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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP 139/2001
in
OA 1147/1999,
MA 2106/2001

New Delhi this the 11th day of July, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri Govindan S. Tamai, Member(A).

S. Zafar Husain,
S/o Shri Nazar Husain,
R/o House No.604-A,
Sector-3, R.K. Puram,
New Delhi-22.

... Applicant.

(By Advocate Dr. Sumant Bhardwaj)

Versus

Mr. Raj Gopal, Director,
Directorate of Information
and Publicity, Govt. of
NCT of Delhi, Block No. 9,
Old Secretariat,
Delhi-110 054.

... Respondent.

(By Advocates Shri K.K. Sud, Addl. Solicitor General with
Ms. Sumedha Sharma).

O R D E R (ORAL)

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

In MA 2106/2001, an affidavit has been filed by Shri Praveen Chaturvedi on 20.11.2001 in pursuance of Tribunal's order dated 30.10.2001. However, Dr. Sumant Bhardwaj, learned counsel appearing on behalf of the petitioner has submitted at the Bar during the course of hearing that he does not rely on the affidavit filed by his junior Advocate Shri Praveen Chaturvedi but has reiterated that he was not fully aware of the law or the legal position. MA 2106/2001 has been filed by the applicant for recall of the orders dated 9.8.2001 and 4.9.2001 in CP 139/2001.

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2. We have heard Dr. Sumant Bhardwaj, learned counsel for the petitioner and Shri K.K. Sud, learned Addl. Solicitor General with Ms. Sumedha Sharma, learned counsel for the respondent in CP 139/2001.

3. Initially, Dr. Sumant Bhardwaj, learned counsel had taken a plea that the aforesaid CP is a Criminal Contempt Petition. However, learned Addl. Solicitor General, relying on the provisions of Rule 5 (ii) and Rule 7 of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992, has submitted that this is not so, as the provisions contained in the Rules have not been complied with. He has, therefore, submitted that it cannot be treated as a "criminal contempt" of the Tribunal's order. After this submission was made by the learned Addl. Solicitor General, Dr. Sumant Bhardwaj, learned counsel has immediately submitted that he does not press this plea and accordingly the same is rejected. He has made further submissions on the Contempt Petition 139/2002 (Civil). Learned counsel for the petitioner has vehemently submitted that as per the orders of the Tribunal dated 2.11.1999 read with the order dated 8.3.2000 in MA 2808/1999, the respondents ought to have implemented the Tribunal's order in accordance with law. According to him, this has not been done.

4. The relevant portion of the directions of the Tribunal in the aforesaid order dated 2.11.1999 reads as follows:

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"3. Learned counsel for applicant, however, submits that he had already worked in the post of Assistant Information Officer in the Ministry of Information and Broadcasting and the applicant may be considered for promotion to the post of Assistant Information Officer. It is also contended that this post is identical with the post of Sub-Editor hence the applicant is entitled to the post of Assistant Information Officer. We find some force in this contention. It is not disputed that the applicant has been earlier working in the post of Assistant Information Officer during the period from 5.10.87 to 13.11.91. In the circumstances we direct Resp. No. 2 to consider the case of the applicant for promotion to the post of Assistant Information Officer in the Government of National Capital Territory of Delhi, if the post is identical and if the applicant is found eligible for such promotion".

(emphasis added)

5. Learned counsel for the petitioner has submitted that the applicant had been forced to file two Original Applications. He has also emphasised on the fact that the Tribunal had stated that they found "some force" in the contention advanced by the learned counsel for the applicant. He has stated that the applicant had worked in the post of Assistant Information Officer (AIO) for a period of over four years. He has submitted that taking into account the circumstances of the case, a direction was given to respondent No.2 i.e. the Director of Information and Publicity to consider the case of the applicant for promotion to the post of AIO, if the post is identical and if the applicant is found eligible for such promotion. He has vehemently argued that it was, therefore, incumbent on the part of respondent No. 2 to give a finding whether the posts were identical and if the applicant was found eligible for promotion as AIO, which he states has not at all been done in the order issued by respondent No. 2 on 1.2.2001.

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6. On the other hand, the order dated 1.2.2001 has been relied upon by the respondents to submit that they have complied with the aforesaid order of the Tribunal and the C.P. should be dismissed. Learned Addl. Solicitor General has submitted that MA 2106/2001 is a frivolous application without any substance and should be dismissed, as a Contempt Petition has to be taken seriously and not in the manner argued by the learned counsel for the petitioner. He has, therefore, prayed that the Miscellaneous Application should be dismissed. Further, he has submitted that notwithstanding this and without prejudice to his opposition for recall of the order dated 4.9.2001 and restoration of CP 139/2000, in order to save the valuable time of the Tribunal, Learned Addl. Solicitor General has also made his submissions on the merits of the Contempt Petition. As mentioned above, we have also heard Dr. Sumant Bhardwaj, learned counsel.

7. The relevant portion of the order dated 1.2.2002 issued by respondent reads as follows:

"In compliance of the direction as contained in the Hon'ble CAT's order dated 2.11.1999 and 8.3.2000 in the above noted O.A., the case of Sh. Zafar Hussain was considered and it is regretted that the promotion of Sh. Zaffar Hussain to the post of Asstt. Information Officer is not possible as:

The post of Urdu translator, on which Sh. Zaffar was working, was not in the feeder line for the post of Asstt. Information Officer as per the Recruitment Rules and as such he was not eligible for the promotion to the post.

The applicant has already retired on 30.11.1996 and for giving any benefit to him, the amendment in the Recruitment Rules of the post of Asstt. Information Officer for including the post of Urdu Translator in the feeder line, will have to be made, with retrospective effect, which will be arbitrary, unacceptable and unjustified.

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Therefore, there is no justification in according promotion to the applicant with retrospective effect. Sh. Zafar Hussain is informed accordingly".

8. The learned Addl. Solicitor General has submitted that the above order shows that necessary action has been taken by the Director in compliance with the directions of the Tribunal. He has submitted that all that was required by Respondent No. 2 was to consider the case of the applicant for the post of AIO which has been done. He has submitted that in case the applicant finds that the order is wrong and he is aggrieved by it for any reason, the remedy lies elsewhere and not in a Contempt Petition as otherwise it will be contrary to the settled law. He has further submitted that it cannot be denied that consideration of applicant's case has been done and reasons for not promoting him have also been given, in terms of the relevant law and rules. The learned Addl. Solicitor General has submitted that as per the orders of the Tribunal, liberty had been given to respondent No. 2 to consider the case of the applicant for promotion to the post of AIO if the post is identical and if he is found eligible, which has been done. In the circumstances of the case, he has submitted that there is no question of any contempt of the Tribunal's order. Learned Addl. Solicitor General has also submitted that it was unbecoming of the learned counsel for applicant letting down his junior counsel which according to him is not proper.

9. We have carefully considered the pleadings and the submissions made by the learned counsel for the petitioner and the learned Addl. Solicitor General for the respondent.

10. In this case, the Tribunal by order dated 2.11.1999 has no doubt stated that they found "some force" in the contention of the learned counsel for the applicant that the applicant had already worked in the post of AIO, though on ad hoc basis, in the Ministry of Information and Broadcasting and so he may be considered for promotion to that post. However, we find force in the submissions made by the learned Addl. Solicitor General that there was no direction of the Tribunal to promote the applicant to the post of AIO but only a direction to Respondent No. 2 to consider the case of the applicant for promotion, if the post was identical and if the applicant was found eligible for such promotion. This will mean that the consideration has to be in accordance with relevant law and rules. We have read and re-read the order passed by the respondent dated 1.2.2001 and are satisfied that he has considered the applicant's case for promotion to the post of AIO, in terms of the aforesaid orders of the Tribunal. It cannot be stated in the facts and circumstances of the case that the respondent has committed any act which could be termed as wilful or contumacious disobedience of the Tribunal's order justifying any further action to be taken against him for punishment under the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. A plain reading of the order issued by the respondent dated 1.2.2001 shows that in compliance of the Tribunal's orders,

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the applicant's case has been considered by Respondent No. 2 and there is, therefore, no justification to proceed further in the Contempt Petition.

11. We are fortified in the view we have taken in the matter, following the judgement of the Hon'ble Supreme Court in **J.S. Parihar Vs. Ganpat Duggar & Ors.** (JT 1996 (9) SC 611). In this case, there was a direction from the Hon'ble Court to prepare a fresh seniority list which was done. The Hon'ble Apex Court has held that "once there is a order passed by the Govt. on the basis of the direction issued by court there arises a fresh cause of action to seek redressal in an appropriate forum". (See also the judgement of the Hon'ble Supreme Court in **T. Sudhakar Prasad Vs. Govt. of A.P.** (JT 2001 (1) SC 204). In the present case, therefore, while we are fully aware that the Majesty of Law and dignity of courts and Tribunals should be upheld and that the orders of courts and Tribunal are to be fully complied with by the respondents, at the same time as held by the Hon'ble Supreme Court, where there is no deliberate flouting of the orders of the court, as in the present case, it would not be proper to take an unreasonable view of the matter with the aim only to punish the respondent under the Contempt of Courts Act, 1971. (See. **J.S. Parihar's case (supra)** and **Indian Airports Employees Union Vs. Ranjan Chatterjee & Anr.** (JT 1999 (1) SC 213) In the facts and circumstances of the case, the amended memo of parties is unnecessary and is accordingly rejected.

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12. In the result, taking into account the totality of the facts and circumstances of the case, we do not find that there is any wilful or contumacious disobedience of the Tribunal's order dated 2.11.1999 read with the order dated 08.3.2000. Accordingly, CP 139/2001 stands dismissed. For the reasons given above, MA 2106/2001 is also dismissed.

(Govindan S. Tampi)
Member (A)

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

In perusing the order dated 4.9.2001 passed in CP 139/2001 in OA 1147/1999, in paragraphs 4 and 5 a typographical error has crept in. The CP referred to is "CP 139/2001" and not "CP 195/2001" as wrongly typed.

(Govindan S. Tampi)
Member (A)

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

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