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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

CP NO. 352/2003
OA NO. 2587/2002

This the 27th day of October, 2004

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)
HON'BLE MR. S.A.SINGH, MEMBER (A)

1. Sh. R.C.Bajpayee,
S/o Sh. D.D.Bajpayee
R/o C-5D/68-C, Janakpuri,
New Delhi-110058
Retired as Section Manager in
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.
2. Sh. Hari Singh,
S/o Sh. Ram Dayal,
R/o WZ-51, Block-G,
School Road, Uttam Nagar,
New Delhi-110059.

(By Advocate: Sh. J.Buther)

Versus

1. Mrs. Binoo Sen
Secretary,
Ministry of Agriculture,
Department of Animal Husbandry & Dairying,
Krishi Bhavan,
New Delhi-110001.
2. Mrs. Amarjeet Kaur,
General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008.

(By Advocate: Sh. S.M.Arif)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

Counsel for respondents seeks permission to file reply today during the course of the day. He has supplied advance copy of the reply to the counsel for applicant.

2. On the request of the parties we have heard on the CP.

3. OA-2587/2002 was disposed off by this Tribunal on 19.5.2003 by following orders:-

“12. Consequently, we quash the impugned orders, allow the application and hold:-

(a) that the applicants are entitled to the second financial upgradation on completion of 24 years of service subject to the conditions of the ACP Scheme;

(b) that the claim of the applicants cannot be rejected because they cannot be allowed to be discriminated; and

(c) that the claim of the applicants should be considered in the light of the findings arrived at above for grant of the scale of Rs.10,000-15,200/- . The decision in this regard should be taken within a period of three months from the date of receipt of a copy of this order.”

4. Even after the expiry of 2 months period the order was not implemented. Applicant filed the present CP on 24.9.2003. Show cause notice was sent to the respondents and the matter was listed for hearing on 25.11.2003. The respondents filed an application on 18.12.2003 for review of the order dated 19.5.2003 along with an application for condonation of delay. We are told that the delay was condoned and the review application-26/2004 was disposed of by the bench by order dated 17.8.2004. The relevant extract of the order passed is as under:-

“2. During the course of submission, learned counsel for respondents had tried to draw our attention to the fact that the persons mentioned in the orders are not drawing the pay scale as has been mentioned in the operative part of the order.

3. As we perused the order passed by this Tribunal referred to above. It is clear that it was held that applicants did not fulfil the requisite qualification for the scale which they were claiming, but keeping in view that certain persons who are junior to the applicants were stated to have been given the benefit of second financial upgradation, the above said order was passed.

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4. The respondents pleaded that the said scale of Rs.10,000-15200/- has not been given to those persons. The order passed by this Tribunal only indicates that the claim of the applicants has to be considered in the light of the findings that had been arrived at. The said order has yet not been passed. Therefore, question of review as to what scale should be accorded does not arise. Petition may read observation in this way."

5. The complaint was that the order of the Tribunal passed in the OA has not been implemented and the case of the applicant was not considered for second financial upgradation. In the reply which the respondents undertook to file in the Registry today and which has been produced before us for the purpose of disposal of the contempt petition they have alleged that the delay was caused because of filing of the review application and the clarification which was given by the Tribunal while disposing it of by order dated 13.8.2004. It is submitted that the order of the Tribunal dated 19.5.2003 read with the order passed in the RA on 13.8.2004 was implemented within 14 days of the order, i.e. on 27.8.2004.

6. The contention of the counsel for applicant is that there is no explanation for non-compliance of the order of this Tribunal dated 19.5.2003 made in the OA within the stipulated time of three months and that the RA was filed by the respondents much after the instant contempt petition was presented to the Court for taking action against the respondents. Conversely, counsel for respondents has submitted that there is no deliberate and intentional delay in implementing the order. It is submitted that the review application was filed with an application for condonation of delay in filing of the review application. The delay has since been condoned by the Bench. It is further submitted that the review order was passed by this Tribunal on 13.8.2004 and the Hon'ble Tribunal had given clarification as to how the order dated 19.5.2003 in the OA is to be read.

7. The perusal of the order dated 13.8.2004 passed by the Bench in RA-26/2004 which has also been produced before us shows that the Hon'ble Tribunal did consider the plea of the respondents raised in this application. It was

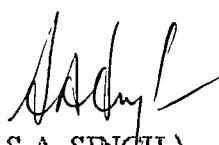
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submitted to the bench that the pay scale of Rs.10,000-15,200 has not been given to the persons who were said to be the junior to the applicants and had been granted financial upgradation. The Tribunal observed that the order passed by the Tribunal only indicated that the claim of the applicants had to be considered in the light of the finding that have been arrived at. It was observed that the Tribunal had not quashed the impugned order. It was clarified that the order made in the OA should be read in accordance with the observations made in the order in review application. From the order, therefore, it is evident that though the Tribunal had dismissed the review application but it had made certain observations, which in the view of the respondents, were necessary for it to consider the grant of financial upgradation to the applicant in accordance with the directions of this Court.

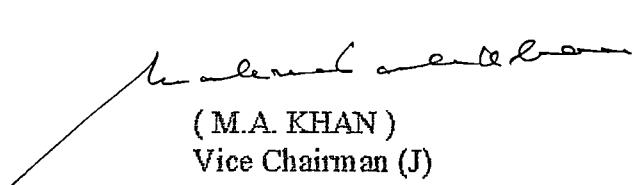
8. The matter of grant of financial upgradation and implementation of the order was duly considered and necessary orders were now been passed within a fortnight of the order passed by the Bench in RA-26/2004. In the totality of the facts and circumstances, we do not find that there was any contumacious and willful delay on the part of the respondents in implementing the order for which they should be held in contempt of this Tribunal.

8. In view of the aforesaid circumstances, we do not find any ground to proceed in the matter further and discharge the notices. CP disposed of.



(S.A. SINGH)
Member (A)

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(M.A. KHAN)
Vice Chairman (J)