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CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

C.P.No.246/2000

IN

OA No.2572/99

New Delhi: this the 28th day of September, 2000.

Shri Atam Prakash Sharma,
S/o Late Shri Bhagwan Dass,
R/o 473, Rishi Nagar,
Shakurbasti,
Delhi- 34

.....Petitioner.

(By Advocate: Shri M.N.Krishnamani, Sr.Counsel with
Shri S.P.Sharma)

Versus

Union of India,
through
the Secretary,
Shri Arun Bhatnagar,
Ministry of Rural Development,
Krishi Bhawan,
New Delhi-3

2. Shri A.K.Soni,
Under Secretary,
Ministry of Rural Development,
Krishi Bhawan,
New Delhi-3

.....Respondents.

(By Advocate: Shri VSR.Krishnan)

ORDER

Mr.S.R.Adice, VC(A):

Heard both sides on C.P.No.246/2000 alleging
contumacious non-implementation of the Tribunal's
order dated 23.2.2000 in OA No.2572/99.

2. Applicant had filed OA No.2572/99 seeking
retrospective regularisation in the pay scale of
Eco-Investigator Gr.I w.e.f. 31.10.91 or retrospective
promotion in the pay scale of Statistical Investigator
Gr.I w.e.f. 25.4.91 with consequential benefits. He
also impugned the RRs of 1993.

3. Upon completion of pleadings, the OA came up
for hearing on 23.2.2000. After hearing, the OA
was disposed of in the presence of both parties by

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oral order dated 23.2.2000 with a direction to respondents to examine whether vacancies of Statistical Investigator Gr.I in the promotion quota became available between 25.4.91 on which date applicant became eligible for consideration for promotion as per rules, then prevailing, and 27.5.93 on which date the amended RRs were notified, and if vacancies did exist, consider applicant's case for promotion as Statistical Investigator Gr. I, with consequential benefits. These directions were to be implemented within 3 months from the date of receipt of a copy of the order.

4. In the CP filed on 2.6.2000 it was alleged that respondents had taken no action till that date for implementation of the aforesaid order.

5. Respondents in their reply have annexed copy of their OM dated 21.6.2000 (Annexure- CP-I) pursuant to the aforesaid order therein stating that on the basis of the Ministry's records, it has been found that no vacancy of Statistical Investigator Gr.I in promotion quota was available between 25.4.91 and 27.5.93 against which applicant could be promoted.

6. Applicant has filed an addl. affidavit dated 24.8.2000 in which he has complained that respondents' reply affidavit has not been filed by Contemnor No.1 who has also not appeared, and in which respondents' contention that no posts of Statistical Investigator Gr.I during the relevant period has been denied, and the existence of 4 such vacancies have been claimed.

7. In so far as non-filing of respondents' reply affidavit by contemnor No.1 himself is concerned, we note that the same has been filed by the Under Secretary in respondent Ministry. In CAT Full Bench decision dated 12.8.92 in RA No. 152/90 + connected cases

(CAT Full Bench Judgments 1991-94 Vol. III) it has been held that any officer of GOI who is competent to file written statement and counter affidavits in judicial proceeding is competent to file reply affidavit in contempt proceeding. Hence there is no legal infirmity in the reply affidavit of the Under Secretary.

8. In so far as the question whether or not vacancies of Statistical Investigator Gr. I were available between 25.4.91 and 27.5.93 is concerned, the same cannot be adjudicated in contempt proceedings. Following the Hon'ble Supreme Court ruling in J.S. Parihar Vs. G. Duggar & Ors. JT 1996(3) SC 608,

"Once there is an order passed by the Govt. on the basis of the directions issued by the Court, then arises a fresh cause of action to seek redress in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action (and) cannot be considered wilful violation of order."

9. In the light of the above, the contempt proceedings are dropped. Notices discharged.

10. In the course of hearing, we were also informed that applicant has filed an appeal petition in Delhi High Court with respect to the order dated 23.2.2000 in which he has contended inter alia that the aforesaid order is silent regarding applicant's claim for regularisation in the pay scale of Eco-Investigator Gr. I w.e.f. 31.10.91.

Copy of that appeal has been received by respondents
and the matter is reportedly to come up before the
Delhi High Court on 8.11.2000.

A. Vedavalli
(DR. A. VEDAVALLI)
MEMBER (J)

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A).

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