

(9)
46

CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

C.P. No. 209 of 1995

in
O.A. No. 201 of 1989.

15th

New Delhi, dated the 15th May, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE Mrs. LAKSHMI SWAMINATHAN, MEMBER (J)

M.S. Rao & Ors.

Versus

Union of India

APPLICANTS

RESPONDENTS

And

In the Matter of

1. Shri P.S. Gusain,
S/o Shri A.S. Gusain,
C/o P.B. Section,
Ministry of External Affairs,
New Delhi.
 2. Shri C.B. Thapliyal,
S/o Late Shri S.B. Thapliyal,
R/o B-14, EA Hostel,
K.G. Marg,
New Delhi.
 3. Shri C.O. Thomas,
S/o late Shri Ouseph C.,
R/o 60, Samachar Appartments,
Mayur Vihar-I Extension,
Delhi-110091.
 4. Shri Vishwajit,
S/o late Shri Dewan Narshing Dass Chopra,
R/o 14A, New Saraswati Group
Housing society,
26/1, Sector-9, Rohini,
Delhi-110085.
- APPLICANTS

VERSUS

Shri K. Srinivasan,
Foreign Secretary,
Ministry of External Affairs,
South Block,
New Delhi.

..... RESPONDENTS

Advocates: Shri A.K. Behera for the applicants
Shri N.S. Mehta for the official
respondents and Shri K.C. Mittal
Dr. D.C. Vohra/ for the pvt.
respondents

A

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER. (A)

In this C.P. bearing No. 209/96 Shri P.S. Gusain & Ors. have alleged deliberate misimplementation by the official respondents (UOI) of the Tribunal's judgment dated 3.6.94 in O.A. No. 201/89 Shri M.S. Rao & Ors. Vs. UOI.

2. In that O.A. the applicants Shri M.S. Rao & four others, all Section Officers in Ministry of External Affairs, New Delhi had challenged certain orders passed by the respondents, pursuant to the decision of the Hon'ble Supreme Court dated 11.12.87 in Writ Petition No. 2635/80 Shri Karan Singh Vs. UOI and the Tribunal's judgments in TA No.129/85 decided on 21.11.86 and O.A. No.762/87 decided on 12.2.88. In that O.A. those applicants had also challenged certain Notifications issued by the Respondents subsequently on various grounds.

3. That O.A. was disposed of by impugned judgment dated 3.6.94, the operative portion of which reads as follows:

" In view of the above it would be fit and proper to direct the respondents to recheck the dates of regular promotion as Section Officers of the applicants vis-a-vis the other promotee Assistants and it has to be ensured that May, 1987 seniority list of Assistants is correctly followed. It is needless to add that while doing this the guidelines given in the second case of Tandon vide order dated 12.2.1988 have to be scrupulously followed. Respondents are allowed a period of four months from the date of receipt of this order for implementing the above direction.

A

Under the circumstances the O.A.
is disposed of on the above lines.
No costs".

4. Admittedly the present applicants in the C.P. were not applicants in that O.A.

5. Thereupon some of the applicants presently before us, also filed RA No. 252/94 praying for review of the impugned judgment dated 3.6.94. That RA was dismissed by order dated 3.8.94 in which the contentions raised by the applicants for review were rejected.

6. Meanwhile in implementation of the Tribunal's judgment dated 3.6.94 respondents issued the Seniority List of integrated Grades II & III of General cadre of IFS (B) vide O.M. dated 28.6.94, the preamble to which reads as follows:

" In its order dated 3.6.94, the Principal Bench of Central Administrative Tribunal in the case of M.S. Rao & Ors. Vs. UOI & Ors. (ORA No.201/89), directed the Ministry

- i) to check the date of regular promotion as Section Officers of the applicants (DR Assistants promotee SOs) vis-a-vis the other promotee Assistants;
 - ii) it has to be ensured that May, 1987 Seniority List of Assistants is correctly followed and
 - iii) while doing so, the guidelines given in the 2nd case of P.N.Tandon vide order dated 12.2.88 to be scrupulously followed.
- A

2. Accordingly, a revised Seniority List of Officers of the integrated Grades II/III of the General Cadre of the I.F.S.(B) as on 28.6.94 is enclosed. This Seniority List supersedes the one circulated vide O.M. No. Q/CAD/582/2/93 dated 16.9.93.

3. Placement of Officers in this Seniority List for the years 1970 to 1980 and 1985 to 1991 is based on the principle of "Continuous Officiation" as stipulated in the Supreme Court judgment in the case of G.S. Lamba & Ors. Vs. the UOI (Writ Petition Nos. 13248 - 13257 of 1983 decided on 6.11.85) as also the CAT's decision in the case of K.C. Francis & Ors. Vs. UOI (OA 837/86 decided on 16.3.93) and in consonance with Rule 21(4) of the IFS(B) RCSP Rules.

4. Placement of officers in this Seniority List for the years 1981 to 1984 is in accordance with Rule 25(1) of the IFS (B) RCSP Rules.

5. The Seniority List is subject to any order that the Govt. may pass in respect of any officer in whose case there may have been some factual errors.

6. The Seniority List is further subject to the final decision of the Courts in the following cases:

(a) S.L.P. No.11481 of 1980 -
UOI Vs. Om Prakash & Ors.

(b) Petition No. OA-2388/91 -
M.P. Singh & Ors. Vs. UOI"

7. The applicants in the present CCP now contend that the official respondents have wilfully and deliberately misplemmented the Tribunal's judgment extracted above by issuing impugned orders dated 28.6.94 because

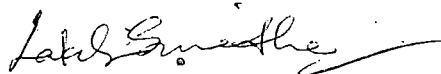
- (i) the respondents were only supposed to recheck the dates of regular promotion of officers promoted since 1981 bonafidely with a view to rectifying the anomaly created by issuance of Order No.III dated 12.5.88, but instead of doing so the respondents recast the entire Seniority List at breakneck speed and with malafide interest.
- (ii) instead of removing the earlier anomaly as directed by the Tribunal the same has been compounded because by impugned order dated 28.6.94 132 Departmental promotees have been placed against a quota of only 32 Deptl. Promotee S.Os in a single year 1985 and most of the SOs from amongst DP's promoted in subsequent years 1986, 1987, 1988 and 1989 against their respective quota have now been shown promoted in 1985 alone.
- (iii) the position of the applicants has thereby been adversely affected in the Seniority List vis-a-vis others.
- A


8. A plain reading of the preamble of O.M. dated 28.6.94 makes it abundantly clear that the respondents have sought to implement the Tribunal's judgment dated 3.6.94, and while doing so they have also kept in mind certain other relevant judicial pronouncements on the subject delivered from time to time. If the present applicants have any grievance in respect of that O.M., it is open to them to agitate the same in accordance with law, ^{as} a C.C.P. is not the appropriate instrument for the purpose. In this connection we note that it was open to the present applicants to have impleaded themselves in O.A. No. 201/89 but they did not do so. Some of them filed RA No.252/94 which was dismissed. During arguments applicants' counsel Shri Behera stated that the RA was filed before the O.M. dated 28.6.94 was issued, on an apprehension that the implementation of the judgment dated 3.6.94 may affect them adversely, and the actual O.M. dated 28.6.94 was not available to them when the RA was filed, but we note that the R.A. was disposed of on 3.8.94, that is well after issue of the O.M. dated 28.6.94 and it was open to the applicants in the R.A. (some of whom are also applicants in the present C.P.) to have brought the contents of the O.M. dated 28.6.94 to the Tribunal's notice, before orders were passed on the R.A. on 3.8.94 but that does not appear to have been done either.

9. It is well settled that the object of initiating contempt proceedings is not to enforce private rights, but to help to maintain respect and decorum for the judicial process. In this connection Shri NS. Mehta, Id. counsel for the official respondents has invited our attention to the case V.G.Narainkutty Vs. Flag Officer Commanding-in-Chief 1987 Cr.LJ 51(DB) Kerala referred to in The Law of Contempt of Court & Legislation by Mr. Justice Tek Chand, Third Edition, 1994. In that case the Kerala High Court had held that the petitioner who was working as LDC in Naval Defence was entitled to be placed above his immediate junior in LDC cadre, and pursuant to the High Court's declaration, the authorities fixed the petitioner's rank. Feeling aggrieved, the petitioner initiated contempt proceedings against the Chief of Staff and Flag Officer Commanding in Chief. Relying upon a Supreme Court's case (A. Nahta Vs. UOI (1985) 3 SCC 382) the Kerala High Court held that no case for contempt was made out, and in case the petitioner felt aggrieved by fixation of his rank it was open to him to apply for enforcement of his private legal rights. The contempt proceedings were not a substitute for enforcement of private legal rights, and that petition was accordingly dismissed.

10. We are in respectful agreement with that ruling and under the circumstances find ourselves unable to hold that any contempt proceedings are warranted against the official respondents. Applicants' counsel Shri Behera has cited certain authorities in support of his arguments viz. S.N.Kapur Vs. UOI 1989 (2) SCC 297; T.M.A.Pai Foundation Vs. State of Karnataka 1995 (4) SCC 1; C.K.Daftary Vs. O.P. Gupta AIR 1971 SC 1132; and a Full Bench decision of CAT reproduced in ATR 1987 CAT 612, but a careful perusal of those citations makes it clear that none of them advance the case of the present applicants for initiating contempt proceedings against the official respondents.

11. This Contempt Petition is accordingly dismissed and the notices issued to the alleged contemnors are discharged. No costs.


(Mrs. LAKSHMI SWAMINATHAN)
Member (J)


(S.R. ADIGE)
Member (A)

/GK/