applicant has to be fixed, the exercise had to be done in accordance with the rules and instructions. That has not been done. Resultantly, we quash the impugned order dated 6.8.2001.

9. For the reasons given above, the impugned order is quashed and it is directed:

- (a) the respondents in terms of the earlier directions of this Tribunal dated 4.11.2000 in O.A.1476/98 would re-fix the seniority of the applicant and he would be entitled to promotion on basis of re-fixation of his seniority;

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- (b) consequential benefits would accrue after the said exercise is done;
- (c) this exercise should be done at the earliest and preferably within five months of the receipt of the certified copy of the present order because the applicant has since superannuated; and
- (d) the respondents shall pay Rs.5000/- as cost of litigation to the applicant.

S. Naik

( S.K. Naik )  
Member (A).

V.S. Aggarwal

( V.S. Aggarwal )  
Chairman.

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