



**Central Administrative Tribunal
Principal Bench, New Delhi**

C.P.No.456/2008 in O.A.No.73/2004

Tuesday, this the 27th day of January 2009

Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

1. Shri Chattarsal Sehrawat
age about 56 years
s/o late Shri Pyare Lal
r/o Village & PO Pochanpur
New Delhi
2. Shri Satpal Singh
age about 47 years
s/o late Shri Mehar Singh
r/o Sec-V, 1093
R.K. Puram, New Delhi-22
3. Shri N.K. Sharma
age about 47 years
s/o Shri R.N. Sharma
Sector-V, 825
R.K. Puram, New Delhi-22
4. Shri C.P. Singh
age about 50 years
s/o late Shri Ghasita Singh
r/o I-138, Sarojini Nagar
New Delhi-23
5. Shri Rakesh Gupta
age about 47 years
s/o Late Shri Murari Lal Gupta
r/o I-358, Sarojini Nagar
New Delhi-23
6. Shri D.D. Sharma
age about 51 years
r/o I-334, Sarojini Nagar
New Delhi-23

..Applicants

(By advocate: Shri S.K. Gupta)

Versus

1. Dr. T. Ramasami
Secretary
Ministry of Science & Technology
(Department of Science & Technology)
Technology Bhawan, New Mehrauli Road
New Delhi

(22)

2. Dr. T. Ramasami (looking after the charge of Surveyor General of India, Surveyor General of India Post Box No.37 Hathibarkala, Dehra Dun
3. Shri R.K. Nim Director, Western Printing Group Palam Village Road, Delhi Cantt. New Delhi-10

..Respondents

(By Advocate: Shri H.K. Gangwani)

ORDER (ORAL)**Shri Shanker Raju:**

Applicants approached this Tribunal in OA-73/2004, which was disposed of 29.11.2004. Though relief prayed in paragraphs 8.1 & 8.2 were barred by *res judicata*, yet in the conspectus of the facts and circumstances of the case where the training period has been treated for the purposes of seniority and eligibility, same has been directed to be treated for the purpose of Assured Career Progression (ACP) as per the rules and instructions by reckoning training period towards the eligibility for grant of benefits of ACP.

2. Learned counsel for applicants would contend that the applicants now being accorded benefits of ACP by reckoning their regular service from the date they have been inducted into Grade II whereas the training period has not been made inclusive in that, runs on the face of the order passed by the Tribunal, as the respondents have not approached the higher forum to challenge the order, which has attained finality and is binding. Contumacious disobedience of Tribunal's order and non-implementation in true letter and spirit is the claim forwarded by the applicants.

3. Learned counsel for respondents, at the outset, took exception to the limitation by stating that whereas the order of the Tribunal is dated 29.11.2004, yet a contempt petition has been filed in 2008, which is not in accordance with the rules laid down both under the Administrative Tribunals Act, 1985 as well as Contempt of Courts Act, 1971.

4. Learned counsel would also contend that there is no wilful disobedience of the directions but by way of abundant caution, an apology has been tendered in the counter reply.

5. On merits, it is stated by learned counsel for respondents that two years' training period spent as Training Type 'B' and further two additional promotions for the purpose of financial upgradation in the scale of Rs.5000-8000 and Rs.6500-10500 were over and above three time bound lateral advancements in the pay scales of Rs.3200-4900, Rs.4000-6000 and Rs.4500-7000.

6. Learned counsel would further contend that the matter was considered as per the provisions in the contempt petition and a Committee of Secretaries (COS) decided the issue by ruling that the regular service has to be reckoned only from inception of Grade II and the earlier service has been treated as training period. As such, if the analogy forwarded by learned counsel for applicants is accepted, not only in Grade II but also in other grades, the training period would have to be included for eligibility for the purpose of ACP, which when not a regular service, the benefits granted to the applicants are in true letter and spirit of the directions of the Tribunal.



7. By relying upon the decision of a Constitution Bench of Apex Court in **Ram Prasad & others v. D.K. Vijay & others**, (1999) 7 SCC 251, it is contended by learned counsel for respondents that promotion is not only an advancement to higher position but also an advancement to the higher pay scale and if either of the conditions is satisfied, that has to be treated as a promotion and also a placement in selection grade.

8. Learned counsel for respondents would further contend that if the applicants are entitled and due for promotion under the ACP scheme, the same would be accorded to them. The enhanced benefit of two ACP was approved by the Government as a special case after COS and approval of Cabinet and those, who had completed 12 years regular service in Grade II in the pre-revised pay scale, have been accorded the same.

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

10. As we find that towards the implementation of Tribunal's order, an order passed by the respondents in 2008 and a stand taken in November 2007 has given a fresh cause of action to the applicants to allege contempt on the ground that the compliance is not in true letter and spirit of the directions of the Tribunal. In such an event, we do not find that limitation is attracted in this case, as the embargo of one year is when there is a clear-cut contempt and no efforts have been made by the respondents to execute the orders. However, in the instant case, the process is continuing and it has culminated into a definite decision of the respondents in 2008 for which limitation would not attract.

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11. In contempt jurisdiction, we are primarily concerned with the implementation of our orders and to ensure that whatever directions are issued, if not challenged and set aside by the higher forum, are to be respected to maintain majesty of law. Any order passed by the respondents whereby beyond the scope of the consideration any decision taken would not stand scrutiny of law. It is trite in law that the respondents being model employer should not approbate and reprobate simultaneously. There should not be inconsistency in their stand taken before the Court. On one hand, ACP scheme when refers to regular service as a service rendered under the statutory rules and substantive in nature, all the norms of promotion, which are applied to the grade and scale to which financial upgradation is given when mutatis mutandis applies to ACP, in such an event, a conscious decision of the respondents to prepone the grade to entry of the applicants by reckoning their training period and on that basis an office order issued on 27.2.2003 whereby for promotion on regular basis in Grades IV, III and II, period of training has been included as regular service, they are estopped from taking a different stand now to exclude this regular service from being considered as an eligibility for grant of ACP. In such an event, fixation under FR 22 (1)(a)(i) is a clear stand of the respondents that for all purposes this training period has to be treated as regular service.

12. While taking cognizance of this issue, a specific finding of the Tribunal and on the basis of averments in the counter reply in the OA that the period of training has to be treated as eligibility period for grant of benefit of ACP and a direction consequent upon it to consider this eligibility to be reckoned towards the grant of ACP as per rules and

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instructions is a referral to the rules and instructions on ACP, i.e., scheme of ACP and conditions laid down therein, which stipulate that regular service has to be reckoned for the purpose of grant of financial upgradation under ACP.

13. Now a stand taken by the respondents is that this training period can be treated as training but the regular service has to be treated from the date the applicants have moved to Grade II is clearly a contradictory stand and inconsistent plea taken by them over and above the plea taken by the Tribunal in OA. If this is the stand of the respondents, it would have been propagated before the Tribunal and if a contrary view has been recorded by the Tribunal, certainly non-approach to the High Court in appeal and attainment of finality of the directions would not leave any scope to the respondents to act otherwise by treating this service as training and not regular service. However, as earlier said, our prime concern is that the directions are implemented in true letter and spirit but this is a case where over and above the directions of the Tribunal, the respondents have passed an order without preferring an appeal, which cannot be countenanced in law. By way of sheer indulgence, as we are not insisting in punishing the respondents but primarily to prevent miscarriage of justice to get our directions implemented, we accord another opportunity to the respondents to count the period of training period towards regular service under ACP scheme and further to accord benefits to the applicants by passing a speaking and reasoned order within a period of two months from the date of receipt of a copy of this order.



14. With this, CP stands disposed of. Notices are discharged. However, liberty is accorded to the applicants to revive it in case of non-compliance. No costs.

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(Dr. Veena Chhotray)
Member (A)

S. Raju

(Shanker Raju)
Member (J)

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