

Central Administrative Tribunal

Principal Bench

1. CP No.372/2006
in
OA No.1021/2005

With

2. CP No.374/2006
in
OA No.2963/2004 ✓

New Delhi this the 18th day of January, 2007.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

Shri Hari Narain & Ors.

-Applicants

(By Advocate Shri Amarjit Singh Bedi, proxy for Shri V.P. Pandey,
Advocate)

-Versus-

1. Shri R. Narayanaswami,
Chief Secretary,
Delhi Secretariat,
Players Building,
I.P. Estate,
New Delhi-110 002 & Another

Respondents

(By Senior Counsel Shri R.K. Khanna with Ms. Simran, Counsel)

1. To be referred to the Reporters or not?

Yes

2. To be circulated to outlying Benches or not?

Yes

S. Raju
(Shanker Raju)
Member (J)

Central Administrative Tribunal

Principal Bench

1. CP No.372/2006
in
OA No.1021/2005

With

2. CP No.374/2006
in
OA No.2963/2004

New Delhi this the 16th day of January, 2007.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Mrs. Neena Ranjan, Member (A)

CP No.372/2006

1. Shri Hari Narain,
S/O Late Shri Munna Lal,
R/O 1369,
Type-II, Gulabi Bagh,
Delhi-110007
2. Shri Puran Mal,
S/O Shri Arun Singh,
R/O 201,
Bharat Nagar,
Delhi-52.
3. Shri Dharam Pal,
Shri Charan Singh,
R/O V-489, Gali No.17,
Main Road,
Vijay Park,
Delhi.
4. Shri Pritam Singh,
S/O Mehra Singh,
R/O 368, Vill. & P.O.
Pochan Pur,
New Delhi.
5. Shri Murari Lal,
S/O Shri Banwari Lal,
R/O DDA Janta Flat,
Nand Nagri,
Delhi-93

6. Shri Sunder Lal,
S/0 Sh.Ram Swaroop,
R/0 B-547,
Raghbir Colony,
Gali No.4/5,
Kondli,
Delhi.
7. Sh.Hargovind Singh,
S/0 Shri Ram Chander,
R/0 B-3/145,
Moh. Nabi Karim,
Hapur,
Ghaziabad (UP)
8. Sh. Subhash Chandra,
S/0 Shri Chhedi Lal,
R/0 Qtr.No.923, Gulabi Bagh,
Delhi-7
9. Sh.Ramesh Chander,
S/0 Sh. Chhaju Ram,
R/0 61-A, Nanda Enclave,
Nazafgarh,
New Delhi.
10. Shri Nand Kishore,
S/0 Shri Roop Lal,
R/0 RZ-B/80, Raj Nagar,
Palam Colony,
New Delhi.
11. Sh.Braham Prakash Singh,
S/0 Shri Tej Singh,
R/0 RZ 170/13, Gali No.4/A,
Durga Park, Nasir Pur Rd.,
New Delhi.
12. Shri Roop Ram Banswal,
S/0 Shri Ram Singh Banswal,
R/0 347, Jwala Puri,
Paschim Vihar,
New Delhi.
13. Shri Anand Singh
S/0 Shri Lal Singh
R/0 F-57, Nanak Pura,
New Delhi-21
14. Shri Devi Dayal,
S/o Shri Mangloo Ram,
R/0 B-7/115, Sec.III,
Rohini, Delhi-85
15. Shri Surinder Kumar,
S/0 Shri Hazari Ram,

R/O Qtr.No.33,
Sec.VIII, R.K.Puram,
New Delhi.

16. Shri Kailash Chand,
S/O Shri Sohan,
R/O Dilshad Colony,
A-1/207,
Ghaziabad (UP).
 17. Shri Harish Kumar,
S/O Shri Tej Ram,
R/O 436,
Lancer's Road,
Timarpur,
Delhi-54
 18. Shri Mukesh Kumar,
S/O Shri Hari Kishan,
R/O A-67, Bim Vihar,
Gali Johripur, Delhi.
- Petitioners/Applicants

(By Advocate Shri Amarjit Singh Bedi, proxy for Shri V.P. Pandey,
Advocate)

-Versus-

1. Shri R. Narayanaswami,
Chief Secretary,
Delhi Secretariat,
Players Building,
I.P. Estate,
New Delhi-110 002.
 2. Shri V.V. Bhatt,
The Principal Secretary (Finance),
Government of NCT of Delhi,
Delhi Secretariat,
Players Building,
IP Estate,
New Delhi-110 001.
- Respondents

(By Senior Counsel Shri R.K. Khanna with Ms. Simran, Counsel)

CP No.374/2006

B.R.Arya,
210-C, Pocket-C,
Mayur Vihar-II,
Delhi-110091

-Petitioner/Applicant

(By Advocate Shri Amarjit Singh Bedi, proxy for Shri V.P. Pandey,
Advocate)

-VERSUS-

Shri V.V. Bhatt,
The Principal Secretary (Finance),
Government of NCT of Delhi,
Delhi Secretariat,
Players Building,
IP Estate,
New Delhi-110 001.

-Respondent

(By Senior Counsel Shri R.K. Khanna with Ms. Simran, Counsel)

O R D E R

Hon'ble Shri Shanker Raju, Member (J):

As these Contempt Petitions have been filed against a common order passed by the Tribunal on 11.7.2006, they are being disposed of by this common order.

2. A brief factual matrix transpires that the Assistant Accounts Officer (AAOs), despite completion of eligibility having not been promoted as Accounts Officer (AOs) and Senior Accounts Officers despite availability of vacancies and the reservation having not been followed, led to challenge of OM dated 22.9.1992 and OM of 1994, which is clarified w.e.f. 2.7.1997, whereby a classification has been created in the cadre of AOs by bifurcating sanctioned posts of AOs into 80% and 20% for Senior AOs and AOs respectively and placing Senior AOs in senior functional promotional grade with fixation under FR 22 (1)(a)(1). Applicants, who belong to general as well as reserved categories, claim that the posts of AO and Senior AO should be added and treated as common posts of AO from feeder grade and adoption of reservation policy, taking all the 100% posts of AO together but not 20% posts

of AO. In this backdrop consequential benefit of seniority and promotion, from the date the promotion was due, was also sought.

3. The Tribunal vide common order despite the respondents have resisted to the claim on the ground that on restructuring of the organized cadre 80% of the sanctioned strength of the cadre of AOs was placed in the higher pay scale of Senior AO and only 20% posts as AOs separate roster have to be maintained and as clarification has been issued, it is stated that the posts of Senior AO are not available to the feeder grade for promotion to the posts of AO. The Tribunal after relying upon the decision of the Chandigarh Bench of the Tribunal in OA No.426/PB/94, decided on 24.7.2001, held as follows:

“18. Evidently, by restructuring there can be a process of moving upwards and having a higher status while remaining on the same pedestal, whereas promotion has the effect of taking a frog-leap from the lower pedestal to the next higher pedestal leaving behind the original platform. Thus it would appear that in the context of reservation in upgraded existing posts by restructuring, keeping in view the various factors which are also present in this OA, the law that has been laid down does not support the stand taken by the respondents herein. Besides, it is well settled that administrative orders cannot infiltrate into an arena that is already governed by judicial pronouncements.

19. In view of the above discussion it is apparent that the features of the present OA are similar to those cases which formed part of the matter before the co-ordinate Bench at Chandigarh. It is therefore directed that all the posts of AOs recruitment rules keeping in view the provisions of reservation policy. 80% of the posts of AOs would be treated as upgraded and re- shall be available to the feeder cadre for promotion and filled as per the designated as Senior AOs and the benefit of pay fixation in the higher pay scale extended to those AOs who are senior and eligible as per criteria prescribed by the respondents. These 80% posts would not be regarded as promotional posts and FR 22 (1 (a)

(1) shall not apply. There would be no reservation of post in placement in the 80% of the upgraded posts of AOs. In view of these directions the impugned orders are set aside to that extent. The present position is *inter alia* based on the impugned orders of many years ago. Decisions which have been implemented till date shall not be disturbed.

20. The consequential benefits due to the applicants shall be considered by the respondents accordingly and appropriate orders issued as per law within a period of four months from the date of receipt of this order. The applications are disposed of. There shall be no order as to costs."

4. Accordingly, an order passed on 27.10.2006 promoted nine persons as AOs from AAOs with immediate effect. Learned counsel of applicants stated that once their relief was consideration of promotion retrospectively and the action of respondents to restrict the quota to a percentage has been set aside by quashing the memorandum the natural consequences would flow, which, *inter alia*, include not only consideration of promotion but also consequential benefits which are accrued not in the case of prospective promotions but in retrospective/antedated promotions. Learned counsel of applicants stated that the total strength of AOs is 108, out of which 24 are to be reserved for the prescribed categories and as the posts are lying vacant, applicants who have a right to be regularly appointed from the year 1998 when the posts were lying vacant, consequential benefits are to follow. Learned counsel of applicants has relied upon a decision of the Apex Court in ***Gopi Chand Vishnoi v. State of U.P.***, (2006) 9 SCC 694, to contend that on account of entitlement of promotion from back date arrears are consequential.

5. Learned counsel has also relied upon the decision of the Apex Court in **J.K. Industries v. Chief Inspector**, (1996) 6 SCC 685, to contend that a sentence in the order should not be read as an exception in isolation to the *ratio decidendi* laid down. Learned counsel has further relied upon the decision of the Apex Court in **P.N.B. v. Virender Kumar Goel**, (2004) 2 SCC 193, to buttress his plea.

6. On the other hand, Shri R.K. Khanna, learned Senior Counsel appearing for respondents along with Ms. Simran, vehemently opposed the contentions and stated that despite relief of consequential benefits prayed for by applicants, yet having not granted the same in specific terms the consequential benefits now being paid to applicants as promotion and fixation of pay is compliance of the order of this Tribunal in its true letter and spirit and there is no wilful disobedience on the part of respondents.

7. It is also stated that the decisions cited are distinguishable and as the matter is contentious, it cannot be dealt with in a contempt petition.

8. We have carefully considered the rival contentions of the parties and perused the material on record.

9. In fact the OAs filed by applicants have not been allowed, these are disposed of by setting aside the memorandum and consideration of consequential benefits upon applicants by the respondents. As a result thereof, on treating 100% of the posts orders passed by the respondents on 27.10.2006 promoted

60
applicants but with immediate effect and this has not been antedated with grant of consequential benefits of seniority etc.

10. It is trite law that whatever is specifically prayed has not been specifically granted cannot be dealt with in contempt to be considered and accorded to applicants. If, in any manner, they are aggrieved by non-implementation of the order, of which compliance does not appear to be vitiated by any malafide or contumacious disobedience, remedy lies elsewhere. A contentious issue, and when the decision is not clear and is prone to two interpretations, in contempt we cannot exceed our jurisdiction, granting a claim to the parties, which has not been granted in explicit terms in the original order.

11. In the result, for the foregoing reasons, finding no contempt on the part of respondents, CPs are dismissed. Notices are discharged with liberty to applicants to pursue their remedy against the orders, in accordance with law. No costs.

Let a copy of this order be also placed in the file of CP-374/2006.

(Neena Ranjan)
Member (A)

(Shanker Raju)
Member (J)

‘San.’