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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

C.P. No. 82 of 2004 In
Original Application No.163 of 2002

New Delhi, this the 4th day of June, 2004

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)
HON'BLE MR.S.A. SINGH, MEMBER (A)

Prabir Kumar Das
Naval Headquarters,
Directorate of Logistic Support,
"C" Block, Sena Bhawan, New Delhi.Petitioner

(By Advocate: Shri Rajeev Sharma)

Versus

1. Shri Anjani Kumar
Deputy Secretary to Government of
India, Ministry of Defence, New Delhi.
2. Shri Manoj Joshi
Officer on Special Duty (IC)
Ministry of Finance and Co-Affairs
D/o Expenditure,
New Delhi.Respondents

(By Advocate: Shri B.K. Berera)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicant has filed this CP as he has a grievance that the order passed by the Tribunal in OA 163/2002 dated 18.12.2002 has not been complied with wherein following directions were given:-

" However, having regard to the ratio in P.V. Hariharan's case (Supra) though we are of the view that applicants have been discriminated in the matter of accord of upgradation and higher pay scale w.e.f. 1.1.1996 with their counter-parts DCIOs in IB, we partly allow the OA and 'set aside' the orders passed by the respondents on 7.2.2001 and direct respondents to reconsider the issue of according upgradation to applicants w.e.f. 1.1.1996 in the light of the observations made above and particularly the enbloc upgradation according to their counter-part in IB. This exercise shall be done by passing a detailed and speaking order within a period of 4 months from the date of receipt of a copy of this order. If the respondents decide to accord them the benefit from 1.1.1996 applicants shall be entitled to all consequential benefits. No costs".

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2. However, the respondents had passed an order dated 27.2.2003 but had rejected the claim of the applicant once again. The said order was passed in compliance of the directions given in the OA.

3. In the Original OA there were 20 applicants. out of which 14 persons filed a CP which was registered as OA 223 of 2003 as all of them complained about the grievance of the order having not been complied with. But when the CP was taken up for hearing, no one appeared on behalf of the applicants and the CP was dismissed as the Tribunal was satisfied that the order dated 27.2.2003 has been passed in compliance of the orders. Thereafter applicant filed an MA seeking restoration of the CP and disposal of the same after hearing the counsel for the applicants. But while deciding the MA, the court again found that the order had been complied with and also rejected the request for rehearing of the CP. Against the said order the applicant filed a Civil Writ Petition before the Hon'ble Delhi High Court but the CWP was withdrawn. However, liberty was given to the applicant to file a fresh Contempt Petition before the Tribunal so it is in these circumstances the present CP has been filed by only one applicant, namely, Prabir Kumar Dass. He is still insisting that the contemors having passed an order dated 27.2.2003, had rejected the claim of the applicant and thus they have not complied with the orders.

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4. The respondents have taken a preliminary objection that the Tribunal while dismissing the earlier CP had held that no contempt is made so the CP was dismissed.

5. The respondents also stated the CWP was dismissed as withdrawn with liberty to file a fresh CP but the important question of law arises whether the Tribunal has power to hear the matter which has been decided by the Bench of the same Tribunal particularly when there is no order to set aside the earlier findings. The concept of intra-Tribunal appeals, i.e., appeal from an order or decision of a Member of a Tribunal sitting singly to a Bench of not less than two Members of the Tribunal is alien to the Administrative Tribunals on matters covered under Section 14(1) of the Act and since the decision of this Tribunal given in earlier CP filed by the applicant has not been set aside so this Tribunal cannot go beyond the said order passed by the Tribunal. Thus the CP is barred by principles of res judicata.

6. We have heard the learned counsel for the parties and gone through the record.

7. The learned counsel for the applicant submitted that when liberty to file a fresh Contempt Petition was granted by the Hon'ble Delhi High Court so this court being subordinate to the High Court cannot interpret with the order again and the CP itself has to be heard on merits.

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8. On the contrary the learned counsel for the respondents submitted that the order passed by the Tribunal in the earlier CP has not been quashed by the Hon'ble High Court nor could it have been quashed because the Hon'ble High Court has no jurisdiction to entertain the same as the appeal against the said order lies before the Hon'ble Supreme Court, so once that order stands this Tribunal cannot decide the CP again.

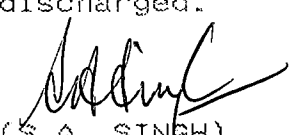
9. In our view also the order of the Hon'ble High Court as annexed by the counsel for the applicant at page 52 of the paper book clearly shows that the applicant himself had withdrawn the CW before the Hon'ble High Court. Though a liberty has been granted to file a fresh CP but the fact remains that the Hon'ble High Court did not quash the order passed by this Tribunal on the earlier CP so the question arises whether the order passed in the earlier CP stands as it is or not and whether this court can rehear the CP. In our view the answer would be emphatic 'no' because in view of the judgment given by the Hon'ble Supreme Court in T. Sudhakar Prasad Vs. Government of A.P. and Others reported in 2001 (1) SCC 516 it was held that it was only the Apex Court who had jurisdiction to go into the question of validity of the order passed on the Contempt Petition and this has been so held by the Hon'ble M.P. High Court in Randheer Singh Vs. State of M.P. reported in 2004 (2) ATJ 79. The learned counsel for the applicant submitted that the order passed by the Hon'ble High Court is not even without jurisdiction because the applicant had approached the Hon'ble High Court against the rejection of his MA whereby the Tribunal had refused

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to revive the CP and the applicant had not approached the High Court against the order passed on the CP. It was also mentioned that while withdrawing the CW the High Court had permitted the applicant to file a fresh CP so this court should entertain the CP and decide the same on merits.

10. In our view this contention of the applicant has again no merits because in the CW the applicant could neither approach for hearing of the CP nor the High Court had passed any order quashing the order passed by the Tribunal on the CP, so the order passed by this Tribunal in the earlier CP stands as it is on date of the filing of the fresh CP by the applicant as such by filing the fresh CP applicant cannot reagitate the issue because it would be squarely hit by the principles analogous to the doctrine of res judicata.

11. Thus we are of the considered opinion that the present CP is not maintainable so the same is hereby dismissed. Notices issued to the respondents are discharged.


(S.A. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER(JUDL.)

/Rakesh