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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

C.P.163/2001 IN
OA 336/1999

New Delhi, this the 21st day of December, 2001

Smt. Lakshmi Swaminathan, Vice-Chairman(J)
Shri Govindan S. Tampi, Member(A)

Shri V.K. Sharma
S/o Late Shri Shyam Sunder Lal
M-64, Saraswat Bhawan, Shastri Nagar,
Delhi-110049. ...Petitioner
(Applicant in person)

Versus

Shri Ramesh Chandra
Principal Secretary(Finance)
4th Level, 'A' Wing, Player's Building
I.T.O., New Delhi - 110001. ...Respondent.
(By Advocate: Shri Rajinder Pandita)

O R D E R

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

C.P.163/2001 has been filed alleging non-implementation of Tribunal's order dated 11.12.2000 issued while disposing of OA No.336/99.

2. Heard Shri V.K. Sharma, applicant/petitioner in person and Shri Rajinder Pandita, learned counsel for the respondent.

3. We observe that OA No.336/99 has been disposed of by the Tribunal on 11.12.2000, without quashing the impugned order as the post of JAO had not been identified as one to which the benefit of reservation for physically handicapped was available. Tribunal however however went on to make the following observations.

"21. However before parting with the judgement we may mention that since the indentification of a post for extending the benefit of reservation for physically handicapped is a continuing process and since the applicant has given names of certain posts, which according to the applicant, are equivalent to the post of JAO had already been indentified for extending the benefit of reservation under the quota of physically handicapped, so we direct the respondents

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to take up the matter with the appropriate authorities to find out if the post of JAO as available on the cadre and for which the applicant is claiming promotion under the quota of physically handicapped, can be identified for being extending the benefit of reservation on account of physically handicapped. The respondents shall take necessary steps within a period of 2 months from the date of receipt of a copy of this order. In case the respondents get positive response from authorities, then the benefit be extended to the applicant."

4. Reviewed Application filed by the applicant was dismissed by the Tribunal on 1.3.2001. On 12.1.2001, respondents had informed the applicant that as there was no reservation for physically handicapped persons for appointment by promotion to Group 'B' posts, he was not entitled to get the appointment. Applicant/petitioner alleges that this was wrong and malafide. According to him, the post of JAO was undoubtedly a Group 'C' post as, various authorities, including 5th Central Pay Commission had categorised, it as such, and the respondents had themselves admitted on 17.12.99, before the Chief Commissioner(Persons with Disability), that the said post was in Group 'C', SAS Exam/ JAO Exams are conducted by Controller General of Accounts, which was not possible if it was a Group 'B' post. Besides, ^{acc. to the Petition} respondents have taken inconsistent stands in the matter, as in one OA (493/96) they averred that the post was yet to be identified while, in two other OAs (2564/98 & 336/99), they stated that the post was not so identified. The respondents had acted against the policy of reservation for physically handicapped, which was a welfare measure and had opted a strict and not flexible attitude in implementing ^{the policy and the same} was improper. When the Tribunal had taken a positive approach while deciding the OA, respondents had failed to do so and had by the above act committed contempt of the

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Tribunal's order and had thus invited contempt action, pleads the applicant.

5. On the other hand, respondents point out in their written pleas and oral submissions through Shri Rajinder Pandita that they were not guilty of any contempt. The respondents detail the circumstances under which the applicant came to be posted as JAO on ad hoc basis against reserved category for physically handicapped people, on the basis of an earlier clarification by DOPT declaring the post as falling in Group 'C' for which the said reservation was available and came to be subsequently reverted following advice from various Accounts organisations. Before the receipt of the Tribunal's order DOPT had informed Dy.. Chief Commissioner for Disability on 17.7.2000 that the post of JAO in CCAS has been categorised as Group 'B' (Non-Gazetted). That being the case there was no reservation fro physically handicapped in Group 'B' post. In Delhi Administration also the post of JAO came to be classified as Group 'B' (Non-Gazetted) by ~~modification~~ dated 10.4.2001 and was shown as a promotional post. Therefore, the applicant's case could not be considered for promotion. Hence, the applicant was informed on 23.1.2001 that the benefit could not be extended to him. Evidently therefore, the respondents have not committed any wilful or contumacious disobedience of the Tribunal's order and the contempt action shall not lie against them.

6. We have carefully considered the matter. We observe that the Tribunal had, while disposing of the OA, did not allow it but had ~~only~~ directed the respondents to take up the matter with the appropriate authorities to find out if the post of JAO as available on the cadre to

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which the applicant has made the claims, can be identified for extending the benefit of reservation on account of the individual being physically handicapped. Noting much turns on the averments of the applicant that the respondents have taken inconsistent stands as the position of the respondents in both the cases in the same, though expressed in different words. Clarification issued by the Finance/Accounts Department shows that in terms of DOPT's order dated 17.7.2000, reservation for physically handicapped persons in Group 'A' and 'B' was available only in the case of direct recruitment and not for promotions and therefore, the applicant's case could not be considered. The post of JAO has also been specifically designated by Notification dated 10.4.2001 as Group 'B' (Non-Gazetted). That being the case nothing further remained for the respondents to act as the instructions by the Tribunal was only to grant the benefit to the applicant, if the respondents had received any positive response from the authorities to whom they have made reference to indicate whether that reservation for physically handicapped persons was available for the post of JAO. As it has been clarified that the said post did not fall in the category, the respondents had informed the applicant accordingly. And that was correct.

7. In the above view of the matter, we are convinced that the respondents have not committed any disobedience of the Tribunal's order. C.P. is, therefore, dismissed and notice to the alleged contemnor is discharged. File be consigned to the records.

(Govindan S. Tampli)
Member (A)

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