

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP. No. 79/96
in
OA. No. 320/90

(37)

Dated New Delhi, this 12th day of August, 1996.

HON'BLE SHRI A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

P. Banerjee
A-5/62, Sector XVIII Rohini
DELHI-110085. ... Petitioner

By Advocate: Shri M. K. Gupta

versus

1. Shri B. P. Singh
Secretary
Department of Culture
Ministry of Human Resource
and Development
Shastri Bhawan
NEW DELHI-110 001.
2. Smt. Achala Moulik
Officiating Director General
Archaeological Survey of India
Janpath
NEW DELHI.
3. Shri S. K. Chakravorty
Secretary
Union Public Service Commission
Dholpur House
NEW DELHI-110003.
4. Shri A. C. Grover
Director (Admn.) & (Conservation)
Archaeological Survey of India
Janpath
NEW DELHI. ... Respondents

By Advocate: Shri N. S. Mehta

O R D E R (Oral)

Hon'ble Shri A. V. Haridasan, VC (J)

This CP has arisen out of the order passed by the Tribunal in OA.320/90 on 25.4.1995. The application was allowed. The recommendations of the DPC meetings held on 15.4.1987 and 7.6.1989

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were quashed and the respondents were directed to constitute a fresh DPC to reconsider the case of the petitioner who is the original applicant, for promotion to the post of Director (Conservation) ~~in the~~ ~~the~~ vacancy arising in 1986 onwards on superannuation of Shri R. Vishwanathan, disregarding the adverse ACRs for the years 1984 and 1985 and taking into consideration the other ACRs in accordance with the relevant rules and instructions within a period of two months from the date of receipt of a copy of the order. It was also directed that if the applicant was found fit for promotion to that post, all the consequential benefits in accordance with law should also be given to him. It was further observed that the prayer of the petitioner (the original applicant) for quashing the appointment made by the respondents following the advertisement dated 13.1.1990 was not allowed at that stage and that the said advertisement and subsequent appointment of Shri A. C. Grover, 4th respondent would abide by the result of the Review DPC. Alleging that the directions contained in the above judgement was totally ignored by the respondents and thereby the respondents have committed contempt which makes them liable to be proceeded

with under the Contempt of Courts Act, the petitioner has filed this CP.

2. Notices having been issued to the 1st and 2nd respondents on the CP, ^{they} have filed additional affidavits. The case of the petitioner was considered by the Review DPC. On the basis of the recommendations he was first promoted to the post of Director (Conservation) by order dated 9.5.1996 with effect from 9.5.1996. Finding that this did not satisfy the directions contained in the order, the matter was further considered and the petitioner was appointed as Director (Conservation) with effect from 15.4.1987 by order dated 9th July.1996 with all consequential benefits. The respondents in their affidavits have admitted that there has been delay in implementation of the judgement and that the delay was owing to procedural formalities which could not be avoided. They have also stated that they held the Tribunal in great regard and respect and prayed that the contempt proceedings may be dropped.

3. The learned counsel for the petitioner states that so far as the benefits which flow out of the judgement of the Tribunal to which the

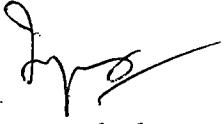
applicant was entitled, they have been given to him though belatedly. The only grievance which still persists according to the learned counsel for the petitioner is that once on the recommendation of the Review DPC the petitioner is promoted, there should be no post of Director (Conservation) on which the 4th respondent should be still continued and, therefore, by continuing the 4th respondent on the aforesaid post, respondents 1 & 2 are guilty of contempt.

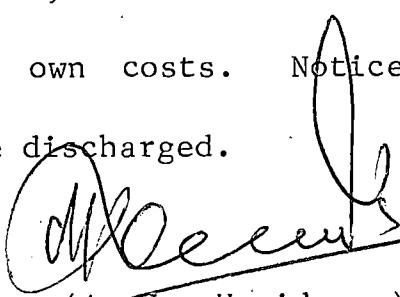
4. In the additional reply affidavit filed by respondent no.1, it has been stated that the appointment of the 4th respondent stands vitiated. However, the respondents contended that as the 4th respondent was recruited in consultation with the UPSC, a separate decision in his case would soon be taken and that may not be linked with this matter.

5. The learned counsel for the petitioner states that once the appointment is vitiated, the Government has no right to retain the person so appointed. Technically, the learned counsel is correct. If the process of selection is vitiated, the selected person has no right to continue generally. This difficulty was understood by the

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respondents 1 & 2. They considered the fact that the 4th respondent who was selected in the year 1989, if he is now to be thrown out of the service for no fault of his, it would be harsh on him and, therefore, they are seeking ways and means to do justice to him also without in any way interfering with the legitimate rights of the petitioner. We do not consider such an action on the part of the respondents 1 & 2 to be against the directions contained in the order of the Tribunal. Therefore, we are of the considered view that in the facts and circumstances of the case, it is not necessary to take any further action against the respondents on the CP. The CP is, therefore, dismissed leaving the parties to bear their own costs. Notices issued to the respondents are discharged.


(K. Muthukumar)
Member (A)


(A. V. Haridasan)
Vice Chairman (J).

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