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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

C.C.P.No. 385 of 1993
in

O.A.No. 1082 of 1989

New Delhi, this the 22nd day of December, 1993.

Hon'ble Mr Justice S.K.Dhaon
Vice Chairman

Hon'ble Mr B.N.Dhoundiyal
Member(A).

Shri Naveen Kumar Son of Shri Murli Dhar
resident of Flat No.6, Thompson Road,
Ajmeri Gate, New Delhi.
(by Mr O.P.Kshatriya, Advocate).. .. Petitioner

versus

Shri H.P.Wagle, Secretary, Ministry of Communications,
Sanchar Bhawan, Ashok Road, New Delhi.
(by Mr M.L.Verma, Advocate)

... .. Respondent.

ORDER (oral)

1. By a common order dated 18th May, 1990, this Tribunal disposed of number of O.A.s with certain directions. This contempt application arise out of O.A.No.1082 of 1989, which forms part of the bunch of cases, disposed of by the aforesaid order.

2. The complaint is that the direction No.(iii), given by this Tribunal has been and is being observed in breach. A counter-affidavit has been filed on behalf of the respondents. The contents of the ^{same} have been sworn in by one Shri Deepak Chanduka, Divisional Engineer, Telephone A/T(SW) Electronics Karol Bagh Telephone Exchange, Delhi.

3. Direction No.(iii), as contained in the order of the Tribunal may now be extracted::

" after re-instating them, the respondents

shall consider regularising the services of the applicants in accordance with the scheme prepared by them. Till they are so regularised, they shall be paid the minimum pay in the pay scale of regularly employed workmen in the respective posts. They would also be entitled to all the benefits and privileges envisaged in the judgment of the Supreme Court in Jagrit Mazdoor Union's case.."

Direction No.(iii) contains three distinct directions;

- (i) the respondents shall consider the case of the applicant for the regularisation of his service in accordance with the scheme prepared by them;
- (ii) the respondents are liable to pay to the applicants the minimum pay payable to the regularly employed workmen in the respective posts in accordance with the pay scale fixed; and
- (iii) even before the regularisation of the services, the applicant would be entitled to the benefits and privileges which are being given to regularly employed workmen.

4. It appears to be the common case of the parties that in accordance with direction No.(ii), the applicants have been re-instated in service. Their specific complaint is that neither of the three afore-mentioned conditions(in conditions No.(iii)) have been complied with by the respondents.

5. In the counter-affidavit filed, the material averments are these. The petitioner/applicant was re-instated as Casual Labourer w.e.f.23.8.1990. The petitioner was to be considered for regularisation in service as per the proposed scheme for regularisation. The said scheme was circulated vide letter dated 7.11.1989(Annexure-I). In the Circular, para 3.2 clearly indicated that the

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scheme was applicable to those daily-rated Mazdoors, who had been engaged before 30.3.1985. Since the petitioner was engaged as a daily-rated Mazdoor with effect from 13.7.1987 to 21.9.1987 and thereafter on 2.11.1987 till he was removed from service on 8.5.1989, he was not entitled to the benefit of the Scheme, therefore, his services were not regularised.

6. The question to be examined is whether the defence taken by the respondents is tenable. A reference had been made to the scheme in paragraph 5 of the judgment, which has given rise to this contempt petition. In paragraph 5, there is no indication, whatsoever, that the said Circular, referred to in the counter-affidavit, really formed part of the Scheme. We will, therefore, proceed on the assumption that the Tribunal did not consider the Circular as a part of the scheme. We have seen the Circular and we are not prepared to accept the contention advanced on behalf of the respondents that the Scheme is an Annexure to the Circular. It appears to us that vide letter dated 7.11.1989, the scheme was circulated, therefore, the said Circular should really be treated as a covering letter alongwith the scheme. The contents of this Circular cannot be taken into consideration for implementing the terms of the scheme. Shri Verma points out to us that ⁱⁿ the Hindi Version of the Circular, the Scheme has been mentioned as Annexure. Be that as it may, that will not change the legal position.

7. We have already indicated that the instructions issued under the said Circular cannot and could not control the express terms of the scheme. We may note that it is not the case of the

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respondents, in the counter-affidavit filed, that since the petitioner had been engaged after 30.3.1985, he was not entitled to the benefit of Circular.

8. The Scheme, referred to in the order of the Tribunal is nomenclatured as Casual Labourers (grant of temporary status for regularisation) Scheme of the Department of Communication, 1989.

9. Paragraph 2 of the Scheme states that the Scheme will come into force with effect from 1.10.1989 onwards. We may note that the oral orders, terminating the services of the petitioners have been quashed by the Tribunal on 18.5.1990 and the respondents were directed to re-instate the petitioners. Thus the order, including the oral order, if any, would stand effaced. In the eye of law, no such order ever came into existence. It follows that the petitioner continued to be in service, even after the passing of the order. Thus, there can be no difficulty in holding that the petitioner was in service on the date when this Scheme came into existence, that is, on 1.10.1989. It also follows that for the purpose of para 5 of the Scheme, the petitioner was (currently employed) on the date of coming into force of the Scheme. The respondents have, therefore, taken an unjustifiable defence in not implementing the directions of this Tribunal.

8. The petitioner has come out with a specific case that in terms of the sub directions (ii) and (iii) of direction No.3, he has not been paid the minimum pay, which was payable to a regularly employed workmen. He has also not been given the other benefits, referred to in the

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judgment of the Supreme Court in Jagrit's case. The reply filed is somewhat amusing. The relevant part of the reply, so far as it relates to the matter of payment reads:

".. the applicant has been receiving all the dues for which he is entitled."

We expected a better reply from the respondents, particularly, in a contempt matter. In the rejoinder filed by the petitioner, in paragraph 4, it is re-asserted that the petitioner has been paid only wages of a daily rated Mazdoor and no other benefits, as provided in in the scheme of the Department of Telecommunication, as directed by the Tribunal in the judgment dated 18.5.1990, have been given to him. On the material on record, we have no hesitation in recording a finding that the respondents have failed to make the payments, as required by this Tribunal. We also record the finding that the respondents have failed to give to the petitioner, the other benefits, as directed by the Tribunal. The conclusion, therefore, is that the respondents have committed a breach of the directions given by the Tribunal. It is unfortunate that the sole respondent, in this contempt application has retired from service. It is equally unfortunate that the petitioner has failed to apply for the substitution of the name o f the new incumbent of the post, which was held by the sole respondent. In the circumstances, we are unable to take any action for the breach of the directions given by the Tribunal.

9.. Shri Verma has vehemently contended that the contempt application is barred under Section 20 of the Contempt of Courts Act. Suffice to say that on 11.10.1993, the DET/A/T(SW)Telecom.

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New Delhi sent a communication to the petitioner on behalf of the department of communication. The subject of this communication is:

" Notice for compliance of directions of the Central Administrative Tribunal Principal Bench, New Delhi; within thirty days of the receipt thereof.

O.A.No.1082 of 1989 Final Directions issued on 18th May, 1990 by Court No.II of the Tribunal. "

It is recited in the said communication that since the relevant papers/files are not available with the department at present, compliance of the directions of the Tribunal could not ^{be} done. It is also recited that since the Circle office is situated at Jabalpur, it is intimated that after due clarification from the concerned authority, a final decision will be implemented at the earliest. It is thus indicated that the final decision had not been taken till 1.10.1993. Furthermore, a close look on the directions given by the Tribunal in direction No.(iii) would indicate that no time limit had been fixed for the purpose of regularising the services of the petitioner and no time ^{limit} had been fixed from the date from which the petitioner shall be entitled to the pay in the minimum pay scale of a regularly employed workmen. Also, no time limit had been fixed as to from which date, the respondents were required to give benefits and privileges envisaged in the judgment of the Supreme Court in Jagrit Mazdoor Union's case. Thus, we find no force in the submissions of Mr Verma that the contempt application is barred by limitation.

10. Under the circumstances, we direct the respondents that they shall now ^{comply} with the directions

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given by this Tribunal, within a period of one month from today. We make it clear that in the event of non-compliance of this order, serious consequences may ensue.

11. With these observations, the CCP. stands disposed of with no order as to costs.

S.N. Dhoundiyal
(B.N.Dhoundiyal)
MEMBER(A)

S.K. Dhaon
(S.K.Dhaon)
VICE CHAIRMAN

/sds/