

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

C.P.NO.97/2002 IN O.A.NO.604/2000

(AO)

TUESDAY, THIS THE 17TH DAY OF SEPTEMBER, 2002

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)
HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Shri Madan Lal
Asstt. Commissioner
Kanpur Central Excise Commissionerate
r/o Flat No.29, Type-IV
Laxman Bagh, Swaroop Nagar, Kanpur

(By Advocate: Shri M.L. Ohri) ..Applicant

Versus

1. Shri (Dr.) S. Narayan
Secretary
Ministry of Finance
Department of Revenue
North Block, New Delhi
2. Shri K.L. Verma
Chairman
Central Board of Excise & Customs
Ministry of Finance
Department of Revenue
North Block, New Delhi

(By Advocate s : Shri R.N.Singh & Shri R.V.Sinha) ..Respondents

O R D E R (ORAL)

Shri S.A.T. Rizvi:-

Alleged non-compliance of the directions issued by this Tribunal on 7.9.2001 in OA-604/2000 forms the basis of the present Contempt Petition. By the said order, the Tribunal quashed and set aside the order of penalty dated 17.5.1999 and directed that the petitioner's pay be restored to him. By the same order, the respondents were given the liberty to continue the departmental

proceedings against the petitioner from the stage of examination of certain witnesses. A further condition stipulated in the said order was to the effect that if the respondents fail to take up the departmental proceedings as above within three months, they (respondents) shall consider the petitioner's claim for promotion to the Senior Time Scale (STS) and on being found fit for the purpose, promote him from the date the petitioner's juniors were promoted. Grant of consequential benefits was also ordered by the Tribunal. The respondents were to proceed in the matter in accordance with the rules and instructions and judicial pronouncements.

2. The respondents' case is that having failed to take up the departmental proceedings against the petitioner within the period of three months laid down by the Tribunal, they have considered the petitioner's claim for promotion to the STS in the manner directed by the Tribunal and, therefore, the present Contempt Petition deserves to be dismissed.

3. We have heard the learned counsel on either side at length and have perused the material placed on record. We have ~~2~~ perused the extract taken from the DOP&T's OM dated 12.1.1988 supplied to us on behalf of the respondents. We have also perused the letter dated 28.6.2002 issued by the respondents to the petitioner, a copy of which has been supplied by the learned counsel appearing on behalf of the respondents.

4. The period of three months stipulated in the Tribunal's directions dated 7.9.2001 expired on 7.12.2001 without the respondents being able to take up the departmental proceedings against the petitioner. MA-408/2002 filed on behalf of the respondents seeking extension of time for complying with the directions of this Tribunal was rejected. (A2)

5. The petitioner was initially considered for the grant of ad-hoc promotion to the STS by the DPC held on 5/15/17.10.1990. As the conduct of the petitioner was then under investigation, the recommendations made by the DPC in relation to him were put in the sealed cover by following the procedure laid down in the DOP&T's OM dated 12.1.1988 which, *inter alia*, provides that in the case of "Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise", the recommendations of the DPC were to be placed in a sealed cover. ^{2. By about} ~~at~~ the same time, disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 were initiated against the petitioner for imposition of a major penalty. On conclusion of these proceedings (initiated on 6.12.1991), the penalty of reduction of pay by three stages for five years with cumulative effect was imposed on the petitioner vide respondents' order of 17.5.1999. The Tribunal's order dated 7.9.2001 refers to this very order of penalty which was quashed and set

Yaside with liberty to respondents. During the pendency of the aforesaid proceedings, another charge-sheet also for a major penalty was issued to the petitioner on 23.5.1995. These proceedings resulted in the imposition of a penalty of reduction in pay by three stages for a period of three years with cumulative effect. The aforesaid penalty orders were issued on 18.3.2002. The petitioner's case for promotion to the STS was meanwhile considered by the DPC in its meeting held on 16.3.2000.

Q Clearly, at that time, the aforesaid disciplinary proceedings initiated on 23.5.1995 were yet to be finalized. In view of this, the recommendations made by the DPC on 16.3.2000 were placed in the sealed cover and this was done in accordance with the DOP&T's instructions issued on 14.9.1992. The period of the aforesaid penalty imposed on the petitioner on 18.3.2002 is yet to expire as the duration of the penalty will last three years. Meanwhile, the petitioner is facing yet another departmental action initiated vide orders issued by the respondents on 14.1.2002. The petitioner is, in the circumstances, not clear from the vigilance angle. The sealed covers containing the recommendations of the DPC meetings held in 1990 and 2000 as above could not, therefore, be opened and acted upon, and this is entirely in consonance with the aforesaid instructions issued by the DOP&T.

6. We have considered the matter in the light of the observations contained in the preceding paragraphs and in view of the contents of the respondents' letter dated

28.6.2002. The Tribunal had simply directed the respondents to consider the petitioner's claim for promotion to the STS in the event of their failure to take up the departmental proceedings within the stipulated period of three months. From the above, we find that the respondents have indeed considered the petitioner's claim for promotion in accordance with the rules and instructions and judicial pronouncements and have correctly arrived at the conclusion that the sealed covers containing the recommendations of the DPCs could not be opened and, therefore, the petitioner's claim for promotion could not be considered yet.

(AA)

7. It is worth pointing out that the earliest opportunity for considering the petitioner's claim for promotion arose three months after the Tribunal passed orders in question on 7.9.2001, i.e. on 7.12.2001. It is not in dispute that on that particular date, the petitioner stood charge-sheeted in a departmental proceeding which culminated in the imposition of a major penalty imposed on him on 18.3.2002. Less than two months thereafter (from 7.12.2001), a departmental inquiry was initiated de-novo on 14.1.2002. Since he stood charge-sheeted in a departmental proceeding and had not been finally exonerated in the departmental proceeding which had earlier concluded in the imposition of a major penalty on 17.5.1999, the respondents acting, in terms of DOP&T's instructions issued on 14.9.1992 could not open the sealed cover and proceed to act on the recommendations contained therein. For the sake of

argument, it may also be pointed out that even if the sealed cover had been opened, the respondents would still have been obliged to place the DPC's recommendations back in the sealed cover in view of the pendency of departmental proceedings initiated on 23.5.1995. For these reasons also, we find no fault with the action taken by the respondents in compliance of the directions issued by this Tribunal on 7.9.2001. (45)

8. The learned counsel appearing on behalf of the petitioner has also relied on Delhi Jal Board v. Mahinder Singh decided by the Hon'ble Supreme Court on 1.9.2000 and reported in JT 2000 (10) SC 158 as well as T.S. Jayachandar v. Union of India & Another decided by the Madras Bench of this Tribunal on 31.1.2002 in OA-475/2001 (A-P-1). We have perused both these orders and find that these are distinguished and the ratio of these judgments will find application only in a case in which the delinquent employee has been exonerated and has thereafter come to be tried in an altogether different departmental proceeding. In the present OA, there is no exoneration in the departmental proceedings. The orders passed by the departmental authorities have been quashed with liberty to the respondents to take up the departmental proceedings from a certain stage. This cannot amount to exoneration in departmental proceedings. Incidentally, as already noted by us above, the aforesaid departmental proceedings have been restarted on 14.1.2002. d

9. In the light of the foregoing, we find no merit in the present Contempt Petition. In any case, there is no whisper of contumacious and willful disobedience of this Tribunal's order. The petition accordingly fails and is dismissed. Notices issued to the alleged contemnors are discharged. No costs.

S. Raju

(Shanker Raju)
Member (J)

S.A.T. Rizvi

(S.A.T. Rizvi)
Member (A)

/Sunil/