

(AD)

Central Administrative Tribunal
Principal Bench: New Delhi

CP: No: 78/1995

IN

OA No:532/87

New Delhi this the 12th day of October 1995.

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

Hon'ble Mr. R.K. Ahooja, Member (A)

I.D.Garg

C/o G.K.Aggarwal

G-82, Ashok Vihar-I

Delhi-110 052

...Applicant.

(By Advocate: Shri G.K.Aggarwal)

Versus

1. Mrs Achla Moulik
Offg. Director General
Archaeological Survey of India
Janpath
New Delhi-10 011.

2. O.P.Aggarwal
Director of Administration
Archaeological Survey of India
Janpath
New Delhi-110 011.

...Respondents.

(By Advocate: Shri N.S.Mehta)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

This contempt petition has arisen out of the order of the Tribunal in OA No.532/87, dated 18.9.92.. The petitioner had filed the original application for promotion to the post of DSAC with effect from December 1979. The application was disposed of with the following directions:

" In the conspectus of facts and circumstances, we allow the application to the extent of directing that the applicant should be considered for promotion as DSAC notionally from 4.12.79 onwards each year and if he is found suitable for promotion in a particular year after 4.12.79 onwards, he should be given promotion from the date on which any direct recruit was appointed in that year with all consequential benefits of seniority and arrears of pay and allowances. If there is no vacancy available in that year because of the direct recruitment supernumerary post should be created till the post is adjusted against the earliest available vacancy. There will be no order as to costs."

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Finding that the directions were not complied with and ~~alleging~~ alleging that the respondents have defied the orders of the Tribunal, the petitioner earlier filed a CCP No.334/93. Taking note of the contentions raised by the respondents that they had taken steps for convening of a DPC and had requested the UPSC to fix a date for convening the DPC and that the petitioner did not file any rejoinder, it was held that there was no need to proceed further with the CCP and therefore the same was dismissed. However, while dismissing the CCP, it was observed that it would be open for the petitioner to make representation to the UPSC for expeditious convening of the DPC and that if there was no fruitful result, it would be open for the petitioner to take recourse to appropriate action against the UPSC. While the petitioner was waiting for the implementation of the judgement after dismissal of the said CCP, he was served with a copy of the letter written by the Director (Administration) for Director General, Archaeological Survey of India to the Registrar, Central Administrative Tribunal, in which he was informed that the case of the petitioner for promotion in pursuance of the directions contained in the order of the Tribunal was reviewed by the Review Departmental Promotion Committee under the Chairmanship of Member, UPSC in its meeting held on 12.4.94. and that the petitioner was found not suitable for promotion for the years 1979 to 1990. Meanwhile in January 1994 in reply affidavit filed by the respondents, the Hon'ble Supreme Court in an SLP in another case between the same parties, it was stated that the Departmental Promotion Committee had recommended the case of the petitioner ~~for promotion~~ to the post of Deputy Superintending Archaeological Chemist, but the order could not be implemented owing to the pendency of the case. The petitioner had on 30.11.1990 caused a lawyer notice to be issued to the respondents demanding issue of orders of promotion retrospectively and for disbursement of pay and allowances within 30 days from 1.12.1994, and stating that legal proceedings ~~are pending in the Tribunal~~

~~It~~ would be initiated in the event of failure to comply with the directions. After this, the petitioner has filed this civil contempt petition on 10th march 1995 alleging that the respondents by not promoting the petitioner though found suitable by the DPC in the year 1990 have defied the orders of the Tribunal and therefore they deserved exemplary punishment under the Contempt of Court Act.

3. The respondents have filed their reply as also an affidavit. They have indicated that compliance of the judgement has been made by having the case of the petitioner considered for promotion right from the year 1979 to 1990 and that as the DPC did not find him suitable for promotion, he could not be promoted. They contend that this contempt petition is not maintainable and prays that the same may be dismissed and notice issued to the respondents discharged.

4. We have with meticulous care gone through the entire pleadings in this case available on record and have heard at length Shri G.K. Aggarwal, learned counsel for the petitioner and Shri N.S. Mehta, counsel for the respondents.

5. The first question that we have to address ourselves before going into the question whether the judgement has been correctly implemented or not; is whether the CP at this point of time will lie. According to Section 20 of the Contempt of Court Act, no court shall initiate any proceedings for contempt either on its own merits or otherwise after expiry period of one year from the date on which the contempt is alleged to have been committed. The alleged contempt in this case as has emerged from the pleadings is that though the DPC had in the year 1990 found the petitioner suitable for promotion, the petitioner was not promoted. The direction contained in the final order in OA No. 532/87 is for considering the case of the applicant for promotion from 4.12.1979 onwards and ^{if} found eligible in any year.

~~to~~ to promote him in that year with all consequential benefits ^{if necessary} creating a supernumerary post. According to the respondents, this

direction was complied with by having the case of the petitioner considered by a review DPC on 12.4.94. Shri Aggarwal, learned counsel of the petitioner states that the direction contained in the judgement is not to hold a review DPC but to have the case of the petitioner considered, meaning thereby that if any DPC is held during the pendency of the case, then reconsideration of that is not required. Thus, according to Shri Aggarwal, as admittedly the petitioner has been found suitable for promotion in the year 1990, the action on the part of the respondents in not promoting him amounts to wilful defiance of the order and therefore deserves punishment under the Contempt of Court Act. Assuming that this argument is correct, we have to consider what is the date on which this contempt has been committed. The DPC found the petitioner suitable for promotion in the year 1990. Pendency of the case before the Tribunal was not a bar for promotion of the petitioner. At least when the case was disposed of in September 1992, the respondents would have promoted the petitioner. So a contempt if at all has been committed by the respondents latest immediately after the judgement was pronounced because ^{as clear} after the judgement was pronounced, he could ~~not~~ have been probably promoted. Learned counsel of the applicant states that the petitioner was not aware of the fact that he was considered by the DPC held in the year 1990 and this fact came to his knowledge only in January 1994 when the respondents filed counted affidavit before the Hon'ble Supreme Court in connection with another case between the parties.

Assuming that the date of knowledge of the petitioner is a relevant point of time to count the period of limitation for filing a contempt petition which obviously is not so, even then, the contempt petition has been filed beyond the period of one year from the date on which the matter came to the knowledge of the petitioner. A reading of Section 20 of the Contempt Act makes it clear that it is not the date

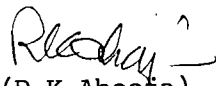
of knowledge of the petitioner that determines the date on which the contempt has been committed but the actual commission of the contempt. The contempt in this case arose when the judgement has not been properly implemented within the date on which it should have been implemented. In a case where no time limit is stipulated for implementing the judgement it has been held that a period of 6 months will be a reasonable period for implementation of the judgement.

6. If the petitioner had a grievance that the respondents had committed contempt by not implementing the judgement in its letter and spirit, he should have filed the contempt petition within a year after 6 months from the date of judgement.

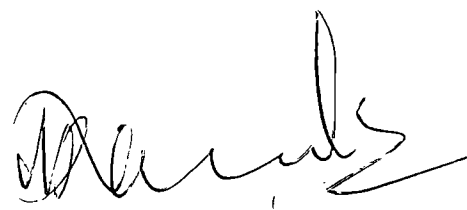
7. On a careful consideration of the facts and circumstances, we are of the considered view that the Tribunal cannot initiate any action under the Contempt of Court Act against the respondents after the expiry of one year from the date of alleged cotempt.

8. In the conspectus of the facts and circumstances, the CP has only to be dismissed and notice discharged. We do so. However, before parting with the case, we make it clear that it will be open for the petitioner to seek appropriate relief in regard to his non-promotion despite the recommendations of the ~~review~~ DPC, if so advised in accordance with law.

Ther is no order as to costs.


(R.K. Ahooja)
Member (A)

aa.


(A.V. Haridasan)
Vice Chairman (J)