

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

CP. 399/01
in
OA No. 495/99
JA No.

(7-5-02 Date of Decision

32

Vinod Kumar & Co. ...Petitioner (s)

Sh. D.K. Garg ...Advocate for Petitioner (s)

V E R S U S

Shri A.P. Srivastava ...Respondents

Under Secretary
Sh. S.M. Dey ...Advocate for respondents

Coram :-

Hon'ble Mr. A. Vedavalli, Member (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. To be referred to the Reporter or not ? YES

2. Whether it needs to be circulated to
other Benches of the Tribunal ? NO

(GOVINDAN S. TAMPI)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

CP 399/2001

in

OA 495/1999

New Delhi, this the 17 th day of May 2002

23

Hon'ble Dr. A.Vedavalli, Member (J)

Hon'ble Shri Govindan S.Tampi, Member (A)

1. Vinod Kumar
S/o Shri Gurbax Singh
R/o E-10-A, Kiran Garden
Uttam Nagar, New Delhi - 59.
2. Prem Lal
S/o Swaran Dass
R/o E-80, Munirka
New Delhi - 110 070.
3. Mrs. Seema Jain
W/o Shri Rohit Jain
R/o 303, Kush Agarsen Apartments
Patparganj, New Delhi
4. Ashok
S/o Shri Hari Singh
Computer Operator
Department of Biotechnology
Block No.2, CGO Complex
Lodhi Road, New Delhi.
5. B.C.Pant
S/o Shri P.C.Pant
R/o A-570, Sector 19, NOIDA.
6. Mrs. Kusum Choudhary
Computer Operator
Department of Biotechnology
Block No.2, CGO Complex
Lodhi Road, New Delhi.

(By Advocate Shri D.K.Garg)

...Petitioners

V E R S U S

Shri A.P.Srivastava
Under Secretary to the Govt. of India
Ministry of Science and Technology
Department of Biotechnology
Block No.2, CGO Complex
Lodhi Road, New Delhi.

...Respondent

(By Advocate Shri S.M.Arif)

O R D E R

By Hon'ble Shri Govindan S.Tampi:

This Contempt Petition has been filed by six
out of eleven applicants, who had filed OA No.495/1999

12

34

alleging that a wrong and incorrect counter affidavit dated 20-8-1999 was filed by the alleged contemnor, which misled the Tribunal to pass the order dated 26-5-2000, dismissing the OA.

2. Heard Shri D.K.Garg, appearing for the applicant/petitioners and Shri S.Mohd Arif, Addl. Govt. Standing Counsel for the respondents.

3. Eleven applicants, all of whom were working as Computer Operator Grade 'A' in the pay scale of Rs.1350-2200 in the respondents' organisation, were aggrieved that after their promotion to the grade of Rs.1400-2300 w.e.f. 31.10.1993, by the order dated 8.7.1997, they were granted the revised pay scale of Rs.5000-8000, which was subsequently brought down to Rs.4500-7000. After examining the points raised in the OA and the facts brought out in the counter affidavit which showed that the Computer Operators were eligible for promotion as Data Processing Assistants after completing seven years of service and that they were granted wrong promotion as Computer Operator Grade 'B' by the DPC in between, the OA was dismissed on 26.5.2000.

4. According to the applicants/petitioners, the respondents had filed a wrong statement, knowing fully well that it was a wrong averment, which led the Tribunal to issue the order dismissing the OA, which was incapable of being implemented. Relevant position

12

35

of the counter affidavit filed on behalf of the respondents by Shri A.P.Srivastava, Under Secretary, reads as follows :-

"It is also pertinent to mention here that as per the recruitment rules, the promotional post for computer operator (Rs.1350-2200/-) is Data Processing Assistant in the scale of Rs. 1600-2660/- (pre-revised) and the computer operators with 7 years regular service in the grade are eligible for promotion. However, the Committee which had submitted its recommendations on 27-9-1996 had erred in not taking into account the fact that the department had already re-structured the posts on the basis of instructions contained in the Department of Expenditure OM dated 11-9-1989. The recommendations of the Committee regarding the introduction of 5 different grades based on the same instructions were, therefore, clearly not in order. Consequently, the promotions of 12 computer operators to higher scale of pay of Rs. 1400-2300/- vide Establishment Order No.31/97/Estt.I dated 8-7-1997 on the basis of the recommendations of Committee were irregular. In fact, this amounted to deriving the double benefit from the same instructions. In the light of this position, the following orders were also not in order :

i) Establishment Order No.44/97-Estt.I dated 29-12-1997 regarding the promotion of Smt. Kusum Choudhary (copy enclosed at Annexure-R/V).

ii) Order No. A-12029/01/96-Estt.I dated 23-3-1998 regarding re-fixation of pay of 12 computer operators in the scale of pay of Rs. 5000-8000/- (revised).

iii) Office Memorandum No.A-12029/01/96-Estt.I dated 23-3-1998 regarding regularisation of the pay scales of the computer operator in 5 different grades ; and

iv) Office Memorandum No.A-12029/01/96-Estt.I dated 2-7-1998 regarding effective date of the revised pay scales.

As soon as the above mistake was detected, the Department, vide its order dated Office Memorandum No. A-12029/01/96-Estt.I dated 3-7-1998 (copy enclosed at Annexure-R/VI) cancelled its earlier order of even number dated 23-3-1998 regarding the re-fixation of pay of the 12 computer operators in the scale of pay of Rs.5000-8000/- (revised).

12

36

Similarly, Establishment Order No.44/97-Estt.I issued under A-12029/01/96-Estt.I dated 29-12-1997 regarding the promotion of Smt. Kusum Choudhary was also cancelled vide this department order No.A-20014/01/94-Estt.I dated 7-12-1998 (copy enclosed at Annexure-R-VII). Accordingly, the pay of all the applicants was refixed in the scale of pay of Rs.4500-7000/- vide this Department's order issued in November and December, 1998 and July, 1999 (Copies enclosed at Annexure-R/VIII to R/XVIII), necessitating recovery of the excess payments made."

The reading of the above indicated that promotional post for Computer Operator in the pay scale of Rs.1350-2200/- was Data Processing Asstt. in the pay scale of Rs.1600-2660/- but after 7 years of regular service. On the basis of the above averments, the Tribunal on 26-5-2000, passed the orders dismissing the OA, with the following remarks :-

"The applicants are only entitled to the scale of Rs. 4500-7000/- in the post of computer operator, being the revised scale to the scale of Rs. 1350-2200/-, they would be entitled for promotion after only seven years of service as computer operator and not three years of service."

5. The petitioners submit that when the above counter affidavit was filed, stating that only Computer Operators with seven years regular service in the grade were eligible for the post of Data Processing Assistant, in the pre-revised scale of Rs.1600-2660/-, the said post of DPA had already been withdrawn, as evident from note dated 13-7-2000, by the respondent/contemnor in file No. BT/A-37011/01/99-E-1. Respondents still made the wrong averment, based on which the OA was disposed of

12

37

by the Tribunal against the Applicants. Infact, the said averment had no basis, either when it was made or when the order was issued.

6. Applicants had applied for the post of Computer Operator in the Ministry of Labour in the pay scale of Rs. 1350-2200/-, in response to an advertisement dated 12-18/5/1990 and were appointed after selection. They were promoted as Computer Operator 'B' in the grade of 1400-2300/- w.e.f. 31-3-1993 and their pay scales had been revised to Rs. 5000-8000/- on 23-3-1998. The same was, however, modified wrongly on 24-1-1998, directing that the above scale would be effective only from the date of completion of three years from the date of promotion as Computer Operator 'B'. The pay scales of the applicants was on the above basis refixed at Rs.4500-7000/-. Applicants' attempt to assail the above did not succeed and the OA was dismissed by the Tribunal on the basis of the above affidavit filed by the respondents. If the contemnor had not averred before the Tribunal that the applicants were not entitled for promotion to the scale of Rs. 5000-8000/-, as Data Processing Asstt., the Tribunal would not have made the observation that the applicants were not entitled to be promoted till they had completed seven years of service in the grade. Applicants infact had nothing to do with the post of DPA, which has been since abolished. Even otherwise all the applicants have completed seven years in the grade. This showed that the applicants have been

12

deprived of their rightful promotion on the basis of the deliberate wrong averment made by the respondents/contemnors.

7. According to Shri D.K.Garg, ld. counsel for the applicants/petitioners, the respondents have by their filing a wrong affidavit, which they knew at the time of filing to be false, had sought to procure a decision of their choice and had thus attempted to interfere with the judicial proceedings and have thus been guilty of criminal contempt, in terms of Section 2 (c) of the Contempt of Courts Act, 1970 and as such deserved to be punished for the same. Learned counsel also invited our attention to the decisions of Hon'ble Supreme Court in Babban Singh & Anr. Vs. Jagdish Singh & Ors. (AIR 1967 SC 68) dated 8-2-1966, Murray & Co. Vs. Ashok Kr. Nevatia and Anr. (2000 (2) SC 367) dated 25-1-2000 and of Allahabad HighCourt in CMWP No.39100/2001, decided on 13-2-2002, which according to him, supported his contentions. Hence his draft charge 'You by making misleading averments in the counter affidavit filed on 20-8-1999, mislead the Hon'ble Court and persuaded the Hon'ble Court to pass a wrong judgement'.

8. The averments made in the CP are stoutly opposed by the respondents. According to them, no contempt of any sort has been committed by them and no misleading averments had been made. Respondents have only stated the facts, which they stand by till date. In their counter affidavit, it had been mentioned by

2

39

them that in terms of the Ministry of Finance, Dept. of Expenditure OM No.F.7(1)/IC/86 (44) dated 11-9-1989, EDP posts in the Deptt. were restructured as under :-

Original posts with
scale of pay

Revised posts with
scale of pay

1. Data Entry Operator
(Rs.950-1500) - 9 posts
2. Computer Assistant
(Rs.1200-2040) - 5 posts : Computer Operator
(Rs.1350-2200) - 16 posts
3. Computer Analyst : Data Processing Asstt.
(Rs.1400-2300) - 2 posts (Rs.1600-2660)- 5 posts.

9. Recruitment Rules of the above mentioned posts of Computer Operator (CO) and Data Processing Assistant (DPA) were duly notified in the Gazette of India No.29 dated 21-7-90. Five out of the eleven applicants in the OA who were in the scale of pay of Rs.950-1500/-/Rs.1200-2040/- were reappointed as Computer Operators in the scale of Rs.1350-2200/-. All the subsequent appointments were only in the scale of Rs.1350-2200/- (Rs.4500-7000/-). Besides, all of the applicants were not recruited against the advertisement of 12-18 May, 1990 and one of them was appointed only in 1994. In terms of the Recruitment Rules, promotional post for Computer Operator (Rs.1350-2200/- pre-revised) was Data Processing Asstt. (Rs.1600-2600/- pre-revised) for which eligibility criterion was seven years' regular service in the feeder cadre. As the posts of DPAs had been abolished earlier, the Deptt. had sought to have them revised in June 99 itself, much before filing the

h

counter affidavit. Earlier the Committee which had looked into promotional avenues in the cadre had suggested in 96 having five grades for Computer Operators, overlooking the fact that the cadre has already been restructured, as far back as in September 1984. Posts of Computer Operator Grade 'B' in the scale of Rs. 1400-2300/- (Rs.5000-8000/- revised) recommended by the Committee had never been created, nor were any rules formed therefor. Thus, when the DPC met on 6-6-1997, to consider promotion to Computer Operator Grade 'C' in the scale of Rs.1400-2300/-, such a post did not exist. Promotion could have been considered only after the posts were created and Recruitment Rules notified. That being the case, promotions ordered on 8-7-97 and 29-12-77 were against non-existent posts and were thus illegal and had to be cancelled. Since DPAs posts have not been revised as yet, five among the applicants have been given financial upgradation in ACP in the scale of Rs. 5000-8000/-, which will be extended to others also in their turn. All of them would be considered for promotion as DPAs, once the posts are revised. This would show that the respondents had only presented the true and correct picture and that no contempt would lie, according to them.

10. During the oral submissions, Shri Garg, ld. counsel for the applicants/petitioners had argued at length about the criminal contempt committed by the alleged contemnor and prayed for imposition of heavy punishment on him. He did not accept the version of

(A)

the learned counsel for the respondents that the CP having been filed on 25-7-2001, when the relevant order disposing of the OA had been issued on 26-5-2000, as according to him, the alleged contempt started only from the day, the applicants come to know of it. They had filed the CP soon after they had come to know about the impropriety committed by ~~him~~ ^{him} On being specifically asked by the Court as to whether he had obtained the necessary consent from the Law Officers of the Govt. as prescribed in rule 5 (ii) of the Contempt of Courts (CAT) Rules, 1992, Shri Garg replied that it was only a technical requirement and, therefore, he had not done it. Shri Garg also had taken exception to the fact that the counter affidavit to the CP has been filed by one Shri Bakshi Ram and not by Shri A.P.Srivastava, alleged contemnor.

11. We have carefully considered the matter. The applicants/petitioners seek to have the alleged contemnor punished for what they feel to be a improper act in filing a false/wrong affidavit in the OA filed by the them, thereby misleading the Tribunal to give a wrong order. On the other hand, the respondents plead that they had acted correctly and properly and that no contempt of any sort has been committed by them.

12. Contempt is a very sensitive matter and, therefore, Courts of Law and Tribunal would have to tread very carefully in the matter. Time and again, it has been emphasised by the Hon'ble Supreme Court that care and caution would have to be exercised while

12

dealing with contempt matters and that the power of the contempt has to be used sparingly and in genuine cases, as what ~~is~~^{is} sought to be achieved by institution of contempt proceedings is the establishment of the majesty of law and not seeking private revenge or retribution. We have kept the above in mind, while dealing with this case as well.

13. Contempt arises only when there is wilful or contumacious disobedience to any judgement, decree direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court (Civil Contempt) or publication of any matter or doing of any other act, which scandalises or attempts to scandalise or lowers or tends to lower the authority of any Court; or prejudices or interferes or tends to interfere with the due course of any judicial proceedings or interferes or tends to interfere with or obstruct or tends to obstruct, the administration of justice in any other manner (criminal contempt), as brought out in Section 2 (a) (b) and (c) of the Contempt of Courts Act, 1971. It appears from the perusal of this Petition that what is seeking to raise, is the charge of criminal contempt though it is not strictly spelt out. The draft charge only states as below :-

"You by making misleading averments in the counter affidavit on 20-8-99, mislead the Hon'ble Court and persuaded the Hon'ble Court to pass a wrong judgement".

However, Shri Garg, ld. counsel for the applicants/petitioners had indicated that what he has raised is the issue of 'criminal contempt'.

(11)

43

14. Contempt jurisdiction of the Tribunal revolves around Section 17 of the Administrative Tribunals Act, 1985 read with ^{provision 8 L} Contempt of Courts Act, 1971. Before proceeding to consider the aspect of the Contempt, we have to examine the maintainability of the petition. Section 20 of the Act reads as below :-

"No court shall initiate any proceedings of contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed".

In this case, the order on account of which, the applicants/petitioners are aggrieved has been issued on 26-5-2000 and the counter affidavit, which the applicants, feel led lead to this order is dated 20-8-99. This CP has been filed only on 25-7-2001. Therefore, it falls beyond the period of one year, which is fixed by the Act. The applicants' plea is that the contempt would run from the date on which, they came to know of the improper conduct of the alleged contemnor and, therefore, the CP is not hit by limitation. The same does not merit acceptance as the matters contained in the counter affidavit dated 20-8-99, filed by the respondents ~~are~~ based on Recruitment Rules, which were in the knowledge of all concerned including the applicants/petitioners. If they had felt that the respondents were responsible for any mis-declaration or false averment, the applicants/petitioners had all the time to contest the same, both in the rejoinder and during oral submissions. Not having done so at the appropriate time, the applicants/petitioners cannot come out on

44

this belated occasion, alleging contempt. The plea by the respondents that the CP is hit by limitation has to be upheld.

15. We also observe that Rule 5 (ii) of the Contempt of Courts (CAT) rules, 1992 reads as below :-

"In the case of 'criminal contempt' of the Tribunal other than a contempt referred to in Section 14 of the Act, the petitioner shall state whether he has obtained the consent of the Attorney General or the Solicitor General or the Addl. Solicitor General and if so, produce the same, if not reasons thereof;

It means that a criminal contempt petition would lie before this Tribunal only if the consent of anyone of the Law Officers of the Govt. mentioned above has been obtained or reasons adduced if such consent has not been obtained. During the oral submission, the learned counsel for the applicant, Shri Garg, was specifically asked by the Court to produce the consent as required or to show reasons in their absence. Ld. counsel was not able to do so. Instead he attempted to side-track the issue by stating that the same was only a technical matter. We do not agree. The consent from the approved senior Law Officer from the Govt. has been made mandatory only to reduce and obviate frivolous petitions. When, as pointed out above, the proceedings are sought to be initiated against any one in contempt matters, it should be ensured that the same is correct both in law and procedure. The applicants/petitioners have failed to do so and cannot expect the Tribunal still to uphold their complaints.

AS

16. In spite of the above, we have considered the CP on merits and we find that the same has no legs to stand on. The respondents' counter affidavit dated 20-8-99, represents the facts on record regarding the promotion of Computer Operator 'A' grade to higher grades. It is clearly pointed out that the DPC had incorrectly ordered selection of the applicants in the OA to the post of Computer Operator Grade 'C' in the grade of Rs.1400-2300/- which did not exist at the relevant time and therefore, the promotion ordered on the basis of the said DPC had to be cancelled and correction effected by placing all the applicants in the proper replacement scale of Rs.4500-7000/- instead of the scale of Rs.5000-8000/-. The respondents reiterate the said position even while countering the CP. Nothing has been brought on record by the applicants/petitioners to show that the averments of the respondents did not represent facts. That being the case, there is no reason whatsoever to hold that the respondents had attempted in any manner to mislead the Tribunal so as to obtain an incorrect judgement, as alleged by the applicants/petitioners. The allegation, therefore, is frivolous and merits rejection outright.

17. The applicant has referred to the decision of the Hon'ble Supreme Court in the case of Babban Singh and Anr. Vs. Jagdish Singh and Ors. (supra) as well as Murray & Co. Vs. Ashok Kumar Newatia (supra) along with the decision of the Hon'ble Allahabad High Court in CM Writ Petition No.39100/2001 filed by Anil Kumar

46

Sharma and Anr. However, the above decisions would not come to the help of the applicants/petitioners, as they refer to cases where deliberate and false averments made by the alleged contemnors. Para 9 of the Hon'ble Apex Court's decision in Murray & Company's case reads as below :-

"The right to inflict punishment for contempt of court in terms of the Act of 1971 on to the law courts has been for the purposes of ensuring the rule of law and orderly administration of justice. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law since the image of such a majesty in the minds of the people cannot be left to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined. It is true that the judiciary will be judged by the people for what the judiciary does, but in the event of any indulgence which can even remotely be termed to affect the majesty of law, the society is bound to lose confidence and faith in the judiciary and the law courts thus, would forfeit the trust and confidence of the people in general".

The above sentiments have been reiterated by the Hon'ble Supreme Court in the cases of T. Sudhakar Prasad Vs. Govt. of A.P. and Ors. (JT 2001 (1) SC 204) as well as Suresh Chandra Poddar Vs. Dhani Ram & Ors. (SCALE 2001 (8) 452).

18. The perusal of the facts and circumstances brought out in this CP would clearly indicate that the respondents have only acted correctly and have not acted in any manner to interfere the course of justice or judicial process. No case, therefore, lies for initiating any action for contempt against them. CP, therefore, has to be dismissed.

(47)

19. We have noted that the ld. counsel for the applicant had taken exception to the fact that the reply to the contempt petition has been filed by one Shri Bakshi Ram and not by Shri A.P.Srivastava, whom the applicants/petitioners would like to have punished as the alleged contemnor. This objection cannot be upheld as Shri Srivastava had signed the counter affidavit dated 20-8-1999, only in his capacity as the Under Secretary of the Ministry of Science and Technology, Deptt. of Bio Technology, (as he was at the relevant time) and based on the official documents which he was handling. As he is holding a different post at present, Shri Bakshi Ram, Under Secretary in the same Ministry and Department, his successor in Office has sworn on the counter affidavit to the CP. The same cannot be faulted.

20. We are fully convinced that in the above circumstances, filing of this Contempt Petition by the applicants/petitioners was a clear act of the abuse of the process of law. They were only attempting through this CP to have the earlier order, modified. The same could have been done, if they so wished by either filing a review application or moving the Hon'ble High Court in CWP. They have instead chosen, what they thought to be a short cut, by instituting this Contempt Petition, which has no basis at all, when they should have known that contempt jurisdiction could be and should be invoked only in rarest of rare cases and that too with sound basis. The

48

applicants/petitioners would have to pay a price for this indiscretion and impropriety.

21. In the above view of the matter, the CP 399/2001 in OA 495/99, being totally devoid of any merit, fails and is accordingly dismissed. We also order that the applicants/petitioners shall pay to the respondents cost for this litigation, which is quantified at Rs.5000/- (Rupees five thousand). This amount shall be paid to the respondents within a period of one month from the date of receipt of a copy of this order.

(GOVINDAN S/TAMPI)
MEMBER (A)

/vksn/

A. Veda Valli
- 17/5/2002
(DR. A. VEDAVALLI)
MEMBER (J)