

**Central Administrative Tribunal
Principal Bench**

C.P.No.508/2004 in O.A.No.951/2002

New Delhi, this the 7th day of May 2007

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Smt. Neena Ranjan, Member (A)**

1. Mrs. Geeta Sabharwal
w/o Shri Anil Sabharwal
working as LDC, Department of STD
Safdarjung Hospital, New Delhi
2. Mr. P.N. Gaur
s/o late Shri Raja Lal
Working as LDC, Department of Revalidation
Safdarjung Hospital, New Delhi
3. Mr. S.P. Gaur
s/o late Shri B.P. Gaur
working as LDC, Account Section
Safdarjung Hospital, New Delhi
4. Mrs. Veena Luthra
w/o Shri S.K. Luthra
Working as LDC, Estate Office
Safdarjung Hospital, New Delhi

..Applicants

(By Advocates: Shri K.C. Mittal and Shri Harvir Singh)

Versus

1. Dr. R.N. Salhan
Medical Superintendent
Safdarjung Hospital, New Delhi

..Respondent

(By Advocate: Shri R.V. Sinha)

ORDER

Shri Shanker Raju, Member (J):

This contempt petition is directed against an order dated 20.8.2004 passed by the Tribunal in OA-951/2002 where following directions have been issued:-

"43. Accordingly, for the foregoing reasons, we dispose of the OA with a direction to the respondents to re-consider seniority of applicants as LDCs in the light of our observations made above, within a period of three months from the date of receipt of a copy of this order. In case of grant of seniority from the dates of

initial appointments applicants shall be entitled to all consequential benefits. No costs.

2. As a compliance, order passed by the respondents on 29.11.2004 accorded seniority to the applicants in the grade of LDC w.e.f. 1.1.1990. Being aggrieved by non-grant of seniority from the date of initial appointment, the present CP filed was earlier disposed of on 11.8.2005 holding that the applicants are at liberty to take legal recourse as per the decision of the High Court in writ petition where the decision of the Tribunal was challenged.

3. An order passed in WP Nos. 18644-47/2004 disposed of the CP vide order dated 16.11.2007 where the following directions have rendered:

"2. Learned counsel for the Respondent Mr. R.V. Sinha has submitted that the appropriate remedy apart from the remedy in filing the Contempt petition is the remedy of Execution under the Act available to the Petitioner. However, the Petitioner has chosen to file Contempt Petition which, in our view, ought to have been dealt with on its merits and accordingly, we direct that the Petitioner is permitted to revive the Contempt Petition No.508/2004 which was disposed of on 11th August, 2005 and the parties are required to appear before the Tribunal on 26th February, 2007. Tribunal is directed to restore and disposed of the Contempt Petition not later than 15th May, 2007.

The Writ Petition stands disposed of accordingly."

4. Accordingly, applicants' learned counsel has been heard.

5. The only impediment for non-grant of seniority from the initial date of appointment of the applicants as LDC by the respondents is that having extended opportunities to qualify the typing test, the applicants have failed to comply with the aforesaid. As per the recruitment rules those who had earlier cleared the typing test were accorded the seniority but as per DOPT's OM of 29.9.1992 under

clause 10 applicants have been given the benefit of exemption from typing test on completion of the years' service in the grade.

6. Learned counsel for applicants in the light of above stated that in the order passed by the Tribunal, cognizance was taken of an issue raised before the Apex Court. In SLP (C) No.76/96 where an order passed on 21.10.1997 ruled that the appointments of the applicants have been made in accordance with rules and cannot be treated on continuation of number of years either as *ad hoc* or fortuitous.

7. Learned counsel has also referred to several observations including the reliance placed by the Tribunal in OA on a decision of the Constitution Bench of the Apex Court in **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra**, (1990) 2 SCC 715.

8. It is contended that once the Tribunal has clearly held that the appointments of all the applicants were according to rules and in this backdrop reconsideration of the seniority of the applicants has to be done, respondents' order is not only running on the face of the decision of the Apex Court but also is a wilful disobedience of the directions of this Tribunal. As the Apex Court has ruled that the appointments of the applicants are in accordance with rules, which includes passing of typing test, respondents are now estopped in law from taking a contrary view to defeat the purpose. As such, applicants are entitled for seniority from the date of their initial appointment and any impediment in the way of grant of such is a wilful disobedience and contempt on part of the respondents, which has to be corrected to prevent miscarriage of justice and to uphold the majesty of law.

9. On the other hand, Shri R.V. Sinha, learned counsel for respondents vehemently opposed the contentions and stated that whether the decision taken by the respondents is wrong or non-compliance of the directions is not the scope in contempt petition.

10. Learned counsel states that when the power to reconsideration has been left to the respondents, the outcome of such reconsideration cannot be a cause to haul them up or hold them for wilful disobedience.

11. Learned counsel further states that there should have been a positive finding of wilful disobedience against the applicants and as the seniority was not an issue before the Apex Court, now grant of seniority is an independent matter, which has to be decided in accordance with the rules.

12. Learned counsel contended that the applicants were not eligible for the post and those who were eligible have already been accorded the seniority. Reliance has been placed on the decisions of the Apex Court in **J.S. Parihar v. Ganpat Duggar & others**, AIR 1997 SCC 113 and in **State of Haryana & others v. M.P. Mohla**, (2007) 1 SCC 457 to contend that when a matter is contentious, it should not be taken in contempt, for which a fresh cause of action arises, which has to be dealt with in accordance with rules.

13. Learned counsel for applicants distinguishes the decision in **J.S. Parihar's** case (supra) and stated that once the order of the High Court has mandated disposal of writ petition on merits, the objection would not stand.

14. Learned counsel would also contend that what is envisaged through this contempt petition is the compliance of the decision in true letter and spirit and if it is found to be interfering in any manner in the cause of justice the order of the respondents has to give way.

15. On careful consideration of the rival contentions of the parties and perusing the material on record, we are of the considered view that referral to the decision of the Apex Court (supra), which was passed in case of applicants herein, was with a view to demonstrate that *ad hoc* officiation of the applicants cannot be treated as *ad hoc* or fortuitous and the Apex Court ruled that their appointments were in accordance with rules, as such the appointment from initial stage has to be treated as a substantive appointment. In such view of the matter, on substantive appointment, seniority has to be reckoned from the same date.

16. As to non-passing of typing test, which is a pre-recruitment or maybe a post-recruitment process for promotion but in the matter of direct recruitment on completion of all the formalities if a person is appointed and the Apex Court ruled that such an appointment is in accordance with rules, taking a contrary view would amount to contempt of the Apex Court where this issue has attained finality.

17. As regards the aforesaid issue of appointments of the applicants in accordance with rules, it is no more *res integra* and it cannot be overreached or interfered with in any manner by interpreting the recruitment rules and showing impediment of qualifying the typing test.

18. Insofar as compliance of reconsideration of seniority is concerned, the same was not left to the wisdom of the respondents alone. The same has to be done in the light of observations made by the Tribunal in the order. One of such observations was that the appointments of the applicants were made in accordance with rules. Accordingly, taking an impediment of non-fulfillment of rules and non-passing of typing test would be overreaching the decisions of the Tribunal as well as the Apex Court.

19. In this light, we are of the considered view that while reconsidering the claim of the applicants for seniority, the observations made by the Tribunal and the finality arrived at by the Apex Court, have not been taken into consideration in its true letter and spirit by the respondents.

20. In contempt, to uphold the majesty of law, our endeavor is to ensure that the decision of the Tribunal is complied with in true letter and spirit. Any infraction to the aforesaid would entail consequence.

21. In the result, for the foregoing reasons, we do not advert and approve the reconsideration by the respondents vide order dated 29.11.2004. With a view to dispense with justice and to meticulous act in accordance with our directions, we accord another opportunity to the respondents to reconsider this matter and pass an appropriate order strictly in the light of our directions in OA and the observations made in the order passed in CP. The aforesaid consideration shall culminate into a reasoned order to be passed within a period of two months from the date of receipt of a copy of this order,

22. For the present, CP stands disposed of. Notices are discharged. However, applicants are at liberty to revive it at an appropriate stage, if so advised. No costs.

N Rangan

(Neena Ranjan)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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