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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

C.P. No. 430/2010
IN
O.A. NO.1334/2001

New Delhi, this the 17th day of September, 2010

CORAM: **Hon'ble Mr. Shanker Raju, Member (J)**
Hon'ble Dr. Veena Chhotray, Member (A)

1. The National Archives & Museum Employees Union,
Through its General Secretary Shri R.S. Atal,
39/466, Panchkula Road,
New Delhi
2. Shri R.S. Atal,
39/466, Panchkula Road,
New Delhi

... Petitioners

(By Advocate: Shri M.K. Bhardwaj)

versus

1. Union of India & Ors
Shri Jahwar Sarkar,
Secretary of Ministry of Tourism, Department of
Cultures, Shastri Bhawan,
New Delhi
2. Shri Vijay S. Madam,
Director General,
National Museum,
Janpath, New Delhi


... Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER

By Dr. Veena Chhotray, Member (A):

The CP 430/2010 has arisen out of the OA No.1334/2001 decided vide the Tribunal's order dated 19.2.2002. Earlier the CP No.09/2010 on the same subject had been, vide the Tribunal's order dated 22.3.2010, allowed to be withdrawn with a liberty to file a fresh one with the previous history explaining the delay for approaching the Tribunal praying the desired relief after a long gap of 8 years. The present CP traces the circumstances under which the present CP is being filed. This includes a series of intervening litigations in different forums by both the parties.



In response to a Notice on the CP, a detailed counter affidavit has been filed on behalf of the respondents. Further, the matter would be argued by the learned counsels Shri M.K. Bhardwaj and Shri Rajesh Katyal, appearing respectively for the applicants and the respondents. We have carefully considered the contentions by both the learned counsels as also the material on record.

2. The petitioners in the OA 1334/2001 were the National Archives and Museum Union, and the main respondent Director General, National Museum under the Union Ministry of HRD, Department of Culture. Specifically, the applicants had been working as Gallery Attendants in the National Museum, New Delhi and had been agitating for parity in pay and service conditions with Record Assistants, their counter-parts in the adjoining National Archives, also functioning under the HRD Ministry. In this OA the petitioners were pressing for some specific follow-up grievances in pursuance of the directions of the Hon'ble Apex Court in the WP(C) No.1230/1988 on 10.2.1988 and 10.10.1998. The relevant extracts of this order were incorporated in the detailed order of the Tribunal in the OA 1334/2001. This reveals that despite repeated opportunities no counter affidavit had been filed by the respondents and in the circumstances that the Apex Court was left with no option but accept the actual allegations of the petitioners. Further, the qualification, the nature and condition of the work of the petitioners and the Record Attendants were also found to be the same; however, the benefits by the IV Pay Commission had been confined only to the Record Attendants without considering the Gallery Attendants. In this background, the claims of the petitioners were found to be justified and the view was taken that the petitioners were entitled to the same scale of pay and other service benefits as of the Record Attendants in the National Archives. The following directions were issued by the Apex Court:-



"A direction shall issue to the respondents to equate the service conditions of the petitioners with those of the Record Attendants of the National Archives within three months hence, with effect from 1st April 1988. xxx"

3. In the OA 1334/2001, the petitioners had sought four specific reliefs : (a) enhance the strength on the post of Jamadar and Sr. Jamadar upto 22 and 36 respectively as recommended by the Director General of National Museum; (b) revise the pay scales on the basis of accepted formula FR 22-C and 22-A on the IV CPC recommendations; (c) appropriate pay fixation; and (d) grant of arrears of salary with interest @ 24% per annum w.e.f. 1.4.1988.

After a detailed consideration of the respective contentions, in the context of the decision of the Hon'ble Apex Court and the follow-up steps taken by the respondents, the Tribunal had come to the finding that there had been only a partial compliance of the order of the Hon'ble Supreme Court. While the pay scales of Jemadars and Sr. Jemadars had been revised upward, the respondents had not addressed adequately the issue of promotional avenues to the petitioners. It was also noticed that grant of ACP on which the respondents were relying, was only a stagnation removal measure, which did not preclude any promotion. Further, para-8 of the order had specifically noted the fact of there being just one post of Sr. Jamadar and 3 posts of Jamadars with the total number of 53 Gallery Attendants as by no means construed as a method for fulfilling the "legitimate expectations" of the petitioners. Emphasizing that it was incumbent upon the respondents to open reasonable promotional avenues for the applicants, the Tribunal had reiterated the directions of the Hon'ble Supreme Court and observed the following:-

"Tribunal therefore has to reiterate the directions of the Supreme Court and advise the respondents to act correctly and justly so that the legitimate grievance of the applicants are atleast partially met. We do not intend to tell the respondents as to how many posts are to be created but leave it to the respondents wisdom with the hope that they would act correctly and properly."

Allowing the OA, the following operational directions were issued:-



*"The impugned order dated 20.12.2001 is quashed and set aside and the respondents are directed to take action in terms of Supreme Court's direction dated 10.2.88 and to provide equality in status for the applicants with their counter parts in National Archives both in terms of scales of pay and in terms of promotional avenues **by identifying the posts for upgradation to the level of Jamadar and Sr. Jamadar so that the legitimate expectations of the staff who have been stagnating for considerably long time is adequately taken care of.** xxx"*

(emphasis supplied)

4. The main ground raised in the CP is that the respondents have not really implemented the directions of the Tribunal in the OA 1334/2001; as the applicants are still stagnating and do not have adequate promotional avenues, least of all equality in service conditions with their counterparts in the National Archives as per the directions of the Apex Court in the WP(C) No.1230/1988. The learned counsel Shri M.K. Bhardwaj would seek to emphasize that the respondents had failed to demonstrate any implementation towards the promotions, after the passing of the order in the OA 1334/2001. Further, it would be stated that now they were inventing a new methodology to mislead the Tribunal.

5. On the other hand, the detailed counter affidavit filed by the respondents asserts about having duly complied with the directions of the Apex Court as well as of the Tribunal. It is stated that this is not only in regard to the grant of pay-scales but also opening up reasonable promotional avenues for the applicants to redress their legitimate grievances. It is also averred that the cadre of Gallery Attendants is a dying cadre and the vacant posts are deemed abolished. However, still the respondents have ensured that the applicants have sufficient scope for promotions. Para-9 makes the following averments:-


*"9. That there are sufficient promotional avenues for the Gallery Attendants which had been explained in the chart which is annexed herewith as **ANNEXURE-R** wherein it has been shown that those Gallery Attendants as shown in the chart got the promotions which the applicants cannot deny. It is submitted that out of 52 Gallery Attendants, 47 were eligible for promotion. It is submitted that 30 Gallery Attendants got*



promotions in the grade of Jamadar, Lab. Attendant, Library Attendants and Attendant (Fiber Glass). It is submitted that 11 got promotion in the grade of Sr. Jamadar and six got promotion in the grade of LDC under 10% quota. Thus, the above figures clearly show that 47 people got promotion. It is pertinent to mention here that at present there are 13 Gallery Attendants and there are 6 vacant promotional posts which include 1 Library Attendant, 1 Lab. Attendant, 3 Jamadar and 1 Attendant (Fibre Glass). It is stated that the Government is considering the promotion of the Gallery Attendants to the above mentioned 6 vacant promotional posts, as per rules. xxx"

Along with the CA, a detailed tabular statement showing the number of Gallery Attendants promoted and having received the benefits of higher scales has also been enclosed. The learned counsel Shri Katyal would submit that as per the directions of the Tribunal in the OA 1334/2001, the emphasis had been on justly meeting, at least partially, the legitimate grievances of the petitioners regarding the promotional avenues. The learned counsel would further submit that the detailed status as reflected by the respondents now clearly showed that the same had been sincerely attended to. It would also be argued that the promotional avenues could not by any logic be argued to run parallelly and one to one to the strength of the feeder cadre, more so in the present case where the posts Gallery Attendants constituted a dying cadre.

6.1 We note that while considering the issue of promotional avenues for the petitioners, both originally by the Apex Court and subsequently by the Tribunal, the mention had always been made of the posts of Jamadar and Sr. Jamadar. In the OA 1334/2001 the objection being raised by the Tribunal was to the fact of there being only one post of Sr. Jamadar and three posts of Jamadar for the applicants, 53 in number. We also note that in the final operational directions, the Tribunal had directed the Respondents to identify the posts for upgradation to the level of Jamadar and Sr. Jamadar. This by implication meant that there could be posts other than Jamadar and Sr. Jamadar as well against which the applicants could be promoted.




6.2 As per the submissions in their CA, the promotions given to the petitioners include several posts other than the Jamadar and Sr. Jamadar i.e. Lab. Attendant, Library Attendant, Attendant (Fibre Glass) and also LDC. Whether the pay scales of the former three were of the level identical to or close to those of the Jamadar and Sr. Jamadar is not revealed from the respondents' submissions. However, even limiting the promotions to the grades of Jamadar (5), Sr. Jamadar (11) and LDC (6); the total comes to 22 persons as having been promoted. It is also pertinent that as per the respondents there are 3 more vacant posts of Jamadar against which promotions are proposed out of the present 13 incumbents as Gallery Attendants. These detailed facts lead us to the conclusion that there is a merit in the respondents' contention regarding acting in due pursuance of the judicial directions.

7. It is trite in law that the jurisdiction under 'contempt' is extremely limited in scope. In **Security Finance (P) Ltd and Anr vs Dattaraya Raghav Agge & Ors** {AIR 1970 SC 720} it was held by the Apex Court that:

Every Act cannot be a defiance or willful negligence of the Court's order. Any act which is intentional, deliberate and has a character of disrespect with malafides is a contumacious disobedience.

In the present case we do not find any defiance or willful negligence of the orders passed in the OA.

8. In view of the foregoing, we do not find merit in the Contempt Petition, which is dismissed hereby with no order as to costs.


(VEENA CHHOTRAY)
MEMBER (A)


(SHANKER RAJU)
MEMBER (J)

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