

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

CCP 104/92 in
D.A. 1113/87

DATE OF DECISION: 18.8.1992

M.B. Dass.

... Petitioner.

Versus

U.O.I. & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri K.L. Bhandula,
Chairman.

For the Respondents.

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

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The complaint in this case is that the judgement of the Tribunal dated 6.10.1989 has not been fully complied with. The directions as contained in paragraph 7 read as follows:

"The application is allowed. The opposite parties 1, 2 and 3 shall arrange to recall the applicant on repatriation from the Salal Hydro-Electric Project, shall consider the case for an appropriate status in the light of the Next Below Rule or other applicable rules, and shall give him such appointment/promotion as he may be entitled to. The opposite parties shall comply with these directions within three months from receipt of a copy of this order. The parties will bear their own costs".

2. The steps taken to comply with this order can be ascertained from the order that has been passed as per Annexure VII dated 24.8.1990. It is stated therein that the petitioner was on deputation and it was expected that he would be absorbed in the project to which he was sent on deputation and would not be coming back to the parent

project. It is in this background that his junior Shri B.K. Palit was considered and promoted. It is stated that the case of the petitioner shall be considered for regular promotion as and when regular vacancy arises. It is clear from this communication that the petitioner's junior was promoted on regular basis when the petitioner was on deputation. Having regard to the directions of the Tribunal in regard to promotion of the petitioner by applying the Next Below Rule, it means that if a junior to the petitioner was regularly promoted, the petitioner should be given such promotion. The respondents have stated that they never expected the petitioner to come back and that they appointed Shri Palit, who was junior to the petitioner, resulting in there being no vacancy in which the petitioner could be accommodated. This cannot be accepted as an answer to the show cause notice when the Tribunal has commanded them to apply the Next Below Rule. The respondents should have given regular promotion to the petitioner as on the date on which Shri Palit, his junior, was given, either by reverting the junior-most person or by creating a supernumerary post if the respondents thought that others promoted should not be disturbed. It is obvious that the petitioner should be given the same status and position as is occupied by his junior Shri Palit. That being the clear effect of the judgement, we have no hesitation in holding that understanding of the legal position by the Respondents is not correct. We accept the statement of Shri Verma that they bonafide believed that it is enough if an ad hoc promotion is given to the petitioner and he is considered for regular promotion as and when regular vacancy arises. We accept that that was a bonafide view taken by the respondents. Therefore, wilful

disobedience is not established. However, we make it clear that if they do not comply with the directions hereafter, their conduct would be regarded as wilful disobedience of the order of the Tribunal.

3. The period of limitation would be taken to run from the date the contempt is committed which would be deemed to have been committed when there is wilful disobedience. That situation has not arrived yet. Therefore, the question of rejecting this application does not arise. By way of indulgence, we direct the respondents to give regular promotion to the petitioner as on the date on which his junior was given such promotion and to give him all benefits flowing from this order within two months from this date. If there is no compliance with this order, the cause of action for taking action under the Contempt of Courts Act will arise after the expiry of the period granted by us. We also make it clear that in the event of the order being not complied with in spite of this elucidation, we may not hesitate to award further costs and interest to the petitioner.

4. With these directions, this CCP is disposed of.

SRD
190892

Silguph
(I.K. RASGOWDA)
MEMBER(A)

Malimath
(V.S. MALIMATH)
CHAIRMAN