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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

DATE OF DECISION: 13.3.1991

REGN. NO. CCP 88/90 in
OA 31/88

Shri K.D. Beri & Ors.

... PETITIONERS.

Versus.

Shri Naresh Chandra,
Secretary, Ministry of
Home Affairs & Anr.

... RESPONDENTS.

with

REGN. NO. CCP 63/90 in
OA 31/88

Shri H.C. Guru & anr.

... PETITIONERS.

Versus.

Shri M.R. Reddy, Deputy
Director(E), Intelligence
Bureau, Ministry of Home
Affairs, North Block,
New Delhi & Anr.

... RESPONDENTS.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioners
in CCP 88/90.

... Shri E.X. Joseph,
Counsel.

For the Petitioners in
CCP 63/90.

... Shri S.C. Luthra,
Counsel.

For the Respondents.

... Shri P.H. Ramchandani,
Sr. Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav
Banerji, Chairman)

Both these CCPs have raised identical question of
fact and were heard together and can be disposed of by a
common order.

In CCP 88/90, Shri K.D. Beri and four others are
the petitioners and they have come to the Tribunal stating

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that the respondents ought to have implemented the judgement dated 26.4.1989 of the Tribunal and have prayed for taking action against the respondents under Sections 2(b) and 23 of the Contempt of Courts Act, 1971 and Section 17 of the Administrative Tribunals Act, 1985, and to punish them in accordance with law.

In CCP 63/90, Shri H.C. Guru and Shri Harish Chandra, have made several prayers; first is to hold the respondents guilty of committing contempt of the Tribunal by wilfully disobeying the common judgement and order dated 26.4.1989 in O.A. No. 1675/87 and O.A. No. 31/88. The other prayers made by the petitioners are as follows:

"(ii) clarify that the only principle to be adopted in determining the seniority of Section Officers in Intelligence Bureau will be the date of continuous officiation so far as the respondents and petitioners in OA No. 1675/87 and OA No. 31/88 are concerned.

(iii) After determining the seniority of all applicants in OA No. 1675/87 and OA No. 31/88 according to length of service, the seniority of later appointees/promotees shall be as per rota: quota principle envisaged in the recruitment rules.

(iv) Quash the seniority list dated 25.7.89 and issue a fresh seniority list as per (iii) and (iv) above".

The last prayer is to pass such other orders as this Hon'ble Tribunal may deem fit. It will be noticed at once that there is no specific prayer in the case of Shri H.C. Guru and anr. to punish the two respondents for committing contempt of the Hon'ble Tribunal.

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The prayers made by the applicants Shri S.N. Bhatnagar and Ors. in O.A. No. 1675/87 were for quashing the order dated 3.8.1987 and 15.9.1987 issued by the respondents, and for restoring the actual and regular date of promotion as Section Officer for all purpose including seniority from the date of officiation, and for striking down the seniority list dated 8.8.1987 with a direction to revise it according to length of service in terms of the above mentioned two prayers. The relief prayed for in O.A. 31/88 was for striking down of the Memorandum No. 4/Seniority(CC)/86(3)-660 dated 8.8.1987 and the seniority list annexed to the same, grant of directions/orders to the respondents No. 1 and 2 directing them to re-determine the seniority of the applicants and the examinee-promotee on the basis of the length of service as Section Officer and to issue a fresh seniority list on the basis of such re-determination and to grant the applicants further promotions and all other due service benefits on the basis of such re-determination of seniority.

Since both the O.As prayed for quashing of the seniority list dated 8.8.1987, they were heard together and disposed of by a common decision.

Two questions for determination were framed:

- (i) Whether the review of all promotions on the basis of seniority list of Assistants dated 28.1.1976 was in accordance with the directions of the Hon'ble Supreme Court as given in the judgement dated 30th September, 1986; and
- (ii) Whether the interpolation of examinee promotees and assignment of seniority to them in the seniority list of Section Officers issued on 8.8.1987 was in accordance with the scheme of Reorganisation regulating promotion to the rank of section Officer".

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The question was answered by the Tribunal by its judgment dated 26.4.1989 as follows:-

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"In view of the above discussion, both the applications are allowed with the direction that the impugned seniority list issued in August 1987 is quashed to the extent that it assigns the applicants in O.A. 1675/1987 notional seniority of years later than the dates when they were actually promoted to the posts of Section Officers and further to the extent that it assigns seniority to the examinee respondents above the applicants in both the O.As on the rotational principle. The respondents who were promoted on the basis of the Limited Departmental Competitive Examinations shall be assigned seniority with reference to the applicants on the basis of the dates of their actual appointment/promotion. A fresh seniority list of Section Officers shall be issued within a period of three months from the date of this judgement keeping in view the above directions. There shall be no order as to costs."

Aggrieved by the above decision, the petitioners along with others filed Special Leave Petition Nos. 9315-16 of 1989. The Hon'ble Supreme Court passed the following order on 21.12.1989:

"Special Leave Petition is dismissed. It is needless to state that the Government shall implement the order of the Tribunal faithfully."

The allegation made in CCP 63/90 by Shri H.C. Guru and another is that in spite of the above directions of the Hon'ble Supreme Court, for faithful implementation of the judgement, the respondents have not undone the deliberate violations of the directions of this Hon'ble Tribunal for determining the seniority according to length of officiation to the extent ordered by the Tribunal. It was further stated that Shri I.P. Bhatia, Contemnor No.2, was responsible for preparing the seniority list in terms of the judgement of the Tribunal and the seniority list had been prepared by him. Shri M.R. Reddy, the Contemnor No.1, is the Head of Office and is responsible for finalisation of the list so prepared by Shri Bhatia. The allegation was that both the contemnors have wilfully flouted the directions of the

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Tribunal by not implementing them faithfully.

In CCP 88/90, it was urged that the respondents ought to have implemented the judgement dated 26.4.1989 of the Tribunal faithfully, as directed by the Hon'ble Supreme Court. It was further urged that denial of seniority from these dates would defeat the very purpose of notional promotion and consequently the Supreme Court's directions and ought to have promoted the Section Officers to the rank of Asstt. Director on the basis of the revised seniority list with all consequential benefits. Learned counsel for the petitioners Shri E.X. Joseph, has stated that the order dated 26.4.1989 has not been complied with and the direction given in paragraph 22 of the judgement has not been implemented.

Shri P.H. Ramchandani, Sr. Counsel for the respondents, urged that there has been a compliance with the order of the Tribunal dated 26.4.1989 keeping in view of the observation made in paragraph 21. Paragraph 21 of the order reads as follows:

"The facts of the present case clearly show that the appointment of the applicants and the third party respondents was not made from a combined list as envisaged by the provisions of the Scheme. These can be considered as having been made only in relaxation of the provisions of the Scheme. Further even though the promotions from either category or stream viz., seniority-cum-fitness or Limited Departmental Competitive

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Examination were not in excess of quota, there was a departure from the principle of quota inasmuch as examinees shown in the impugned seniority list had qualified in examinations held three to six years later than the dates of promotion of those who had been promoted on the basis of seniority. It could be that some of the examinees were not even qualified or eligible to take examination in the years of their assigned seniority or might have failed in the examination held in those earlier years. The rota rule of seniority cannot be applied in the present case since the quota principle had not been followed at the time when promotions were made as envisaged by the provisions of the Scheme. The only just and fair principle for determining seniority in the circumstances of the case would be the date of continuous officiation in the post of Section Officer".

He laid emphasis on the last sentence which has been underlined. Shri Ramchandani stated that no case has been made out for taking action under the Contempt of Courts Act, or under Section 17 of the Administrative Tribunals Act. He also urged that the directions which have been sought for in the case of Shri H.C. Guru and another in CCP 63/90, reliefs (ii), (iii) & (iv) cannot be granted in the CCP for it relates to giving of direction on the merits of the case.

Shri E.X. Joseph, learned counsel for the petitioners, further contended that in the seniority list, which has been prepared, persons at Serial No. 219 and 231 who had been promoted by the D.P.C. in 1982 e.g. Shri M.N. Medak and Shri V.P. Chawla, were not entitled to a higher placement as against the petitioners, who had become Section Officers in 1981. The petitioners were placed lower

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than Shri Medak and Shri Chawla. Shri Joseph also urged that in view of the Supreme Court judgement dated 3.8.1987, continuous date should be from the date of notional promotion.

We have heard learned counsel for the parties and perused the material on the record. In our opinion, no case has been made out for taking action under the Contempt of Courts Act or under Section 17 of the A.T. Act.

The matter of seniority had engaged the attention of the Delhi High Court and had gone to the Supreme Court earlier also. The Supreme Court by the judgement dated 30.9.1986 had allowed the appeals and set aside the judgement of the Division Bench of the High Court and ^{ordered} dismissal of the Writ Petition in the High Court. The Supreme Court further directed that the promotions made should be reviewed in accordance with the impugned seniority list of Assistants dated 28.1.1976. The seniority list of Assistants issued on 7.4.1982 in compliance with Delhi High Court's order was set aside and Part I of the seniority list issued vide Memo No. 7/Seniority(CC)/74(1) dated 16.6.75 and finalised on 28.1.1976 had been restored.

Thereafter, the matter came up at the instance of the applicants in O.As 1675/87 and 31/88 before the Tribunal. The Tribunal decided the matter, which has now

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been affirmed by the Supreme Court. The question before us is whether the Tribunal's order dated 26.4.1989 has been implemented or not. The other questions are those which have been raised in the CCP 63/90. Let us be clear that the reliefs (ii), (iii) and (iv), which have been reproduced above, are not within the ambit and scope of a CCP for it seeks direction on the merits of the case. This cannot be done in a C.C.P. Consequently, these reliefs cannot, therefore, be considered at all.

A question arises whether the order dated 26.4.1989 has been implemented or not? The applicants claim that it has not been implemented in full, whereas the respondents' case is that it has been implemented in the light of the judgment of the Tribunal and the Supreme Court. As a matter of fact, great emphasis was laid on the last sentence of the judgment dated 26.4.1989 wherein it was laid down:

"The only just and fair principle for determining seniority in the circumstances of the case would be the date of continuous officiation in the post of Section Officer".

Learned counsel for the respondents stated that this has been followed and done.

It is not the case of the applicants that it has not been complied with at all. The gravamen of the charges is that it has not been implemented as far as the present set of petitioners are concerned, as they have been shown junior to Shri Medak and Shri Chawla.

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For taking action under the Contempt of Courts Act, it is necessary to show that the order has not complied with as a whole or there has been a failure to comply with the order substantially. In a case where substantial compliance has been made but not fully, the provision for invoking the jurisdiction of the Court to take action under the Contempt of Courts Act, can be declined at the discretion of the Court/Tribunal. In such cases, the petitioners can make representation to the authorities. We are, therefore, of the view that the individual cases which have been brought to our notice cannot be examined in a C.C.P. If the petitioners remain aggrieved, they can approach the authorities concerned for rectification or fresh directions and if still aggrieved, may seek the remedy that law provides.

For the reasons given above, we are of the view that the C.C.Ps must fail and are accordingly dismissed. The notices issued to the respondents in both the C.C.Ps are discharged. Parties are directed to bear their own costs.

De Lush
(I.K.RASGOTRA)
MEMBER (A) 13/3/1991

AB
(AMITAV BANERJI)
CHAIRMAN