

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

Regn. No. CCP102/89 in  
OA-1162/86

Date of Decision: 8-8-89

Shri M.S.Birdi

... Petitioner

Vs.

Union of India

... Respondents

For the petitioner

... Dr.D.C.Vohra,  
Counsel.

For the respondents

... Shri M.L.Verma,  
Counsel.

CORAM: HON'BLE MR. P.K.KARTHA, VICE CHAIRMAN (J)  
HON'BLE MR. P.SRINIVASAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?

JUDGEMENT  
(of the Bench delivered by Hon'ble Mr.P.  
Srinivasan, Administrative Member).

In this petition, the applicant in application No. CA-1152/86 complains that the judgement delivered by this Tribunal in his favour while disposing of the said OA, has not been implemented by the respondents therein. He wants us to initiate proceedings in contempt against the functionaries responsible for non implementation of the judgement after ascertaining their names from the Union of India. In addition, he has prayed that he should be given all promotions and consequential benefits on par with a certain I.D.Sharma who, according to him, should have been shown as his junior if the judgement of the Tribunal had been properly implemented. He also prays that promotion of three persons to the post of Superintendents ordered on 4.5.1989 be quashed, because they also should have been shown as junior to him if the judgement of this Tribunal in the aforesaid OA had been properly implemented.

2. In order to ascertain whether a prima facie case of contempt has been made out by the applicant, notices were issued to the Union of India, the respondents in the OA as well as in the present petition. Dr.D.C.Vohra, Counsel for the petitioner and Shri M.L.Verma, counsel for the

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respondents (Union of India) have been heard.

3. In OA 1162/86, the applicant prayed that the then existing seniority lists of L.D.Cs., U.D.Cs., Assistants and Superintendents in the office of the Land and Development Officer, Delhi (hereinafter referred to as 'LDO'), be set aside and the respondents be directed to prepare fresh seniority lists by allowing the applicant to count for the purpose, his service in the same grade in his earlier department. While disposing of the said OA by a judgement dated 11.7.1988, a Bench of this Tribunal of which one of us (P.K. Kartha) was a Member, referred to the operative part of an earlier judgement dated 27.8.1987 rendered in TA Nos. 793 and 794 of 1985 and directed:

" In view of the aforesaid judgment, we need not give any further directions in the instant case before us, but direct the respondents to prepare the revised seniority lists on the basis of the aforesaid judgment. If the revised seniority lists have not been prepared till now, the respondents should complete the preparation of the seniority lists within a period of one month from the date of communication of this order. The consequential benefits of confirmation and promotion to the next higher grade of the applicant before us should be made on the basis of the revised seniority list. The applicant will be at liberty to move the Tribunal, if so advised, in accordance with law if he feels aggrieved by the seniority assigned to him on the basis of the revised seniority list and any action taken by the respondents on the basis of that seniority list."

4. It will be seen that what was directed in OA-1162/86 decided on 11.7.1988, was that a seniority list in different grades in the office of LDO be prepared, as earlier directed by the common judgment dated 27.8.1987 in TA Nos. 793 & 794 of 1985. To understand this common judgement in proper perspective, it is necessary to set out the background of facts in some detail. In November, 1962, staff-LDCs, UDCs and others - numbering in all 80 working in the office of the Regional Settlement Commissioner (hereinafter referred to as the 'RSC') were transferred to the office of the LDO. These transfers took effect from 1.11.1962. Subsequently

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in 1963, 32 officials then working in the office of the Chief Settlement Commissioner(hereinafter referred to as the CSC) were similarly transferred to LDO. The relative seniority of persons transferred from the office of the CSC, those transferred from the office of the CSC and those who were already working in LDO, had to be determined. The Ministry of Health and Family Planning issued a letter dated 9.3.1971 according to which both the set of 80 persons transferred from CSC in 1963 were to "count the service rendered by them in their respective grades in those offices before their transfer to the Land and Development Office for the purpose of seniority both inter se and vis-a-vis staff that existed in the Land and Development Office before these 112 persons joined the Land and Development Office". However, subsequently on 24.12.1981, the Departmental Council of the Ministry of Works and Housing reversed this decision so far as the 32 officials transferred from CSC were concerned, holding that they belonged to "the surplus category and their inter se seniority should be determined accordingly." The result was that they could not count the service rendered by them earlier in the same grade in CSC for the purpose of determining their seniority in that grade in LDO after their transfer to LDO in 1963. They challenged that decision in TA 793/85. TA-794/85 was filed as a "counterblast" by officials working in LDO from the beginning. In its common judgement dated 29.8.1987 disposing of both these TAs, this Tribunal held that the officials who came on transfer to LDO from CSC were not those who were rendered surplus there in CSC. On the other hand, a process of selection was gone through before they were selected and appointed in LDO as LDC, U.D.C. etc. In this view of the matter, this Tribunal directed that the officials who came on transfer from CSC to LDO in 1963 should be allowed to count for the purpose of their seniority in the grade in which they were so appointed in LDO, service rendered by them in the same

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grade earlier in CSC. More specifically, this Tribunal directed that the seniority of officials who came on transfer from CSC to LDO in 1963 be regulated in accordance with the earlier order dated 9.3.1971 passed by the Ministry of Health and Family Planning & Works, Housing and Urban Development which we have extracted above.

5. In its common judgement dated 29.8.1987 in TA 793 and 794 of 1985, this Tribunal was only concerned with the relative seniority of 32 officials drawn from CSC in 1963 vis-a-vis those working in LDO from the very beginning. The case of the 80 officials drawn from RSC did not come up directly in those TAs. One more thing to be noticed is that while directing that the seniority lists of officials in LDO drawn from different sources be prepared in terms of the order dated 9.3.1971 of the Ministry of Health & Family Planning and Works, Housing and Urban Development, this Tribunal added a qualification, in the following words:

"The promotions and confirmations against posts existing prior to 1.11.1962 should be made on the basis of the seniority list existing immediately before 1.11.1962. Promotions and confirmations made thereafter till the admission of the first petition on 14.2.1982, should be protected. Promotions and confirmations made thereafter should be subject to the revised seniority list so prepared. Those who are rendered senior in the revised seniority list to those who have been promoted or confirmed after 1.11.1962 should be given notional promotion or confirmation with arrears of pay and pension."

Thus, Promotions to higher posts in vacancies which existed in LDO prior to 1.11.1962, i.e., the date on which officials from RSC were absorbed in LDO, were to be made on the basis of the seniority lists in the feeder cadre in LDO which existed at that time. Obviously in the seniority lists of various grades prior to 1.11.1962, neither officials drawn from RSC with effect from 1.11.1962 nor those drawn from CSC with effect from some time in 1963 would have figured. Thus, if a person working in LDO

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prior to 1.11.1962 has been promoted from the post of LDC to that of UDC in a vacancy existing in LDO before that date, and LDC absorbed in LDO from RSC or CSC on and after 1.11.1962 could not claim that he should have been promoted in that vacancy on the ground that he (the transferred official) had longer continuous service as LDC in his earlier department. However, if a vacancy of UDC arose in LDO after 1.11.1962, an LDC drawn from RSC (who was senior in that grade by virtue of his longer continuous officiation as LDC in RSC) would have a right to claim ~~that~~ promotion over his junior in LDO itself. In such a case, the direction was that the original LDO (who may have been actually promoted to that post prior to 14.2.1982) should not be reverted from that post but the senior official from RSC should also be given effective promotion from that date with all consequential benefits.

6. The petitioner before us is an official drawn from RSC and absorbed in LDO from 1.11.1982. He was not directly covered by the common judgment in TA Nos. 793 and 794 of 1985 because that judgment, as we have already observed, was in regard to officials drawn from CSC. In view of this, he filed application No. 1162/86 before this Tribunal agitating the question of his seniority vis-a-vis officials who had been working in the LDO from the very beginning. His contention in that application was that his seniority vis-a-vis the original staff of LDO should have been determined by allowing him to count continuous service rendered by him in the same grade in RSC before his absorption in LDO. He complained that that had not been done. We have reproduced above the concluding paragraph of this Tribunal's judgement dated 11.7.1988 disposing of his application. The respondents in that application, approached this Tribunal and obtained extension of time upto 8.4.1989 to implement that order. On 10.4.1989, the respondents

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brought out, what they called, revised seniority lists in different grades purporting to have been prepared in consonance with the directions of this Tribunal in TA Nos. 793 and 794 of 1985 reiterated in OA 1162/86. They say that 8.4.1989 and 9.4.1989 were holidays and hence the revised seniority lists were brought out on the next working day, i.e., 10.4.1989. They, therefore, contend that they have fully complied with the order of this Tribunal in OA-1162/86.

7. Dr. Vohra, counsel for the petitioner vehemently contended that the so called revised seniority lists brought out on 10.4.1989 did not conform to the directions issued by this Tribunal and, therefore, the respondents are guilty of wilful disobedience of the order of this Tribunal. For taking this stand, he relied heavily on the fact that a certain I.D.Sharma, an original official of the LDO did not figure in the revised seniority list of UDCs brought out on 10.4.1989. The said I.D.Sharma had entered service as LDC in LDO on 13.6.1956, <sup>while</sup> ~~which~~ the applicant had been working as LDC in RSC from 15.11.1954. On this basis, the applicant was senior to I.D.Sharma in the grade of LDC following the ratio of the judgements of this Tribunal, referred to above. Inspite of this, Sharma had been promoted as UDC on 4.5.1959, while the applicant had been promoted to that grade only on 14.10.1969. Sharma obtained further promotion to the post of Assistant on 23.12.1969, while the applicant was promoted to that post only on 3.7.1989. Sharma had got two more promotions, <sup>on</sup> 22.9.1977 and as Selection Grade Supervisor on <sup>19</sup> ~~as~~ Superintendent on 2.9.1986, while the applicant was still working as an Assistant. If the respondents had implemented the judgements of this Tribunal faithfully, this could never have happened. In any case, a proper compliance with the orders of the Tribunal would have been to give the applicant successive promotions to the post of UDC, Assistant

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Superintendent, and Selection Grade Superintendent respectively with effect from 4.5.1959, 23.12.1969, 22.9.1977 and 2.9.1986, the dates on which Sharma got promotions to those posts, but this the respondents had not done. This itself was sufficient to show that the respondents had wilfully disobeyed the orders of this Tribunal.

8. Now, if an order of this Tribunal clearly spells out that certain things have to be done and those things are not done, one can say that the order of this Tribunal has not been complied with and there has been wilful disobedience of the orders of this Tribunal. But if certain results which an applicant claims should have been followed a proper implementation of an order of this Tribunal are not so obvious from that order and the said results have to be established by a process of reasoning, then the respondents cannot be accused of wilful disobedience. Now what do we find in this case? In its order dated 11.7.1978, disposing of OA 1162/86 and, for that matter, in its common judgment dated 27.8.1987, disposing of TA Nos. 793 and 794 of 1985, this Tribunal made no specific reference to the relative seniority of the applicant vis-a-vis I.D. Sharma. This Tribunal merely laid down the principle that officials who had come on transfer from CSC and RSC should be allowed to count the service rendered by them before such transfer in their earlier department in the same grade for the purpose of determining their seniority in that grade in LDO after their transfer to LDO. This Tribunal also directed that promotions to higher posts in LDO made prior to 1.11.1962 from among officials already working there at that time should not be disturbed. Now, I.D. Sharma was working as an IDC in LDO prior to 1.11.1962 and was promoted as UDC in LDO also prior to that date. In other words, when the applicant came on transfer to LDO from RSC and was absorbed in LDO in the cadre of IDC from 1.11.1962, I.D. Sharma was

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already working as a UDC and his promotion to that post was fully protected by this Tribunal. Thus, I.D.Sharma, who was holding a higher post on 1.11.1962 than the applicant became automatically senior to him and by that token became eligible for promotion to higher posts in LDC before the applicant. Thus the orders of this Tribunal did not lead to the automatic result contemplated by the applicant that he should have been given promotion to posts of LDC, Assistant, Superintendent and selection grade Superintendent on the dates on which I.D.Sharma was so promoted. ~~does not really flow from the orders of this~~ M  
~~Tribunal~~. In any event, such a result would have to be argued by a process of reasoning and cannot be taken as automatic. That is why, ~~even~~ this Tribunal while passing its earlier order gave the right to the applicant to challenge the revised seniority list and action based on such seniority list by a fresh application, if the applicant deemed fit to do so. Thus, the claim of the applicant that the respondents have committed contempt of the order of this Tribunal by failing to give him promotions to higher posts on dates from which I.D.Sharma was given such promotion, does not stand scrutiny. This itself is sufficient to show that the petition to initiate contempt proceedings against the functionaries of the respondents department has to fail. Similarly, the question whether three other persons were rightly given promotion to higher posts ignoring the applicant, is a matter that has to be gone into. Therefore, if the applicant is aggrieved with the revised seniority list brought out on 10.4.1989, his remedy does not lie in a contempt of court petition. He will have to seek remedy by filing a fresh application, which can be considered on merit.

9. In view of the above, CCP-102/89 is dismissed and

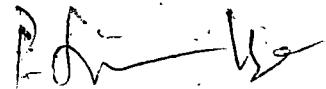


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proceedings in contempt against the respondents are hereby discharged.

Parties to bear their own costs.



( P. SRINIVASAN )  
MEMBER(A)



( P.K. KARTHA )  
VICE CHAIRMAN(J)