

US
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

CP NO. 124/2004 IN
MA NO. 1225/2004.
MA NO. 1226/2004
OA NO. 2253/2000
MA NO. 1292/2004

This the 6th day of July, 2004

HON'BLE SH. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE SH. KULDIP SINGH, MEMBER (J)

Ramesh Chandra
S/o Shri Chokhey Lal
R/o A-20, Overseas Apartments,
9/22, Rohini,
New Delhi-110 085.

...Petitioner

(By Advocate: Sh. Sewa Ram)

Versus

Lt. General V.G. Patankar
Quarter Master General & Chairman of DPC
Army Headquarters, Sena Bhavan,
Ministry of Defence,
South Block,
New Delhi-110 011.

..Respondents

(By Advocate: Sh. P.P. Malhotra alongwith
Sh. R.V. Sinha and Sh. Vineet Malhotra)

O R D E R (ORAL)

By Sh. V.K. Majotra, Vice Chairman (A)

Learned counsel heard.

2. OA-2253/2000 was allowed vide order dated 16.7.2003
(Annexure P-1) with the following observations/directions to
the respondents:-

"In the above view of the matter, the OA succeeds and is allowed. The impugned order promoting Sh. Issar to the post of JSO is quashed and set aside with attendant consequences. Respondents are directed to hold a review DPC to consider the promotion of the applicant to the post of JSO from the date on which Sh. Issar was wrongly promoted and if found fit to promote him with all consequential benefits. This exercise shall be completed within three months from the date of receipt of a copy of this order. However, as Shri Issar, respondent No.4, is found to have already retired, we order as a

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matter of indulgence that no recovery be made from his pay and allowances drawn by him in the higher post of JSO. No costs."

3. Learned senior counsel Sh. P.P.Malhotra appearing on behalf of the respondents pointed out that substantial developments have taken place in the matter after the aforesaid orders were passed in applicant's OA. He stated that certain General candidates had filed a review petition No.240/2003 against the Tribunal's orders which was allowed to be withdrawn with liberty to file fresh Original Application. An OA No.2272/2003 was filed. Another OA No.1350/2003 was also filed by the applicant himself. Both these OAs were decided by a common order dated 3.2.2004 (Annexure R-3) with a direction that applicant Ramesh Chandra could seek review of the earlier decision of this Tribunal or challenge the same. Learned counsel particularly drew our attention to the following paragraphs of the said orders:-

"16. In that event, on behalf of the general candidates, it was urged that since they were not parties, therefore, they can file the OA in their own right. They explained that there are only three posts for promotion in the next higher grade of Junior Scientific Officer. It was not disputed that one post has already been occupied by a Scheduled Caste candidate.

17. Taking advantage of this fact, it is contended that if Shri Ramesh Chandra a reserved candidate is also to be promoted, this would exceed 50% quota pertaining to the said post.

18. This position has been settled and we only refer to the decision rendered by the Supreme Court in the famous case of Indra Sawhney and Others v. Union of India & Others, 1992 Supp(3) SCC 210, wherein it was emphatically held that the reservations contemplated in Article 16(4) should not exceed 50%. Once it is so, necessarily, the post cannot be given to Shri Ramesh Chandra, a reserved category candidate.

19. This question had not been gone into in OA No.2253/2000. Not only that, the general candidates presently before us were even not parties therein. In that event, the said

decision will not operate as res-judicata. We clarify that only parties to the earlier Original Applications filed by Shri Ramesh Chandra would be bound by that order.

21. General candidates relied upon the latter portion of the same, to contend that backlog or carried forward reserved vacancies will automatically lapse in a cadre as soon as the combined representation or promotion exceeds or is more than prescribed number of posts. This answers the queries so much thought of. Therefore, keeping in view the clear position referred to above, we deem it unnecessary to refer this matter to Larger Bench.

23. The impugned order herein clearly indicates that Shri Ramesh Chander cannot be shown senior because of the decision of this Tribunal in OA 966/1999.

24. At the outset, we make it clear that if Shri Ramesh Chander so feels, he can seek review of the order in accordance with law or challenge the same before an appropriate forum. But after the amendment of Article 16(4A) of the Constitution, when OM 21.1.2002 had been issued, it does not put an end to the orders already passed. We have already referred to above that Article 16(4A) does not confer a fundamental right. Once the OM of 21.1.2002 has not been set aside, the judicial orders that had been passed, the respondents in OA 1350/2003 can rightly take shelter of these facts, because of the verdict of this Tribunal and the respondents have not placed him senior and to consider him for promotion."

4. It was alleged on behalf of the respondents that applicant had not approached this Tribunal in the contempt petition with clean hands inasmuch as he has not disclosed information brought out in paragraph 3 above, which was within his personal knowledge. He has also concealed factum of having filed a Civil Writ Petition No.2370/2004 (Annexure R-4 Colly.) alongwith a copy of stay application against Tribunal's orders dated 3.2.2004 and had also made a prayer for compliance of order dated 16.7.2003 passed in OA-2253/2000. In the stay application dated 19.2.2004 before the Hon'ble High Court, applicant himself had described his comprehension of the matter to the effect that by judgment dated 3.2.2004 in

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OA-2272/2003 "a coordinate bench of the Tribunal has actually intended and effectively set aside the judgment order dated 16.7.2003 in OA-2253/2000". While applicant had filed this stay application on 19.2.2004 and the present CP on 25.3.2004 yet these facts were not disclosed in the contempt petition. Learned counsel for respondents contended that it indicates that according to the applicant himself the order dated 16.7.2003 could not have been complied having been set aside and also challenged by the applicant himself.

5. On the basis of the above contentions, learned counsel of the respondents maintained that in effect applicant himself is guilty of contempt and has abused process of law through the present contempt petition.

6. On the other hand, learned counsel of the applicant stated that once the applicant had received a judgment in his favour by order dated 16.7.2003 in OA-2253/2000 he did not deem it necessary to disclose the facts ^{which have now been} brought out on behalf of the respondents. He stated that the Tribunal in orders dated 3.2.2004 Annexure R-3 in OA-1350/2003 with OA-2272/2003 had stated that a question raised in these OAs had not been gone into in OA-2253/2000. The General candidates present before the Tribunal in 2272/2003 and 1350/2003 were not parties in OA-2253/2000. As such the said decision will not operate as res judicata. It was clarified that only parties to the earlier original application filed by Sh. Ramesh Chandra, applicant would be bound by that order. Learned counsel further submitted that he had approached the Hon'ble High Court on a larger issue and he has merely wanted compliance of directions contained in Tribunal order dated 16.7.2003 in OA-2253/2000.

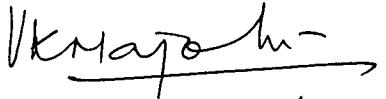
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7. We have considered the rival contentions. It was imperative for the applicant to have disclosed all the subsequent developments including the pendency of the writ petition before the Hon'ble Delhi High Court as also the pleadings in the stay application made before the Hon'ble High Court. It is for the Tribunal to consider whether or not those facts have a bearing on adjudication of the contempt petition. He could not have assumed that all the subsequent developments after the Tribunal's order were irrelevant to the merits of the contempt petition. We deprecate the mindless, self-centred-blind conduct of the applicant which can result in abuse of process of law leading to serious repercussions.

8. The Tribunal's order dated 3.2.2004 in OA-1350/2003 having been assailed before the Hon'ble High Court, which according to the applicant himself amounts to setting aside of directions of this Court made in order dated 16.7.2003 in OA-2253/2000, in our considered view respondents have not committed any wilful disobedience of Tribunal's orders. As such CP is dismissed and notices to the respondents are discharged.


(KULDIP SINGH)
Member (J)


(V.K. MAJOTRA) 6.7.04
Vice Chairman (A)

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