

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1121/95

Hon'ble Shri Justice S.C.Mathur, Chairman  
Hon'ble Shri K.Muthukumar, Member(A)

New Delhi, this 06th day of July, 1995

Shri Mool Chandra  
Joint Director  
Central Statistical Organisation  
Department of Statistics  
Ministry of Planning & PI  
16, Akbar Road Hutments  
New Delhi - 110 011.

Shri Shiv Kumar  
Joint Director  
Central Statistical Organisation  
Department of Statistics  
Ministry of Planning & PI  
12/2, Jamnagar House  
Shahajahan Road  
New Delhi - 110 011.

Shri Pala Singh Tanck  
Dy. R.G.  
o/o The Registrar General of India  
Min. of Home Affairs  
West Block-1  
R.K.Puram  
New Delhi.

Shri Bhagwan Das  
Joint Director (NFSG)  
Central Statistical Organisation  
Deptt. of Statistics  
Ministry of Planning & Programme Implementation  
Sardar Patel Bhawan  
Sansad Marg  
New Delhi - 110 001.

Shri Sheo Raj Singh  
Joint Director  
Department of Chemicals  
Ministry of Chemicals & Fertilizers  
Room No.207, D-Wing, Shastri Bhawan  
New Delhi - 110 001.

Shri Babu Lal  
Joint Director  
Ministry of Health & FW  
Nirman Bhawan  
New Delhi-110 011.

... Applicants

Versus

Union of India - through:  
The Secretary,  
Govt. of India  
Deptt. of Statistics,  
Ministry of Planning & PI

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Sardar Patel Bhawan  
Ministry of Home Affairs  
New Delhi-110 001.

The Deputy Secretary (ISS)  
Deptt. of Statistics  
Min. of Planning & PI  
Parliament Street  
Sardar Patel Bhawan  
New Delhi - 110 001.

... Respondents.

O R D E R (Oral)

Hon'ble Shri Justice S.C.Mathur, Chairman

This case came up before the vacation Bench on 23.6.1995, when an order was passed to the following effect:

"The applicant prays that the matter may be taken up early for hearing. Hence list the case on 6.7.1995 for consideration on the question of Interim Relief before appropriate bench."

2. This is how, this case has been listed today before the present Bench. Applicants 1 and 6 have appeared in person and have stated that they are prepared to argue the case for the purpose of admission also. Accordingly, we have heard them on the admission of the OA.

3. On behalf of the respondents, Ms. Vishiv Maini, Under Secretary, Department of Statistics is present. Reliefs No.(i), (ii) and (iii) sought by the applicants in the present OA are as follows:

"(i) quash the phrase "IN ORDER OF" occurring in Rule 8(1)(b) of ISS Rules 1961 w.e.f. 7.7.1973.

(ii) quash the proviso to Rule 8(1)(b)(1) w.e.f. 27.10.1973.

(iii) quash the Phrase "OTHERWISE THAN BY PROMOTION" occurring in Rule-13 of ISS Rules 1961 w.e.f. 7.7.1973."

4. During the course of arguments, no arguments were advanced on the above three prayers. The argument advanced was that in view of the order passed by their Lordships of the Supreme Court on 27.3.1995, in IA No.9 of 1995 arising

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from Contempt Petition in Civil Appeal No.3844/89, the applicants were threatened with reversion from the posts presently held by them. The argument of applicant No.1 was that the Judgment of the Supreme Court has to be implemented along with the Office Memorandum dated 27.11.1972, which provides for reservation in favour of SC/ST in promotion. To this effect no relief has been claimed in the relief clause. However, since the matter is purely legal, we proceed to consider the plea.

5. The present application is the result of litigation initiated by Shri T.R.Mohanty, a Member of the same service to which the present applicants also belong. That litigation was instituted in the Calcutta Bench of this Tribunal. The application of Shri Mohanty was registered as OA No.336/88.

6. The applicants and Shri Mohanty are members of Indian Statistical Service (hereinafter called as ISS) governed by the Indian Statistical Service Rules, 1961, (for short Rules). Rule-13 as it stood before the amendment provided as follows:

"Appointments to the service made OTHERWISE THAN BY PROMOTION will be subject to orders regarding special representation in the service for Scheduled Castes and Scheduled Tribes issued by the Government from time to time." (Emphasis supplied)".

7. In view of this provision reservation in favour of the Scheduled Castes and Scheduled Tribes in accordance with the orders issued by the Government was possible only at the stage of direct recruitment and not at the stage of promotion. By Office Memorandum dated 27.11.1972, Government introduced the policy of reservation in promotions also. Without amendment of rules, certain

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promotions were made of Scheduled Castes and Scheduled Tribes officers without consideration of General category officers. Later rules were amended and amended Rule-13 reads as follows:

"Appointments to the service shall be made subject to the orders relating to reservation for SCs and STs issued by the Central Government from time to time."

8. This amendment was given retrospective effect from 27.11.1972. In the OA filed by Shri T.R.Mohanty, his plea was that the amendment of the rule could not be given retrospectivity. This plea was accepted by the Calcutta Bench of this Tribunal and also by their Lordships of the Supreme Court in the appeal filed by the UOI and Others against Shri T.R.Mohanty & Others (CA No.3844/89, decided on 14.7.1994). While disposing of the appeal their Lordships observed as follows:-

"We, therefore, declare amended Rule-13 to the extent it has been made operative retrospectively to be unreasonable, arbitrary and, as such, violative of Articles 14 and 16 of the Constitution of India. We strike down the retrospective operation of the rule. In the view we have taken on the point it is not necessary to deal with the other contentions raised by Shri Mohanty."

9. The Calcutta Bench of this Tribunal whose Judgment was affirmed by their Lordships of the Supreme Court had, while allowing the application, provided as follows:

"The applicant, Shri T.R.Mohanty will be deemed to have been promoted to Grade III with effect from 24.11.1987 and will be placed above respondent Nos.3 to 10 in the seniority list of Grade III. He will be paid salary in the scale of Grade III w.e.f. 24.11.1987 and the arrears salary shall be paid to him within a period of 4 (four) months from date of this order."

10. Earlier, the Bench observed "we would not however, like to disturb the promotions already given."

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11. The consequence of the orders passed by the Calcutta Bench and Supreme Court was that suitable officers who had been superseded on account of the application of reservation policy, were to be promoted without reverting any SC or ST officer who had been promoted not on the basis of seniority and merit but only by application of the policy of reservation. The number of sanctioned posts was limited and therefore, the Department found it difficult to implement the judicial orders. It was in these circumstances that IA No.9/95 was filed on behalf of the UOI. While disposing of this application by order dated 27.3.1995, their Lordships have observed as follows:

"Appreciating the difficulties, highlighted by the Union of India, in this application, we are of the view that the UOI should make all efforts to protect the promotions of Scheduled Caste candidates, if possible. We are further of the view that if in the implementation of the directions given by this Court, it becomes necessary to revert Scheduled Caste candidates from the higher posts to which they have been promoted under the existing rules (unamended) or under the amended rules, that may be done and we modify the Tribunal's Judgment to that extent."

12. In view of these observations, it became possible for the Department to revert SC candidates who had been promoted on the basis of reservation policy. However, their Lordships have added the caveat that reversion of SC officers may be resorted to only when it is absolutely necessary. The applicants assert that while implementing this direction of their Lordships the department should take note of the OM dated 27.11.1972 and apply the reservation policy contained therein. When applicant No.1 who argued the case in person was asked whether this Office Memorandum had been considered by their Lordships in the earlier litigation, he replied in the negative. We required him to produce before us a copy of the Judgment dated 14.7.1994

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passed by their Lordships in (UOI vs. T.R.Mohanty in CA No.3844/89) which he did. At page-4 of the copy produced before us, it is observed as follows:

"Executive instructions dated 27.11.1972 issued by the Government of India provide reservation for Scheduled Castes and Scheduled Tribes in the posts filled by promotion on the basis of seniority subject to fitness. The amended rule 13 was made operative with effect from November 27, 1972 with a view to extend the benefit of reservation in promotional posts in the service in terms of the executive instructions of the Government dated November 27, 1972."

13. It is therefore, incorrect on the part of applicant No.1 (Shri Mool Chandra) to say that the Office Memorandum dated 27.11.1972 was not considered by their Lordships. In fact, in the earlier litigation the contention of the general category officers was that in view of statutory Rule-13, as it stood prior to amendment, reservation policy envisaged in O.M. dated 27.11.1972 could not be applied in promotions; this plea was accepted and while disposing of IA No.9/95 their Lordships have not permitted the UOI to now apply the said OM while implementing the order of the Calcutta Bench as confirmed by the Supreme Court.

14. Applicant No.1 has submitted that Office Memorandum dated 27.11.1972 was issued in order to protect the interest of the Scheduled Castes and Scheduled Tribes and the same has to be given effect to. The plea is covered by judgments passed in earlier litigation and it is not open at this stage. Acceptance of the plea will amount to negating the effect of the Supreme Court orders which is not permissible.

15. The 4th relief claimed in the application is to affirm the promotions of the applicants made vide orders dated 24.11.1987 and 22.5.1986. Admittedly by order dated

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24.11.1987, applicants No.1, 2 and 3, namely, Shri Mool Chand, Shri Shiv Kumar and Shri Babu Lal respectively had been promoted. Their promotions were specifically under challenge in the OA before the Calcutta Bench. They were impleaded also. In their presence, the Calcutta Bench held the promotions to be illegal. The order of the Calcutta Bench has been affirmed by the Supreme Court. There is no occasion at this stage to affirm these promotions. These promotions have to be protected only if possible, as already provided in Supreme Court order dated 27.3.1995.

16. It has been stated on behalf of the applicants that by order dated 22.5.1986, the remaining applicants, namely Shri Bhagwan Das, Shri Shiv Kumar and Shri Babu Lal were promoted. It is stated that this promotion order was not under challenge before the Calcutta Bench or before their Lordships of the Supreme Court. It has also been submitted that these applicants had not been impleaded in the application before the Calcutta Bench of the Tribunal.

17. On behalf of the Respondents, Ms. Vishiv Maini, Under Secretary, Department of Statistics, has drawn our attention to the following observations in the order of their Lordships in the Civil Appeal No.3844/89:-

"It is stated by Shri Mohanty in his counter affidavit that the reservation was for the first time introduced on May 22, 1986 and thereafter on September 1, 1987. According to him, the said two orders did not affect him. The order applying reservation quota was issued on November 24, 1987 when respondents 2 to 9 were promoted and the same was successfully challenged by Mohanty before the Tribunal. It has been categorically stated by Mohanty that until May 22, 1986 the reservation policy was not made applicable by the Cadre Controlling Authority in the service and in fact no Scheduled Caste or Scheduled Tribe officer was given out of turn promotion superseding the general category officers."(emphasis supplied).

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18. From this it would appear that their Lordships were not oblivious of the order of the promotion dated 22.5.1986 of which affirmance is sought through the present application. Mohanty did not challenge that order because SC officers promoted by that order were senior to him. This is apparent from the emphasised portion in the above observation. The order cannot be affirmed if it is contrary to the law laid down by their Lordships. The judgment of the Supreme Court cannot be avoided on the ground that some of the applicants were not party to the earlier litigation as the said judgment is Law within the meaning of Article 141 of the Constitution, and it is binding on all Courts, including the Tribunals, within the Territory of India.

19. Last relief claimed by the applicants is "pass the appropriate order against the Government in view of para 4.20 and 4.21." Averments made in these paragraphs are to the following effect:-

"4.20: As per Department of Personnel OM NO.8/12/71-Estt(SCT) dated 21.9.71 (Annexure VI), it was the duty of the Cadre Controlling Authority of ISS to amend the rule 13 of ISS Rules, 1961, but inspite of another two reminders from DoPT dated 7.3.78 and 29.8.84 it was not done over a period of 18 years. This act of the Department is very well covered under DoP & AR OM No.36011/7/80-Estt.(SCT) dated 1.11.80 (Annexure VII). In view of DoP OM dated 1.11.80 necessary order may be passed against the Department of Statistics.

4.21: The judgment and order in OA No.336/88 between Shri T.R.Mohanty vs. Union of India and ORS, the judgment and order in CA No.3844/89 between Union of India and ORS vs. T.R.Mohanty and others are the resultant of the quality of replies submitted by the Department of Statistics." (emphasis supplied).

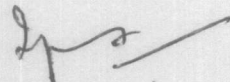
20. From the emphasised portion in paragraph 4.21 it appears that the applicants are blaming the officers of the Central Government for their inefficient handling of the earlier litigation which resulted in orders adverse to the

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interest of SC officers. Even by acceptance of this allegation, the effect of the judgment of the Supreme Court is not diluted.

21. The total effect of this OA is that the applicants want to wriggle out of the situation created by the Supreme Court order dated 27.3.1995. Since the Tribunal is bound by the law declared by the Supreme Court and by the orders and directions issued by it, the applicants have chosen wrong forum for ventilating their grievance. In fact they are trying to flog a dead horse.

22. In view of the above, the OA lacks merit and is hereby dismissed in limine.

  
(K. MUTHUKUMAR)  
MEMBER (A)

  
(S.C. MATHUR)  
CHAIRMAN

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