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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

C.P. NO. 19/2004 IN O.A. NO.936/2002

NEW DELHI THIS.....17th.....DAY OF MARCH 2004

HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Smt. Suhasini Jeneja,
38, B, Pocket B,
Siddhath Extension, New Delhi
2. Shri V.K. Tiwari,
BF-77, Janak Puri, New Delhi
3. Shri Ashok Kumar,
B-408, Pragti Vihar Hostel,
New Delhi
4. Sh. Kamal P. Singh,
161 A-3, Sector-5,
Rohini, New Delhi
5. Shri Ashwani K. Gupta,
R-11, Andrews Ganj,
New Delhi
6. Smt. Shobhana Chatterjee,
E-113, Pragti Vihar Hostel,
Lodhi Road, New Delhi
7. Shri A.C. Das,
D-520, Pragati Vihar Hostel,
Lodhi Road, New Delhi
8. Shri Navneet Kumar,
5/570, Lodhi Colony,
New Delhi
9. Smt. Madhu Mehta,
C-404, Multistoried Apartment,
K.G Marg, New Delhi
10. Sh. Satpal,
34-C, Pocket C,
Siddharth Extension,
New Delhi
11. Sh. M.T Fulzale,
108, Type IV, Sector-3,
Sadiq Nagar, New Delhi
12. Shri J.S Garg,
Type IV, 46, North West
Moti Bagh, New Delhi
13. Smt K.K. Wadhwa,
Type III, 25, North West
Moti Bagh, New Delhi

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14. Shri S.C. Meshram
7H, Multistoried Apartment,
Type D Qtrs,
Minto Road Complex,
New Delhi
 15. Shri B.K. Chakraborty,
269/BG-1, Paschim Vihar, New Delhi
 16. Shri Sashi B. Tiwari,
134, Sector-3,
Sadiq Nagar, New Delhi
 17. Shri R.K. Koshal,
C-6, Netaji Nagar, New Delhi
 18. Shri P.K. Verma, E-07,
CPWD Training Institute,
Kamala Nehru Nagar,
Ghaziabad
 19. Shri S.G. Harkare,
F-419, Pragati Vihar,
Lodhi Road, New Delhi
- (By Ms Tamali Vad, Advocate) Applicants

Versus

1. Shri K.N. Aggarwal,
Director General (Works)
CPWD, Nirman Bhawan,
New Delhi
 2. Shri N.N. Khanna,
Secretary,
Ministry of Urban Development & Poverty
Alleviation,
Nirman Bhawan, New Delhi
 3. Shri S.S. Dabra,
Secretary, DOP&T,
Ministry of Personnel Grievances & Pension,
North Block, New Delhi
- Respondents
- (By Sh. A K Bhardwaj, Advocate)

O R D E R

BY HON'BLE SHRI SHANKER RAJU, MEMBER (J)

By an order dated 12.12.2002 OA No. 936/2002 stands
disposed of with the following directions:

"6. In view of the above discussion, this OA is
disposed of with the following directions:

- (1) Having completed restructuring of
the cadre by re-distribution of the
existing posts of Architects in the
functional and non-functional



grades, respondents shall carry out the amendments of the recruitment rules for Architects in the Central Architectural Service (CAS) within a period of three months from the date of receipt of a copy of this order.

- (2) While amending the recruitment rules, respondents shall consider grant of NFJAG to applicants who have completed nine years in group 'A' on 1.1.1996, as the recommendations of the Fifth CPC were accepted by CPWD as far back as September-October 1997, but given effect from 1.1.1996 in case of Superintending Engineers in their own organisation, without any additional screening. However, it would be a notional placement and fixation and applicants would be entitled for the benefit of pay and arrears in the NFJAG only from 2.4.2001, that is, one year prior to the time they filed the present OA.

No order as to costs."

2. M.A. No. 762/2003 filed by the respondents seeking extension of time to implement the directions, six months further time was granted to the respondents.

3. Applicant sought clarifications through MA 985/2003 as to whether the extension of time pertained to comply the directions passed in order dated 12.12.2002 to which by an order dated 2.7.2002 it has been observed that as the order is clear and unambiguous respondents are to comply with the directions.

4. MA No. 2125/2003 filed by the respondents seeking extension of time to implement the Tribunal's order was allowed by an order dated 13.10.2003 and the time was granted upto 31.12.2003 with the stipulation that no further time will be granted. Learned counsel for the applicant produced a copy of Office Order No. 43 of 2004 dated 9.3.2004 where Non Functional Selection Grade has been granted to the applicants

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w.e.f. 5.3.2004 i.e. from the date of holding of DPC. In so far as the Recruitments Rules are concerned, the same according to the respondents are amended.

5. Learned counsel for the applicant Ms. Tamali Wad contends that the directions of the Tribunal in so far as notional fixation in NFJAG with grant of actual benefits including arrears from 2.4.2001 is yet to be complied with. The orders passed by the respondents runs in the face of the order.

6. According to Ms Wad, having failed to seek any clarification or in absence of any Writ Petition filed, the directions have attain finality and would have to be respected and complied with in its true letter and spirit.

7. As an alternative submissions it is contended that the decision of the Tribunal in Anant Kumar Vs UOI dated 9.3.2001 in OA No. 1659/1998 which was relied upon the applicant therein have been granted NFJAG scale w.e.f. 18.3.2002, which should have been granted to the applicants.

8. On the other hand Shri A K Bhardwaj, learned counsel for the respondents has drawn our attention to a order passed on 20.8.2001 by High Court Delhi in CW. 4990/2001 & CM 8593/2001 filed in Anant Kumar case (Supra) and stated that having found directions innocuous. In so far as the directions to grant benefit of arrears the High Court has modified the orders to the extent that the directions for consideration of grant of benefit of 5th CPC recommendations to the applicants would have to be read in context. Accordingly it is stated that the only interpretation which

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flows from the order is that while considering the grant of NFJAG to the applicants there would also be a consideration in so far as arrears and notional fixation is concerned.

9. Shri Bhardwaj further places reliance on a decision in OA 1050/2003 decided on 29.12.2003 in Anant Kumar & Ors Vs UOI and Ors. wherein while taking cognizance of order passed in CP 74/2002 and also observation of the High Court in Anant Kumar case for the request of grant of arrears OA was dismissed as barred by the doctrine of res-judicata.

10. We have carefully considered the rival contentions of the parties and perused the material on record. It is no more res integra that the decision in OA 936/2002 was based on the decision in Anant Kumar case (supra) the reliefs prayed were identical as also the directions issued. Though the Tribunal had observed in clarification that the directions are unambiguous.

11. The compliance has been done by amending the rules and while considering the NFJAG grant to the applicants they have followed same procedure which was adopted in Anant Kumar case i.e. date of DPC being the relevant date for grant of benefits.

12. It is also not disputed that the directions in OA 936/2002 had not been assailed before the High Court and no clarification had been sought despite extended time for compliance the directions. However, in this manner the directions have attained finality.



13. However, we can not isolate and ignore the decision in Anant Kumar case (supra). The High Court has observed as under:

"Petitioners feel aggrieved of this and have filed this petition to assail impugned order. We find the directions innocuous because all that impugned order calls on petitioners to do is to carry out suitable amendment in rules and to consider grant of benefit of Fifth Pay Commission recommendations to Respondents.

However, it was pointed out by L/C for Petitioner that Tribunal's last observation that Respondents would be entitled to benefit of pay ;and arrears from August, 1998 amounted to clear cut order permitting no consideration required to be accorded by Petitioners. This in our view required to be read in the context of first part of the direction whereby Tribunal was wanting petitioners to consider the grant of non-functional JAG to Respondents while amending the rules.

Petition is dismissed on preliminary hearing with these observations."

14. If one has regard to the above the only inference which could be drawn is that the consideration for NFJAG and also the entitlement to the benefit of pay and arrears had been left to be considered by the respondents and the directions of this Tribunal to that extent have stood modified. Accordingly the respondents have granted the grade to the applicants from the date of DPC.


15. For a contempt it is to be shown that the respondents have deliberately , intentionally and wilfully flouted the directions, but a bonafide act or action taken in good faith following the directions of the High Court shall not constitute a contempt. We fortify our conclusion on the basis of decision in Suresh Chandra Padma Vs Dhani Ram (2002 (1) SC SLJ 150).

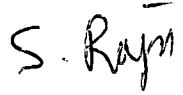
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16. Moreover if the compliance results in a dispute and the matter become contentious giving rise to fresh case of action contempt is not the remedy as held by the Apex court in JS Parihar Vs RS Duggar (JT 1996 SC 608). Having regard to the above we are also of the view that in a contempt petition we cannot issue a fresh direction or review the matter, as held by the apex court in KG Derasari (2002 SCC Labour and Service 756).

17. Having regard to the above discussion finding no contempt on the part of the respondents, CP is dismissed. Notices are discharged. However, it shall not preclude the applicants from pressing their grievance in a fresh proceedings in accordance with law.


(S.A. Singh)
Member (A)


(Shanker Raju)
Member (J)

Patwal/