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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP 242/94 in OA 325/88

New Delhi, this 18th day of January, 1995

Hon'ble Shri S.C. Mathur, Chairman
Hon'ble Shri P.T. Thiruvengadam, Member(A)

1. Shri T.R. Seth
s/o Shri G.R. Seth
1074, Laxmi Bai Nagar
New Delhi-23
2. Shri V.P. Srivastava
s/o late Shri N.P. Srivastava
866, F Type, Timarpur
Delhi-54
3. Shri R.L. Adlakha
s/o late Shri Ram Chand Adlakha
18/24/1/, Old Gobindpuri
Delhi-54
4. Shri R.S. Sharma
s/o late Shri Bankey Lal Sharma
H.No. 72-KG-9, Vikaspuri
New Delhi

.. Applicants

Shri B.S. Charya, Advocate

Versus

1. Dr. Suresh Prakash
Director, Health Service
Dte. of Health & Family Welfare
NCT of Delhi
Saraswathi Bhawan
E-Block, Connaught Place
New Delhi
2. Shri P.P. Chauhan
Chief Secretary
Delhi Administration
NCT of Delhi
5, Sham Nath Marg, Delhi
3. Shri V.K. Shunglu
Secretary
Min. of Health & Family Welfare
Nirman Bhawan, New Delhi

.. Respondents

Smt. Avnish Ahlawat, Counsel for the Respondents

ORDER

(By Shri P.T. Thiruvengadam, Member(A))

This CP has been filed for initiating contempt proceedings against the respondents for not obeying the directions contained in the order dated 30.7.91 in OA 325/88. The relevant direction in this Order

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is to the effect that the respondents were directed to dispose of the representation of the applicants regarding the pay scale and cadre, within four months.

2. MP 3144/91 was filed for clarification of the above order. This MP was disposed of on 15.3.94 with the following observation:

"...The correct way of interpreting the judgement is not only to apply its language mechanically but also to read the same in the context of the grievance made in a particular matter and the ultimate prayer made therein..."

3. The learned counsel for the applicants stated that the grievance relates to ~~the~~ two aspects, namely improvement in pay scale and provision of promotional avenue by encadring the posts occupied by the applicants.

4. We will take up the issue regarding provision of promotional avenue first. The encadrement prayed for is with a view to club the posts of Health Education Extension Officer(HEEO)/Social Science Instructor (SSI) alongwith ^{suitable} ~~the~~ regular cadre posts so that the current posts available in the higher level regular cadre posts could be made available to the applicants too. It is admitted that the posts of HEEO/SSI are not included in the feeder categories for the higher posts in any cadre.

5. It is the case of the respondents that an attempt was made to include the posts of HEEO/SSI as feeder posts for further promotion to the posts of Superintendent of Home. If such inclusion in the feeder cadres for Superintendent of Home had been done, further promotion to the post of ^{Senior} Superintendent of Home etc. would have been made available to the applicants. However, the UPSC did not

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approve the proposal for including the posts of HEEO/SSI as feeder posts for consideration for promotion to the post of Superintendent of Home. UPSC has withheld its approval because the posts of HEEO/SSI belong to a department different from the department controlling the post of Superintendent of Home.

6. We note that the post of Superintendent of Home is ^a Group B Post and any change in the method of recruitment like expanding the number of feeder categories requires the consent of the UPSC. We do not think it would be appropriate to interfere with the stand taken by the UPSC which body is expected to take an overall view of the issues raised.

7. The learned counsel for the applicant then argued that the above rejection by the UPSC was in the year 1989 and the respondents can not justify their inaction by referring to UPSC again since the orders in OA 325/88 were passed on 30.7.91.

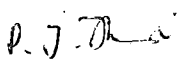
8. The respondents then referred to the efforts made by them to provide promotional avenues to the applicants. In December, 1991, ^{an} alternative proposal was initiated to include the posts of HEEO/SSI as feeder posts for promotion to the newly created posts of Health Education Officer, Exhibition Officer and Editor. This proposal was vigorously pursued but had to be dropped since the nature of duties attached to the post of applicants ~~was~~ different from the nature of duties to be performed by the incumbents of the 3 posts newly created. It was argued that sincere efforts were made by the respondents to provide promotional avenues and they can not be charged with ~~the~~ contempt particularly when the direction was only to dispose of the representation.


9. We note that the direction in the orders was only for disposal of the representation. Such a disposal has been made vide their memorandum dated 21.11.94 attached as Annexure to the second counter affidavit filed by the respondents. We do not see any wilful or intentional disobedience of the orders of this Tribunal. Even where there is disobedience due to some compelling circumstances under which it is not possible for the contemner to comply with the orders of the Court, their Lordships of the Supreme Court have held that the alleged contemner may not be punished (Niaz Ahmed & Ors. Vs. State of Haryana (AT-1994(6)-SC-260). In the case before us, there is not much force for holding that the respondents have committed contempt by not providing promotional avenues.

10. Regarding improvement in the pay scale, the memorandum dated 21.11.94 has brought out that in situ promotion is being ordered in favour of three applicants. The fourth applicant does not qualify at this stage for the inclusion in in-situ promotion as per the policy evolved by the Government in its OM dated 13.9.91. He may become eligible for such consideration in due course.

11. In the circumstances, we do not find any contempt even with regard to the disposal of the representation on the aspect of pay scale.

12. In view of the above, the contempt petition is dismissed. Notice issued to the respondents is recalled. There is no order as to costs.


(P.T. Thiruvengadam)
Member (A)


(S.C. Mathur)
Chairman