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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

C.P. NO.89/2004

in

O.A. NO.885/2000

This the 15th day of July, 2004

HON'BLE SHRI V.K.MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

1. Smt. Saroj Bala W/O Deepak Sachdeva,
R/O 5-L/125, NIT,
Faridabad (Haryana).
2. Smt. Sunita Bedi W/O Vijay Kumar,
R/O E-15/83, Sector 8, Rohini,
Delhi-110085. ... Applicants

(By Shri V.S.R.Krishna, Advocate)

-versus-

1. Shri S.C.Tripathi,
Secretary, Department of Education,
Ministry of Human Resources Development,
Shastri Bhawan,
New Delhi-110001.
2. Shri Satish Loomba,
Director, Directorate of Adult Education,
Ministry of Human Resources Development,
10, Jamnagar House, Shahjahan Road,
New Delhi-110011.
3. Shri B.K.Mishra,
Chairman, Staff Selection Commission,
Block No.12, Kendriya Karyalay Parisar,
Lodhi Road, New Delhi-110003. ... Respondent

(By Shri K.C.D.Gangwani, Advocate)

O R D E R

Hon'ble Shri V.K.Majotra, V.C.(A) :

OA No.885/2000 was disposed of vide order dated 3.9.2001 (Annexure-CP/1) with the following observations/directions to the respondents :

"10. In our view, ends of justice would be met if respondents consider the cases of the applicants to grant them relaxation from appearing in the tests other than those of stenography and typewriting, in terms of the

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relevant rules. Thus, the respondents may through the aegis of Staff Selection Commission consider holding examination in stenography and typewriting for the applicants within a period of six months from the date of communication of these orders by giving them age relaxation as well. In case the applicants are selected on the basis of such a test to be held after granting relaxation they should be considered for re-engagement as Stenographers Grade-D on the first available vacancies."

2. It is alleged that despite filing of a contempt petition for implementation of the aforesaid directions of the Court, respondents did not take any action to implement Tribunal's order dated 3.9.2001. Applicants filed another OA No.2063/2003. On its own motion, the Tribunal issued a contempt notice in CP (Civil) No.326/2003 in OA No.2063/2003. Vide order dated 21.10.2003 (Annexure-CP/3) the contempt proceedings were discharged taking note of the statement made on behalf of the respondents that "they have intimated the applicants to appear in the skilled test for stenography, which is scheduled to be held on 30.10.2003". Ultimately, the skilled test was conducted under the aegis of Staff Selection Commission on 30.10.2003. Applicants were declared successful in the test vide Annexure-CP/5 dated 10.12.2003. The learned counsel of the applicants herein stated that although the applicants have qualified the skill test dated 30.10.2003, respondents have not taken any steps for re-engagement of the applicants. The learned counsel contended that there are adequate number of vacancies against which ad hoc arrangements have been made by the respondents. The learned counsel also relied upon Directorate of Adult Education's document dated 23.10.2003 (Annexure-C/1 to the rejoinder) to establish

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that in the Performance Budget for 2004-2005 in respect of Department of Elementary Education & Literacy, respondents have shown that out of six posts of Stenographers Grade-III in the scale of Rs.4000-6000, one post is vacant. He also referred to Annexure-C/3 which is Establishment Check Register indicating that one out of six posts of Stenographer Grade-III is vacant. He further stated that one vacancy has been created by one Stenographer proceeding on deputation. In their rejoinder in this CP the applicants have pointed out that Shri. Sunil Kumar and Shri Hari Singh are officiating on ad hoc basis as Stenographers Grade-D in Directorate of Adult Education to the detriment of applicants.

3. The learned counsel also filed a copy of employment notice No.1/2004 published in Employment News (26th June-2nd July, 2004) relating to invitation for filling up one post of Junior Stenographer (English). This notification has been issued by the Department of Secondary & Higher Education. The learned counsel stated that one applicant could be accommodated against this post as well.

4. On the other hand, the learned counsel of respondents pointed out that Sunil Kumar and Hari Singh were appointed as Stenographers Grade-D on ad hoc basis w.e.f. 27.9.1988 and 8.12.1987 respectively, i.e., much before the applicants' engagement on contract basis in the Directorate of Adult Education. He further pointed out that averment made in respect of Sunil Kumar and Hari Singh had been dealt with by the Tribunal in its orders

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and as such this issue cannot be raised again in the contempt petition. The learned counsel pointed out that although one vacancy of Stenographer has been shown in the Performance Budget, this is an ad hoc vacancy in the grade of Stenographer Grade-D and as one Stenographer Grade-D is working as Stenographer Grade-II on ad hoc basis, he has a lien on the same post. As such, the same cannot be filled up on regular basis. As there is no regular post of Stenographer Grade-D lying vacant in the Directorate of Adult Education, applicants could not be accommodated. The learned counsel further submitted that respondents had tried their best to get the applicants accommodated in other offices under the Ministry of Human Resources Development by circulating their applications. In response to this search, an autonomous body Auroville Foundation, Tamil Nadu offered the post to both the applicants (Annexure R-II), but the applicants did not respond to that offer.

5. We have considered the contentions raised from both sides.

6. Objection taken by the applicants in regard to Sunil Kumar, respondent No.4 in OA No.885/2000 was dealt with in order dated 3.9.2001 by the Tribunal. As the submissions made on behalf of Sunil Kumar in response to contentions of the applicants were not contradicted by the applicants, it was held in Tribunal's order that the case of Sunil Kumar as regards his recruitment, continuation, regularisation etc., was entirely different than that of the applicants, and as such, question of any

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discrimination meted out to applicants vis-a-vis Sunil Kumar was held not to have arisen at all. Respondents have supplemented that Sunil Kumar and Hari Singh were appointed as Stenographers Grade-D in Directorate of Adult Education on ad hoc basis on 27.9.1988 and 8.12.1987 respectively, i.e., much before the applicants' engagement on contract basis in the Directorate. This has not been contradicted. As such, applicants cannot have any claim vis-a-vis the engagement of Sunil Kumar and Hari Singh who had been engaged prior to the applicants on ad hoc basis. Respondents have contended that the vacancy shown in the budgetary statement for the year 2004-2005 is not a regular vacancy as claimed by the applicants. It is an ad hoc vacancy as one Stenographer Grade-D is working as Stenographer Grade-II on ad hoc basis and has a lien on the same post. Respondents have stated that re-engagement of applicants could be considered only against regular vacancies of Stenographers Grade-D and not ad hoc vacancies. The learned counsel of respondents further submitted that there is a ban in terms of DOP&T OM dated 23.7.2001 (Annreure R-III) on filling up vacancies on ad hoc basis and even such vacancies have to be filled up with concurrence of the DOP&T.

7. In view of the Tribunal's order dated 3.9.2001 in combination with contention of the respondents that Sunil Kumar and Hari Singh had been engaged as Stenographers Grade-D on ad hoc basis much prior to the applicants, case of discrimination has not been established on behalf of the applicants. Admittedly,

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there is one vacancy of Stenographer Grade-D on which one Stenographer Grade-D working as Stenographer Grade-II on ad hoc basis is stated to have a lien and as such, cannot be used for accommodating one of the applicants. There is no second vacancy available. While the learned counsel of applicants stated that against one vacancy shown in the Performance Budget one of the applicants could be accommodated, the learned counsel of respondents stated that Tribunal's direction relates re-engagement of the applicants against regular vacancies of Stenographers Grade-D and not ad hoc vacancies. This certainly is contentious issue which cannot be dealt with in a contempt case.

8. In result, we do not find any deliberate and contumacious disobedience of directions of this Court at the hands of the respondents. The contempt petition is, therefore, disposed of discharging the notices to the respondents.

9. Applicants can seek remedy for their grievances as per law.

S. Raju
(Shanker Raju)
Member (J)

/as/

V. K. Majotra
(V. K. Majotra)
Vice-Chairman (A)

15.7.04