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Central Administrative Tribunal
Principal Bench

C.P. No. 229 of 1999
in
O.A. No. 2498 of 1990

New Delhi, dated this the 2nd December, 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri T.R. Mohanty,
S/o Shri R.N. Mohanty,
Director (Statistics & Records),
D.G. of Resettlement,
Ministry of Defence,
West Block No.4, Wing No.5,
First Floor, R.K. Puram,
New Delhi-110066. ... Applicant

(Applicant in person)

Versus

1. Shri R.S. Mathur,
Secretary,
Dept. of Statistics & Programme Implementation,
Ministry of Planning & Prog. Impl.
Sardar Patel Bhawan,
Parliament Street,
New Delhi-110001.
2. Shri M.D. Asthana,
Formerly Secretary,
Dept. of Statistics & Prog. Impl.,

Currently Secretary,
Dept. of Food & Civil Supplies,
Ministry of Food & Consumer Affairs,
172, Krishi Bhawan,
New Delhi-110001.
3. Shri K.S.P. Rao,
Director,
Dept. of Statistics & Programme Implementation,
Ministry of Planning & Prog. Impl.,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001.
4. Shri N.K. Sharma,
Formerly Under Secretary,
Dept. of Statistics & Programme Implementation,
Currently Dy. Director,
Central Statistical Organisation,
Dept. of Statistics & Prog. Implementation,
Ministry of Planning & Prog. Impl.,
Sardar Patel Bhawan, Parliament Street,
New Delhi-110001. ... Respondents

(By Advocate: Shri P.H. Ramchandani)

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ORDER

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

We have heard applicant Shri Mohanty in person and respondents' counsel Shri Ramchandani on C.P. No. 229/99 alleging that respondents have wilfully ignored the Tribunal's directions dated 24.4.95 in O.A. No. 2498/90

2. At the outset the objections raised by Shri Mohanty that the Under Secretary, Dept. of Statistics who filed respondents reply to the C.P. was not competent to file the same, and Government counsel Shri Ramchandani was not competent to appear and defend the alleged contemnors is rejected in the light of the CAT Full (Delhi) Bench order dated 12.8.92 in R.A. No. 152/90 in CCP No. 11/90 Shri D.P. Badola Vs. Shri A. Dass & Others & connected cases.

3. By the Tribunal's order dated 24.4.95 the O.A. No. 2498/90 was allowed and the impugned Notification dated 20.2.89 amending Rule 13 Indian Statistical Service Rules 1961 was quashed w.e.f. 16.11.97, its retrospectivity (the amendment had been given retrospective effect w.e.f. 27.11.72) having been quashed earlier by the Hon'ble Supreme Court in Union of India Vs. T.R. Mohanty & Others (1994) 5 SCC 450. In that order dated 24.4.95, the Bench had relied heavily on the Hon'ble Supreme Court's judgment in Indra Sawhney & Others Vs. Union of India & Others JT 1992 (6) SC 273.

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4. Applicant Shri Mohanty contends that the ~~effect~~ aforesaid order dated 24.4.95, quashing the impugned Notification dated 20.2.89 was of not having reservations in promotions in ISS after 16.11.97 but despite that reservations in promotions continued to be made by respondents.

5. Respondents' counsel on the other hand contends that well before 16.11.97, the Constitutional (77th Amendment) Act was promulgated on 17.6.95 inserting ~~clause~~ 16(4A) (Annexure R-1) which reads as follows:

"(4A) Nothing in this article that prevent the State from making any provision for reservation in matter of promotion to any clause or class of posts in the services under the State in favour of SC/ST which in the opinion of the State are not adequately represented in the service under the State."

Pursuant to the Ministry of Personnel, Public Grievance and Pensions which is the nodal Ministry in service matters, ^{had} issued O.M. dated 13.8.97 (Annexure R-2) intimating that pursuant to Article 16(4A) it had been decided to continue the promotion beyond 15.11.97. Shri Ramchandani thus contends that the Tribunal's order was to come into effect only after 16.11.97, before which steps were taken by legislature to bring about ^{an} ~~persons~~ ^{provision} legislation backing by way of enabling ~~persons~~ in the Constitution to provide for reservation in promotion, and the Tribunal's order in O.A. No. 2498/90 thus stood ~~effected~~ in view of the Constitutional

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amendment and Law laid down by the Hon'ble Supreme Court in Commissioner of Commercial Taxes Vs. G.S.Rao (1996) 7 SCC 512, wherein, after taking note of the provisions of Article 16 (4A), the Hon'ble Supreme Court had observed that the introduction of Article 16(4A) had removed the base, as interpreted by them in Indra Sawhney's case (Supra).

6. Shri Mohanty, however, contends that Article 16(4A) was only ~~an~~ enabling provision, and respondents were still required to issue a fresh amendment to Rule 13, ISS Rules, 1961 w.e.f. 16.11.97 in view of the Tribunal's order dated 24.4.95 if they intended to continue reservations, and by not doing so, they have disobeyed the Tribunal's order for which contempt action should be initiated against them.

7. We are unable to agree. Contempt proceedings are essentially a matter between the Court and the ^{upheld} alleged contemnors to ~~up~~ the majesty of the law, and to instil respect for it. As held by the Hon'ble Supreme Court in Indian Airports Employees Union Vs. Ranjan Chatterjee & Anr. JT 1991(1)SC 213, for initiating contempt proceedings the disobedience has to be wilful and deliberate. In the present case we do not see any wilful or deliberate disobedience on the part of respondents, and the legal interpretation advanced by respondents as summarised in Paragraph 5 above can under

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no circumstances be construed to amount to wilful and deliberate disobedience of the Court's order.

8. The C.P. is rejected. Notices are discharged.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)

Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

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