

Central Administrative Tribunal, Principal Bench

C.P. No. 9 of 1999 In
O.A. No. 1241/97

New Delhi, this the 11th day of October, 2000

Hon'ble Mr. S. R. Adige, Vice Chairman(A)
Hon'ble Mr. Kuldip Singh, Member (J)

(J)

1. Radhey Shyam Gupta
S/o Late Shri Rameshwar Prasad
R/o 1102 Kucha Natwar Chandni Chowk
Delhi-110 006.
2. Shri Indresh Pal Saxena
S/o Shri R.S.D. Saxena
R/o D-16 DDA Flats,
Timarpur, Delhi.
3. Shri M.M. Sharma
S/o Shri R.C. Bhatt
R/o 75/6, Model Town, Delhi.
4. Shri Vinod Kumar Nirbhai
S/o Shri Ganga Vallabh Nirbhai
R/o J-144, Kartar Nagar,
Delhi.
5. Shri Jai Bhagwan Gupta
S/o Shri Inder Mal
R/o B-3/66, Phase-II,
Ashok Vihar, Delhi.Applicants

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Shri Omesh Saigal
Chief Secretary, 5, Shannath Marg,
Govt. of NCT of Delhi
Delhi-54.
2. Ms. Neeru Nanda
Principal Secretary (Education),
Old Secretariat, Government of NCT of Delhi,
Delhi.
3. Ms. Archana Arora,
Director of Education, Directorate of Education,
Old Secretariat, Delhi.Respondents

By Advocates: Mrs. Avnish Ahlawat and Shri Vijay Pandita.

ORDER

By Hon'ble Mr. Kuldip Singh, Member (J)

This Contempt Petition has been filed by the applicants contending that despite the CAT, PB orders dated

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29.6.98 in OA 1241/97 whereby the promotion of SC/ST candidates as Vice Principals had been quashed, the respondents-department is still continuing to retain the SC/ST candidates on the promotional post of Vice Principal which constitutes contempt of court.

2. Facts in brief are that the applicants had filed OA No.1241/97 whereby they had challenged respondents orders dated 15.7.1996 and 9.9.1996 whereby certain teachers had been promoted as Vice Principals on purely ad hoc and emergent basis for a period of 6 months or till regular appointments were made, whichever was earlier by order dated 29.6.98.

3. That OA was disposed of by order dated 29.6.98 with the following directions:-

"In the circumstances of the case we have no other alternative except to set aside the impugned promotion lists dated 15.7.96 and 9.9.1996 as illegal. We direct the respondents to redo the promotions either regular or ad hoc by following the law laid down by the Hon'ble Supreme Court in the case of R.K. Sabharwal (Supra). The respondents shall first identify the source of vacancies yearwise and shall not bunch together all the vacancies. There is no justification to issue even ad hoc promotions only to the reserved candidates and not consider senior general candidates. We also direct that after the number of vacant posts are ascertained the promotions can be considered only within 3 to 5 times of the said number depending on whether adequate number of SC & ST candidates are available. Even for ad hoc promotion the procedure laid down cannot be ignored. The claim of senior persons cannot be brushed aside arbitrarily promoting persons who are junior. One important guideline for an ad hoc promotion is observance of seniority. We further direct that this exercise shall be completed within a period of 6 weeks from the date of receipt of a copy of this order".

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4. Notice on this contempt petition was issued upon which respondents had filed their reply affidavit on 6.4.99 wherein they had submitted that there was no wilful contempt on their part. They state that the orders dated 15.7.96 and 9.9.1996 which were impugned, had been cancelled and as per Tribunal's directions regular promotion orders had been issued on 19.3.99 after taking into account year-wise vacancies. It was thus contended that the Tribunal's directions had been complied with and the delay caused in implementing the same was only due to the fact that the seniority list from 1976 onwards was not available and it was issued only on 10.2.99.

5. Applicants were not satisfied with this compliance and they filed their rejoinder on 23.4.99 submitting that the respondents had completely ignored the findings/directions given by the Tribunal and had issued the same orders which had been quashed by the Tribunal earlier. It was contended that the vacancies had not been calculated year-wise and the roster point as declared by O.M. dated 16.7.97 pursuant to R.K. Sabharwal's case, had not been adhered to. It was further contended that persons have been promoted, who did not even come within the zone of consideration. It was further urged that by these orders dated 19.3.99 all those persons promoted as Vice Principals had been en bloc

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made senior to the general category candidates even though the SC/ST candidates were not within the zone of consideration.

6. The matter was heard on 4.6.99. In its order passed that day the Bench had observed that respondents' affidavit dated 6.4.99 was sketchy and the methodology adopted by the department in issuing the impugned orders was not clear. Respondents were given another opportunity to file additional details showing compliance of the Tribunal's directions step by step within one month.

7. Thereafter respondents filed an additional affidavit on 13/23.8.99 in which it was explained that this case related to the promotion of male teachers as Vice Principals, for which a separate seniority list was being maintained. It was averred that the final seniority list for male teachers for period 1965 to 1970 was circulated on 12.10.1988 starting from S.No.978 to 1801, and the seniority list for the period from 1970-75 was circulated on 15.9.88 which again started from S.No.1 instead of S.No.1802 and it was from S.No.1 to 514. Yet another seniority list for the period 1976-90 was circulated on 10.2.99 which again started from S.No.1 to 1614.

8. It was further pleaded that after the judgment of the Bench dated 29.6.98, the DPC met on 8.3.99, 10.3.99 and 16.3.99, and at that time seniority list upto 1976 and 1990 were available. The DPC as per the yearwise position for the year 1995-96, first considered the case of SC/ST category candidates which was, in fact, 25 SC and 12 ST. For the year 1995-96 the normal zone of consideration was 190 and the



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extended zone of consideration for SC/ST category was 465.

Since no SC candidate was available in the 1965-70 seniority lists, the seniority list of 1970-75 and 1976-90 were acted upon. Out of the 1970-75 seniority lists only, 179 teachers are working, the rest of them having retired. As such the zone of consideration of SC/ST category was 1 to 514 of seniority list of 1970-75 and 1 to 535 of seniority list of 1976-90. The respondents have also averred that those 33 SC/ST candidates who had been promoted enbloc are those who had not been given promotion in the earlier DPCs held in 1995 and 1996. It is asserted that applicants should not have any grievance in this regard as those SC/ST candidates have been placed at the bottom of the promotion order of 1995-96. Likewise for the years 1996-97, 1997-98 and 1998-99 also the yearwise vacancy position have been calculated and individuals promoted accordingly. It is urged that if any individual has any grievance in regard to his position in the seniority list, that is a cause of action which cannot be agitated in contempt proceedings.

9. Petitioners are still not satisfied. In their additional reply their main objection is that respondents have given total sanctioned strength of Vice Principals as 996 without disclosing the actual number of vacancies which became available in the years 1995, 1996, 1997, 1998 and 1999. It is urged that respondents have not even given the break-up of male and female vacancies because the total number of posts are divided into male and female category but without giving the breakup, the respondents have jumped to the conclusion that there were 149 SC posts and 75 ST posts which is totally wrong as the ratio has to be seen only from 1995 onwards, that too by showing the category of male and

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female separately. Respondents statement that only 150 SC/ST candidates are in occupation of Vice Principals posts is also challenged because according to applicants, respondents had already promoted 96 male and 39 female vide order dated 19.3.99 and had thereafter promoted 14 male and 10 female teachers vide order dated 5.8.99. The total thus comes to $96 + 39 + 14 + 10 = 159$.

10. Other infirmities/inaccuracies in respondents additional reply have also been alleged and it is also urged that respondents have unduly extended the zone of consideration for SC candidates as per their own averments, which is contrary to the directions given by the Tribunal, and have thereby committed contempt.

11. We have heard the learned counsel for the parties and have gone through the records of the case as well as the departmental records, including the minutes of the DPC held pursuant to the Tribunal's order dated 29.6.98.

12. The main consideration before us is whether the respondents have complied with the directions given in the OA as reproduced in para 2 above. The data submitted before the DPC shows that for the year 1995-96 there were 25 SC and 12 ST vacancies and they have separately given the normal zone of consideration and the extended zone of consideration. Along with that there are explanatory notes also showing the manner of calculation of yearwise vacancies for the years 1995-96; 1996-97; 1997-98; 1997-98 and 1998-99, together with the calculation of the zone of consideration (including extended zone of consideration) for filling up the vacancies.

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13. Thus a perusal of the material on record reveals that there has been substantial compliance of the directions given by the Tribunal. If applicants are still not satisfied with respondents implementation of the Tribunal's order dated 29.6.98, it is open to them to challenge the same separately through appropriate original proceedings in accordance with law, if so advised. In this connection the Hon'ble Supreme Court in the case of J.S. Parihar Vs. G. Duggar & Others, JT 1996 (9) SC 608 is very relevant:-

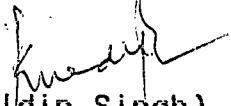
"Once there is an order passed by the Government on the basis of the directions issued by the Court, then arises a fresh cause of action to take redress in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with those instructions. But that would be a fresh cause of action (and) cannot be considered wilful violation of the order".

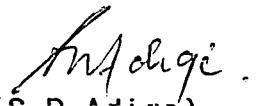
14. Mrs. Chhibber has contended that respondents order dated 19.3.99 have not been passed on the basis of this Tribunal's direction dated 29.6.98, but the aforesaid ruling makes it clear that even if those orders are not in conformity with the Tribunal's directions, it cannot be considered wilful disobedience. Reason to initiate contempt proceedings would arise when there is contumacious, deliberate, wilful or defiant disobedience/non-compliance with court orders, with the objective of upholding the majesty of the law. Clearly the present case is not one of such a nature. As pointed out above, respondents order dated 19.3.99 passed pursuant to the Tribunal's directions dated 29.6.98 gives applicants a fresh cause of action. If they are aggrieved by those orders, it is open to them to challenge the same separately in accordance with law if so advised.

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15. Giving applicants liberty, as aforesaid, these
contempt proceedings are dropped. Notices discharged.


(Kuldip Singh)
Member(J)


(S.R. Adige)
Vice Chairman(A)

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