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Central Administrative Tribunal
Principal Bench, New Delhi.

CP-124/2003

In

OA-278/2002

New Delhi this the 20th day of July, 2005.

Hon'ble Shri V.K. Majotra, Vice-Chairman(A)
Hon'ble Shri Shanker Raju, Member(J)

Shri Jawahar Lal Singh,
S/o Sh. Ram Rup Singh,
Retired Assistant Station Engineer,
HPT, AIR, Kingsway
Delhi-9.

Petitioner

(through Sh. Gopa Dutt, Advocate)

Versus

Sh. Pawan Chopra,
The Secretary to the Govt. of India,
Ministry of Information & Broadcasting,
Shastri Bhavan,
New Delhi-1.

Respondent

(through Sh. Jayant Nath, Advocate)

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O R D E R

Hon'ble Sh. Shanker Raju, Member(J):

OA-278/2002 was disposed of on 13.12.2002 where the applicant had sought regularization as JTS and further consideration for promotion to the post of Station Engineer i.e. STS, with all consequential benefits. The directions issued in the OA on 13.12.2002 were in the wake of retirement on superannuation of the applicant in January 2003 to hold a review DPC and in the event the applicant is found fit for regular appointment as JTS, consequential

benefits including pay & allowances, seniority and promotion, be granted to him in accordance with law and rules.

2. By an order passed on 11.7.2003, respondents have promoted the applicant as JTS and assigned seniority for the year 1989 above one Sh. H.K. Mishra and this promotion would take effect from the date their immediate junior took over charge in the JTS. It is not disputed that in so far as promotion to the post of JTS and other consequential benefits are concerned, applicant has no grievance.

3. Sh. Gopal Dutt, learned counsel for the applicant contends that CP-124/2003 filed by the applicant was disposed of on 29.01.2004 with a direction to comply with the directions in true letter and spirit. According to the applicant by an order dated 20.02.2004 respondents have promoted the applicant as STS but with a stipulation that the promotion would be effective from the assumption of the charge and as the applicant had retired, he would not be in a position to avail the promotion.

4. Learned counsel states that one Sh. Mahesh Chandra Das was promoted earlier and being a junior the applicant would have been treated at par and the Tribunal has directed after his promotion as JTS, consequential benefits, denial of promotion as STS before the retirement construe willful defiance on the part of the respondents.

5. This CP has been revived by this Tribunal by an order dated 09.11.2004 in the light of an order passed in CP on 29.1.2004.

6. Respondents have vehemently opposed the contentions and stated that there is no willful defiance on their part. Respondents have convened the review DPC and by the time it is given effect to, the applicant has superannuated. For the purpose of promotion as STS, as there is no consultation with the UPSC, the

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order passed on 20.02.2004 in fact was passed in compliance of another directions of the Court where the promotions have been reviewed and in supersession of Office Order dated 29.10.1998 where one Sh. H.K. Mishra had been promoted in 1998, his promotion has been made prospectively from 20.02.2004 on assumption of charge. No junior to the applicant had been promoted. As such, the contempt is liable to be dismissed.

7. It is further stated that a contentious matter cannot be gone into in contempt proceedings.

8. We have carefully considered the rival contentions of the parties and perused the material placed on record.

9. No doubt, earlier OA-278/2002 was disposed of basically on a main relief for grant of promotion as JTS and consideration for promotion to STS was also one of the prayers made by the applicant. Rightly the Tribunal directed consideration of the applicant before his superannuation to the post of STS and in that event all consequential benefits including pay & allowances and promotion will be granted to him. In our considered view, as a natural consequence of consideration of the case of the applicant for promotion, the regular appointment as JTS with all consequential benefits, which had already been disbursed to the applicant, one of the directions was to consider the application for promotion. Applicant has been considered and had been promoted w.e.f. 20.02.2004 but due to his superannuation and not taking actual charge of the post, he has not been accorded promotion and consequential benefits.

10. The contention of the applicant that S/Sh. H.K. Mishra Mahesh Chandra Das, who are junior, is concerned, we find that Sh. H.K. Mishra's promotion to STS was later on postponed and Sh. Mahesh Chandra Das belongs to a reserved category. However, without expressing any opinion on merit, we are of

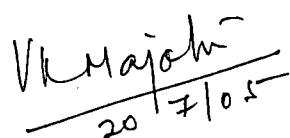
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the considered view that in contempt proceedings, once there is consideration of the applicant for promotion to STS whether juniors have been promoted or not the matter is contentious, which requires probe and cannot be dealt with in contempt proceedings. Our conclusion is fortified by the decision of the Apex Court in Jhareswar Prasad Paul & Anr. Vs. Tarak Nath Ganguly and Ors. (2002(5)SCC 352) wherein it is held that Court in contempt cannot issue direction to create substantive right or to give substantive relief.

10. In the above view of the matter, giving liberty to the applicant to assail his grievance regarding promotion as STS in an appropriate proceeding, the present C.P. is dismissed. Notices are discharged.


(Shanker Raju)
Member(J)
20/7/2005

/VV


20/7/05
(V.K. Majotra)
Vice-Chairman(A)