

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

CP 140/94 in OA 1887/90,
 CP 157/94 in OA 68/91 and
~~O.A. No.~~ CP 231/94 in OA 2988/91
 T.A. No.

DATE OF DECISION 23.8.95

Shri Onkar Verma and Ors.

Petitioners.

S/Shri R.K. Anand, M.L. Chawla, Lakhan
 Pal, M.L. Sharma & Anjun Javed, proxy
 for Sh.S.B. Upadyay. Versus

Advocate for the Petitioner(s)

Lt. Governor, Delhi & Ors.

Respondent

Shri Raj Singh

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. S.R. Adige, Member(A).

The Hon'ble Mrs. Lakshmi Swaminathan, Member(J).

1. To be referred to the Reporter or not? *yes*2. Whether it needs to be circulated to other Benches of the Tribunal? *X*

Lakshmi Swaminathan
 (Smt. Lakshmi Swaminathan)
 Member(J)

S.R. Adige
 (S.R. Adige)
 Member(A)

Central Administrative Tribunal
Principal Bench.

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CP 140/94 in OA 1887/90,
CP 157/94 in OA 68/91 and
CP 231/94 in OA 2988/91

New Delhi this the 23rd day of August, 96.

Hon'ble Shri S.R. Adige, Member(A).

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

CP 140/94 in OA 1887/90.

1. Shri Onkar Verma,
S/o Shri Giri Raj Singh,
R/o 9-C, Sector 12,
R.K. Puram,
New Delhi.
2. Shri Hari Krishna Yadav,
S/o late Shri L.S. Yadav,
R/o 213, Police Colony,
Hauz Khas,
New Delhi.
3. Shri Hari Krishan Kumar Vohra,
S/o Shri B.R. Vohra,
R/o E-349, Govt. Quarters,
Dev Nagar,
New Delhi.
4. Shri Krishan Kumar Arora,
S/o Shri Har Bhagwan,
R/o 252-D, MIG Flats,
Rajouri Garden,
New Delhi.
5. Shri Prem Nath,
S/o Shri U.C. Arora,
R/o 251, MIG Flats,
Rajouri Garden,
New Delhi.

..Petitioners.

By Advocate Shri R.K. Anand, Sr. Counsel.

Versus

1. Lt. Governor,
Administrator of Delhi Police,
Raj Niwas, New Delhi.
2. Shri Nikhil Kumar,
Commissioner of Police,
Police Headquarters,
New Delhi.
3. Shri M.B. Kaushal,
Addl. Director General, CRPF,
CGO Complex,
New Delhi.

..Respondents.

By Advocate Shri Raj Singh.

JS

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CP 157/94 in O.A. 68/91.

Ram Sarup Yadav,
S/o Shri Mangal Singh,
R/o H. No. 200, Police Colony,
IIT Hauz Khas,
New Delhi.

...Petitioner.

By Advocate Shri M.L. Chawla, Shri Lakhan Pal with
Shri M.L. Sharma.

Versus

Shri Nikhil Kumar,
Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.

...Respondent.

By Advocate Shri Raj Singh.

CP 231/94 in O.A. 2988/91.

Noor Ahmed, ACP,
S/o Shri Rafique Ahmed,
Delhi Police, Hauz Khas
Police Station,
New Delhi.

...Petitioner.

By Advocate Shri Anjun Javed proxy for Shri S.B.
Upadyay.

Versus

1. Union of India,
Ministry of Home Affairs,
Govt. of India, Central
Secretariat, North Block,
New Delhi.

2. The Lt. Governor, Raj Niwas,
Delhi.

3. Shri Nikhil Kumar,
Police Commissioner,
Delhi Police,
Police Headquarters,
MSO Building, IP Estate,
New Delhi.

...Respondents.

By Advocate Shri Raj Singh.

ORDER

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

As these three contempt petitions involve
the common question of facts and law, they were
taken up for hearing together and are being disposed,

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of by a common order.

2. In the contempt petitions, referred to above, the applicants have alleged that the respondents have wilfully and deliberately flouted the specific directions given by the Tribunal in the order dated 12.1.1993. In this judgement, the petitions were disposed of with the following directions:

"(a) The cases of the petitioners who have already filed memorials to the President and whose names are included in the list of 74 persons accompanying D.O. letter No. 14047/12/90-UTP addressed by the R.R. Shah, Joint Secretary (UT) to the Secretary (Home), Delhi Administration, shall be considered expeditiously. Such of the petitioners whose names are not included in the said list may also file appropriate memorials giving all relevant information within two weeks from this date. The cases of all the petitioners who filed their representations in this behalf within two weeks from this date shall also be examined and reviewed and their cases considered for being included in the 'F' List (Executive) prepared for the years 1973 and 75. The review shall be done within a period of six months from this date. The reliefs would be granted to them in the same manner the Administration has already granted to others whose cases have been reviewed and their names have been included in the 'F' list.

(b) We would like to make it clear that consideration of their cases directed as above shall be on merits and their requests shall not be turned down either on the ground of delay or laches.

(c) If the cases of some of the petitioners have already been considered by the Review DPC and their names have been directed to be included, they shall be included without subjecting their cases for further review".

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3. According to Shri R.K. Anand, learned counsel for the applicant in CP No. 140/94 whose arguments were also adopted by the learned counsel in the other two contempt petitions, the Tribunal had directed the respondents to grant relief to the persons covered by the judgement in the same manner in which the respondents had already granted relief to others whose cases have been reviewed and their names have been included in the promotion list 'F' (Executive) for the period 1973 to 1975. The applicants, therefore, submit that the only relevant criteria to be adopted is that the persons who are equally situated or having better service records than the persons who have been given promotion by the Administration on their cases being reviewed earlier, be also given seniority with retrospective effect without holding any review DPC. The applicants have, in fact, submitted that they have a better record of service than the other persons who have been given promotion and placed in List 'F'. Their main contention, therefore, is that the petitioners/applicants were also to be considered in the same way as those considered earlier by the administration and in case they have the same ^{or} better service records, then as per the directions of the Tribunal the same relief ought to have been extended to them which has not been done. They allege that this has not been done wilfully and contemptuously by the respondents. Hence, the contempt petitions.

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4. The respondents have filed a reply as also an additional affidavit to which the applicants have also filed a rejoinder. The respondents have submitted that as directed by the Tribunal in its judgement dated 12.1.1993, the respondents have considered the names of the petitioners for inclusion in the promotion list 'F' for the period 1973 and 1975, but their names could not be admitted to the said list as they failed to make the grade. According to them, each of the cases have been considered according to law on its own merit. They have submitted that the petitioners' cases were reviewed by the respondents/department for inclusion of their names in List F (Executive) and those ^{who} made the grade were included in this list w.e.f. 31.8.1975 and 19.12.1975. However, since the petitioners in this petition were not found suitable by the review DPC which was held as per the directions of the Tribunal, their names were not included in the said list. They have further submitted that in the review DPC held in 1993 to review the selection for List F (Executive) of 1973 and 1975, the respondents have adopted the same criteria as adopted in those years except the system of interviews and physical fitness because any interview or physical assessment of a candidate, 20 years after the original assessment, could not give a proper picture of the position in 1973-75. They have, however, submitted that in the review DPC for 1973-75, the department's guidelines dated 23.9.1992 were also kept in view by the review DPC. In the additional

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affidavit, they have submitted that the review DPC which has been held in July-September, 1993 for compliance of the directions given in the judgement had adopted more or less the same criteria as adopted by the DPC held in 1973-75. The learned counsel for the respondents has submitted that there was not much deviation in the guidelines dated 23.9.1992 and those which existed under the then relevant rules, i.e. Rule 13 of the Punjab Police Rules, 1934. In the circumstances, he has submitted that although no review DPC was held by the respondents in 1973-75, because the respondents had been directed by the Govt. of India/Lt. Governor of Delhi to include certain names in List 'F' (Executive) of 1973-75, this was not the position now. . In pursuance of the judgement of the Tribunal, the respondents could only have acted in accordance with the rules, namely, to include the names of the applicants in List 'F' (Executive) by holding a review DPC.

5. We have carefully considered the pleadings and the arguments advanced by the learned counsel for the parties.

6. In this case, the main allegation of the petitioners is that the respondents have not included their names in the promotion list 'F' (Executive) for 1973 and 1975 by wilfully ignoring the directions given by the Tribunal in the judgement dated 12.1.1993 in O.A. 1887/90. In this judgement, the Tribunal had directed that the cases of the petitioners who file representations should also be examined and

reviewed and their cases considered for being included

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in the List 'F' (Executive) prepared for the years 1973 and 75. The Tribunal further directed that the reliefs would be granted to them in the same manner the Administration has already granted to others whose cases have been reviewed and their names included in the 'F' list. However, in sub-para (b) of ~~the~~ para 2 of the judgement, it was made clear that consideration of the cases of the petitioners shall not be turned down either on the ground of delay or laches.

7. From the specific directions given by the Tribunal which includes examination and the review of the cases of the petitioners on merits, it cannot be held that the respondents have either wilfully disobeyed the order or acted contrary to the directions which attracts punishment in accordance with the provisions of the Contempt of Courts Act, ¹⁹⁷¹ read with Sec. 17 of the Administrative Tribunals Act, 1985. The Supreme Court in the case of Amrit Nahata Vs. Union of India (1985(3) SCC 382) has held that the power to commit for contempt of court has to be exercised with the greatest caution. By convening the review DPC for considering the cases of the petitioners on merits for inclusion of their names in List 'F' (Executive) for 1973 and 1975 the respondents cannot be held to have contravened the judgement or the relevant rules. It is well settled that any action that might have been taken previously in contravention of the rules through inadvertance or for any other reason, does not give the petitioners any enforceable

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right that such contravention of rules/instructions should also be extended to them. Such a plea of discrimination can be taken to enforce what is legally right but not what is in violation of the rules/instructions on the subject. In this case, the respondents have in pursuance of the order of the Tribunal held a review DPC to consider the cases of the petitioners for inclusion of their names in List 'F' (Executive) from retrospective dates. The Tribunal had ordered that the cases of the petitioners should be considered on merits and the cases should be reviewed within a period of six months and they be granted reliefs in the same manner the Administration had granted to others whose cases have been reviewed and included in the List 'F'. Therefore, the petitioners' contention that the review DPC ought not to have been held cannot be accepted, although the dispute regarding the criteria adopted by the review DPC held in 1993 may be another matter, which cannot be taken up in these contempt petitions. It is settled position of law that in a contempt petition as far as the jurisdiction is concerned, the only parties involved in the proceedings are the Court and the alleged contemner and the contempt proceedings cannot be used as a substitute for enforcement of private legal rights. but is for maintaining and upholding the dignity of the Courts. (See Haresh K. Jani and Ors. Vs. Sarabhai Ramabhai Shah and another, AIR 1987 Gujarat 215 - a Five Judge Full Bench of Gujarat High Court) and V.G. Narainkutty Vs. Flag Officer Commanding-in-Chief (1987 Cr.L.J. 51 (DB)).

8. From the above facts and arguments advanced by the parties, it is clear that the issue raised in the contempt petitions is an arguable one. As such, we cannot hold that there has been any wilful or contumacious disobedience of the order of this Tribunal dated 12.1.1993. Hence, we are satisfied that no contempt, as alleged by the petitioners in the aforesaid three cases, is established and accordingly these contempt petitions are dismissed. The notices issued to the respondents are accordingly discharged.

(Smt. Lakshmi Swaminathan)
Member(J)

(S.R. Adige)
Member(A)

'SRD'

Attest
Suzanne Klemm
Clerk of Court
County of Santa Clara,
State of California.
Tribunal House,
San Jose, Calif.
March 27, 1966

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