

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P. NO.368/2002 IN
O.A. NO. 751/2001

Tuesday, this the 14th day of January, 2003

HON'BLE MR. GOVINDAN S. TAMPI, MEMBER (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)

1. Shri Y.C. Sharma,
Senior Eco. Investigator,
K-5/6, Model Town-III,
Delhi-110009
2. Shri M.C. Arya,
Senior Eco. Investigator,
A-47, Chandra Nagar,
Ghaziabad
3. Dr. N.K. Sinha,
Eco. Investigator Grade-I,
D-4/F3 Dilshad Colony,
Delhi-110 095

...Applicants/Petitioners

(By Advocate : Shri Gyan Prakash)

Versus

Shri S. Narayan,~
Finance Secretary and
Secretary, Deptt. of Eco. Affairs,
Ministry of Finance & Co. Affairs,
Deptt. of Eco. Affairs,~
North Block
New Delhi-110 001

...Respondent/Contemnor

(By Advocate : Shri R.V. Sinha and Shri R.N. Singh
alone with Shri S. Narayan, Respondent No.1)

O R D E R (Oral)

BY GOVINDAN S. TAMPI, MEMBER (A) :

CP No.368/2002 has been filed by the applicants/petitioners alleging deliberate and contumacious disobedience of the Tribunal's order dated 01.04.2002 in OA No.751/2001 along with OA No.2854/2001. While disposing of the above two OAs filed by 22 and 10 applicants respectively belonging to the Indian Economic Affairs, the following order was passed by the Tribunal:-

"10. The respondents will recalculate the vacancies/posts available against DR and DP quotas for the period from 1986-87 to 2000-01 by excluding 115 posts which were filled in 1989-90 in compliance of the order passed by the Supreme Court. Thereafter, if the respondents find that regular posts have become available for being filled by promotion under the 40% quota, they will proceed to determine the year-wise vacancies/posts and hold a DPC on year-wise basis and while doing so, consider the claims of the applicants in these OAs in accordance with the relevant rules. The respondents are directed accordingly. They are also directed to carry out the aforementioned exercise expeditiously and in any event within a period of three months from the date of receipt of a copy of this order."

2. In reply to the above, and on behalf of the alleged contemnor, affidavit has been filed on 25.10.2002 indicating that against the order of the Tribunal, the Union of India had filed a CWP No.6558/2002. Thereafter, on 26.11.2002 another affidavit has been filed by the respondents indicating that the Writ Petition filed by them before the Hon'ble Delhi High Court having been dismissed on 11.11.2002, vacancies have been recalculated by them and that keeping in mind a matching quota for 14 Direct Recruit (DR) Officers, a DPC has been held for four vacancies to be filled up in the promotee quota. On 02.12.2002, the matter was explained once again that 13 vacancies were becoming available for promotion quota for which action was being taken. However, on the matter coming up before the Tribunal on 04.12.2002 and also keeping in mind the applicants' affidavit dated 03.12.2002, following observations were made by the Tribunal:-

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"9. Having regard to the material on record and on considering the rival contentions of the parties, we are primarily of the view that respondents have yet not complied with the directions of this Court contained in order dated 1.4.2002. Our order has become final and binding particularly when it has been affirmed by the Hon'ble High Court on 11.11.2002. Vide our order dated 29.10.2002, we have accorded an additional period of 10 days after 11.11.2002 for compliance of the directions of this Court.

10. While records and additional affidavit shall be filed by the respondents on the next date of hearing as per our directions above, we direct respondent No.1 to remain present to explain how the directions of this Court have been complied with. List on 14.1.2003."

3. Accordingly the matter has come up today when the respondent has filed an affidavit on 11.1.2003 followed by a reply by the applicants. Shri R.V. Sinha and Shri R.N. Singh, learned counsel for the respondent appeared. Shri S. Narayan, Finance Secretary to the Govt. of India, the alleged contemnor, was also present.

4. Shri R.V. Sinha, learned counsel, explained, in detail, the action taken by the respondent as brought out in the affidavit filed by the Finance Secretary and stated that the respondent had worked out/recalculated the vacancies on yearly basis keeping in mind the position of the Direct Recruits and their appointments year after year and have arrived at the vacancies available in the DP Quota. It is pointed out that in certain years recruitments did not take place in DR quota and, therefore, no action was taken for filling the DP quota as well. It is finally indicated that UPSC has already been requested to hold meeting of

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the DPC for 13 posts to be filled under the DP quota. Thus, the respondent has taken all the steps to implement the order of the Tribunal. Shri R.V. Sinha stated that this was the only way this could have been decided upon.

5. Contesting the above, Shri Gyan Prakash, learned counsel for applicants, stated that the recalculation of the ^{petitioner} vacancies had been done improperly. According to him, irrespective of the fact as to whether direct recruitment was made or not in a particular year, they were entitled to 40% of the vacancies arising in a year in terms of the Recruitment Rules. Therefore, whether direct recruitment had taken place or not, 40% of the ^{yearly} vacancies had to be filled by holding DPC. He has also relied upon the decision of the Hon'ble Supreme Court in the case of Bishan Sarup Gupta vs. Union of India and Others reported at 1973 SCC (Lab), in para 14 of which directed as under:

".....The vacancies for any particular year being ascertained, not more than one-third of the same were to go to the promotees and the rest to the direct recruits. The ratio was not made dependent on whether any direct recruit was appointed in any particular year or not. We are, therefore, unable to accept the construction put on the quota rule by the High Court. In our opinion, the promotees were entitled to one-third of the vacancies in any particular year whether or not there was direct recruitment by competitive examination in that year"

By not adhering to the above, inspite of the specific direction of the Tribunal, the respondents were guilty of contumacious and deliberate disobedience of the

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Tribunal's directions, pleads Shri Gyan Prakash.

6. The above has been strongly rebutted by Shri R.V. Sinha who states that all possible action has been taken and they had acted strictly in accordance with the directions of the Tribunal. Contempt Petition cannot be used to extent this scope of the matter or to reargue the OA which the applicants' counsel attempt to do. He relied on the decision of the Hon'ble Supreme Court in the case of J.S. Parihar v. Ganpat Duggar & Ors. reported at JT 1996 (9) S.C. 608, holding that the exercise of the Contempt's jurisdiction to consider the matter on merits was not permitted. Further, in the case of Kapildeo Prasad Sah and Others vs. State of Bihar and Others ((1997) 7 SCC 569), it was held that "negligence or carelessness in implementing the Court's order may amount to contempt particularly when the person concerned's attention is drawn to implication of the order. However, casual, accidental, bona fide or unintentional acts or genuine inability to comply with the order is not wilful disobedience. Notice for contempt and power of contempt are of far-reaching consequences and they should be resorted to only when a clear case of wilful disobedience has been made out" In view of the above, the CP merits dismissal, pleads Shri Sinha.

7. We have carefully considered the matter. We find that the Tribunal had passed order on 01.04.2002 directing recalculation of the vacancies excluding from

the computation 115 vacancies which had been filled up in 1989-90. The respondents had filed CWP against the order, but after the same was dismissed by the High Court, they took action in working out the vacancies which fell in Grade-IV of IAS. They had worked out the same keeping in mind the vacancies and also the fact as to whether direct recruitment has taken place in a given year or not by making available 40% vacancies in the year recruitment has taken place, but not so in cases where the direct recruitment taken place. Obviously they were under the impression that if in a particular year no direct recruitment had taken place, ordering promotion on the DP quota would lead to an excess of the ratio. This interpretation perhaps is not supported by the findings of the Hon'ble Apex Court, which was referred to by the applicants/petitioners. At the same time, it is seen that the respondents have taken action in recalculating the vacancies in the post, the way they understood the Tribunal's order and, therefore, even if the same was not acceptable to the applicants it cannot be held that they are guilty of wilful or contumacious disobedience. The decision in the case of J.S. Parihar v. Ganpat Duggar & Others (supra) has forbidden the Tribunal from extending the scope of examining the matter while dealing with the contempt. In Kapildeo Prasad Sah and Ors. vs. State of Bihar and Ors. (supra) the Hon'ble Supreme Court had held that accidental mistakes committed or inability for implementing the order fully could also not be taken as a wilful disobedience. Besides, the Hon'ble Supreme Court has, in the case of

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Shri Sudhakar Prasad vs. Govt. of Andhra Pradesh (JT 2001 (1) SC 204) had held that the contempt power would have to be exercised carefully and what is expected is safeguarding the majesty of law. In the case of Shri S.C. Poddar v. Dhani Ram & Ors (SCALE 2001 (8) 452) would also show that as far as contempt matters are concerned, the Tribunal would have to deal very carefully. In this particular matter we do not find that the respondents ^{are guilty of} ~~have~~ ^{done} any wilful or contumacious disobedience of the Tribunal's order inspite of the fact that the action taken by them has not been to the liking of the applicants. In that matter, the remedy lies elsewhere, i.e., by taking recourse on the original side.

8. In the above view of the matter, we hold that the applicants/petitioners have not made out any case for proceeding against the respondents any contempt in terms of Section 17 of the Administrative Tribunals Act, 1985 read with provisions of the Contempt of Courts Act, 1971. The CP is, therefore, dismissed and the notices issued to the alleged contemnor are discharged. The same does not preclude the applicants/petitioners from moving the Tribunal on the original side if there is a grievance remaining and they feel that the respondents have not, while implementing the orders of the Tribunal, given them the correct and proper relief. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

/pkr/

Govindan S. Tampi
GOVINDAN S. TAMPI
MEMBER (A)