

In the Central Administrative Tribunal

Principal Bench: New Delhi

CCP No.354/92 in

Date of decision:20.01.93.

OA No.137/91

Neelam Lata Goswami

....Petitioner

Versus

Commissioner of Police

....Respondent

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioner Shri M.K. Gupta, Counsel.

For the respondents Mrs. Meera Chhibber, Counsel.

Judgement(Oral)

(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The grievance of the petitioner in this case is that the judgement in OA 137/91 has been consciously disobeyed by the respondents, justifying action under the Contempt of Courts Act. The respondents have pleaded that they have taken every conceivable action in accordance with the judgement and that they have not committed any contempt.

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2. . It was contended by the learned counsel for the petitioner that though the petitioner has been given promotion w.e.f. 9.9.1988, they have specifically denied the consequential monetary benefits. The petitioner's counsel submits that the expression 'that the petitioner shall be entitled to consequential benefits' means and includes all monetary benefits. The respondents have taken the stand that the promotion having been given in the light of the directions of the Tribunal, there being no specific direction for grant of monetary benefits, the direction to grant consequential benefits was understood as consequential benefits in accordance with law. It is on that basis that it is submitted that they had to respect Fundamental Rule 17 (1) which incorporates principle of 'no work no pay'. As the petitioner did not work in the promotional post from 9.9.1988 it is stated that FR 17(1) comes into operation, thus denying the petitioner the benefit of emoluments from that date. The Supreme Court had occasion to examine the scope of FR 17 (1) in JT 1991 (3) SC 527 between Union of India etc. etc. vs. K.V. Jankiraman etc. etc. In paragraph 25 of the said judgement dealing with the effect of FR 17, it is stated that the normal rule of 'no work no pay' is not applicable to cases where the employee although he is willing to work is kept away from the work by the authorities for no fault of his. It is stated that where the employee remains away from work for his own

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reasons, although work is offered to him, F.R. 17 (1) will be attracted. We are satisfied that the principles laid down by the Supreme Court is attracted to the facts of this case, as the petitioner's non-functioning in the promotional post from 9.9.1988 was not attributable to any conduct of the petitioner. She could not function in that post because of the disciplinary proceedings which ultimately culminated in a decision being rendered in favour of the petitioner. Hence, we are inclined to take the view that the respondents were not justified in proceeding on the basis that FR 17 (1) is attracted to this case. We are, therefore, clearly of the opinion that the respondents were liable to grant consequential monetary benefits on the basis of her promotion w.e.f. 9.9.1988. As, we are inclined to take the view that failure to comply with this part of the direction is on account of wrong assumption about the position in law, we grant six weeks from this date to compute and pay all the consequential monetary benefits in the light of the elucidation which we have made above.

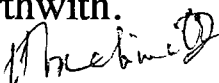
3. The petitioner has another grievance about her seniority and her case not being considered for promotion from the year 1987. The respondents have taken the plea that according to the legitimate seniority of the petitioner based on the date of confirmation, promotion has been given as on the date on which petitioner's immediate junior and immediate senior

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were accorded promotion. There is no finding in the judgement of the Tribunal in regard to the petitioner's contention about her position in the seniority list. The respondents have obviously proceeded to accord to her seniority on the basis of the confirmation order made in her favour, giving confirmation w.e.f. 1.10.1978. Hence, it is not possible to take the view that any contempt has been committed in this case in this behalf by the respondents. The grievance, if any, of the petitioner cannot, therefore, be made subject matter of contempt of court proceedings. So far as the confirmation in the post of Inspector is concerned, the learned counsel for the respondents submitted that the same would also be done within the period of six weeks given above. Subject to the aforesaid directions, this petition stands disposed of. Notice of contempt is discharged.

4. Let a copy of this order be furnished to the learned counsel for both the parties forthwith.

  
(I.K. Rasgotra)  
Member(A)

  
(V.S. Malimath)  
Chairman

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