

Central Administrative Tribunal
Principal Bench: New Delhi

CP-461/2002 In
OA-184/1999

28

This the 6th day of February, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri V.K. Majotra, Member (A)

Ram Yash Sah
S/o Shri Nageshwar Sah
R/o RZ-288/1-B
Gali No.5-B
Gitanjali Park
West Sagarpur
New Delhi-110046.

-Petitioner

(By Advocate: Shri K.K. Sharma)

Versus

Shri K.K. Jaiswal
Secretary (P-1)
Department of Programme Implementation
Sardar Patel BHawan,
New Delhi-110001.

-Respondent

(By Advocate: Shri N.S. Mehta with
Shri R.N. Singh)

ORDER (Oral)

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)

In pursuance of our previous order dated 3.2.2003 Shri K.K. Jaiswal, Secretary, Ministry of Statistics and Programme Implementation is also present in court with the learned counsel for the respondents. He has explained the facts relating to the earlier additional affidavit filed by him. Respondents have also submitted another additional affidavit signed by the same officer to the Government of India, with copy to the opposite side. We have perused the relevant documents and heard the learned counsel for respondent as well as Shri K.K. Sharma, learned counsel for the petitioner.

28

2. The respondents have in the aforesaid affidavits submitted that at no stage, they had any intention to disobey the Tribunal's orders and that they have fully complied with the same in the facts and circumstances of the case. In the additional affidavit dated 6.2.2003, certain Annexures have been given. Shri N.S. Mehta, learned senior counsel has drawn our attention, in particular to the letters issued by the Ministry of Finance, Department of Expenditure dated 5.4.2002 and 5.9.2002. These are with regard to certain clarifications apparently sought by the respondents with regard to the existence or not of the post of Photocopy Operator, which is the subject under consideration in this Contempt Petition. Learned senior counsel had also referred earlier to the Ministry of Finance OM dated 3.5.93 to show in what circumstances the post was deemed to have been abolished, where the same had been kept unfilled for a period of one year. It is relevant to note that in the same OM, the procedure has also been enumerated for creation of such posts by the concerned Ministry, which in this case has been stated to be a non-plan post of Group-D. It appears that the respondent Ministry had taken up the matter with the Department of Expenditure for creation of the post of the Photocopy Operator, which was not agreed to by that Department. This is apparent from the Department of Expenditure's letter dated 5.9.2002 wherein they have given certain reasons for their decision. However, in the meantime, it is also not disputed that the respondents had issued the letter dated 8.2.2002, in which the sanction was conveyed, with the concurrence

of the Financial Adviser in the Ministry of Statistical and Programme Implementation, to have the post created for a further period of one year from 1.3.2002 to 28.2.2003 or till further orders.

3. However, we note from the submissions made by the learned counsel for the respondents as well as the respondent and copies of letters annexed to the additional affidavit dated 6.2.2003, that the necessary sanction from the Ministry of Finance, Department of Expenditure had not been obtained for creation of this post, which they had intended to do during the time when OA-184/1999 was sub-judice. The Tribunal's order in this OA was pronounced on 11.2.2002, i.e., three days after the aforesaid letter had been issued by the respondents.

4. Shri K.K. Sharma, learned counsel for the petitioner has submitted that the Secretary of the respondent Ministry who had filed the aforesaid additional affidavits has been misled. He has, however, contended that because of the letter issued by the respondents dated 8.2.2002, a post of Photocopy Operator existed, against which the directions of the Tribunal dated 11.2.2002 could have been easily complied with, which has not been done by the respondent.

5. Having carefully considered the facts and circumstances of the case, additional affidavits and the further explanations rendered by Shri K.K. Jaiswal, Secretary of the Ministry of Statistics and

YB

(31)

Programme Implementation together with the inter-Departmental correspondence between that Ministry and the Ministry of Finance, Department of Expenditure, we are satisfied that there is no wilful or contumacious disobedience of the Tribunal's order dated 11.2.2002 in OA-184/99. In other words, the post of Photocopy Operator does not exist in view of the fact that it had remained unfilled for a period of nearly four years, was deemed abolished has not been created again in accordance with the laid down procedure. Therefore, the reliance placed by the petitioner on the letter issued by the respondent Ministry dated 8.2.2002 will not assist him in this case.

6. The apology tendered by the learned senior counsel on behalf of respondent in the facts and circumstances of the case is accepted.

7. For the reasons given above, we find no good grounds to justify continuing with the Contempt Petition 461/2002. C.P. is accordingly dismissed. Notices to the alleged contemner is discharged. File to be consigned to the record room.

V.K. Majotra
(V.K. Majotra)
Member (A)

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice-Chairman (J)

CC.