

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

C.P. No.553/2011 in
O.A. No.1501/2004

Judgment reserved on 29.05.2012
Judgment pronounced on 29.08.2012

Dr.

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. Sudhir Kumar, Member (A)

1. Mrs. Usha Anand
W/o Late Shri S.C. Anand
R/o Plot No.18, State Bank Nagar,
Paschim Vihar, New Delhi-110063.
2. D.N.K. Gawri,
S/o Late Shri R.L. Gawari
R/o B-2/226, Paschim Vihar,
New Delhi-110063.
3. S.B. Mathur
S/o Late Shri K.B. Mathur
R/o B-45, Trikuta Hill,
C-58/27, Sector-62
Noida.
4. H.S. Bawa,
S/o Shri Harbans Singh Bawa,
R/o WZ 67-A, Mukherjee Park,
Near Tilak Nagar,
New Delhi.
5. Virender Anand
S/o Sh. Shanti Prakash Anand,
R/o C-2/35-C, Lawrence Road,
New Delhi-110035.

-Applicants

(Applicant No.1 in person)

Versus

1. Shri P.K. Tripathi
Chief Secretary
Govt. of NCT of Delhi
Delhi Sachivalaya,

Dr.

Players Building, I.P. Estate,
ITO, New Delhi-2.

2. Shri Anand Prakash
The Principal Secretary-Cum-Director
Deptt. of Training and Technical Education
Muni Maya Ram Marg,
Pitampura, Delhi-88.

3. Shri Alok Rawat
Secretary,
Union Public Service Commission
Dholpur House, Shahjahan Road,
New Delhi.

-Respondents

(By Advocate: Shri B.N.P. Pathak and
Mrs. B.Rana)

ORDER

Mr. Sudhir Kumar, Member (A):

This Contempt Petition No.553/2011 in OA No.1501/2004 has been filed by the petitioners, praying that the respondents may be directed to comply with the directions issued by this Tribunal vide its order dated 03.03.2005 in OA No.1501/2004, and grant the benefits as directed in the judgment, and that the respondents may be punished for willful disobedience of the orders of this Tribunal apart from any further order or orders in this behalf.

2. The applicant and four others had filed OA No.1501/2004, in which the said order dated 03.03.2005 came to be passed, allowing that OA, and quashing and setting aside the order dated 29.04.2004 impugned therein,



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as well as the seniority list issued by the respondents, and the respondents, therein, were directed to grant regularization of the services of the applicants from the date of their ad-hoc appointment dated 12.12.1988, and also to reckon their seniority from that date for all purposes, including promotion, pension and other retirement benefits, as well as benefits under the Career Advancement Scheme, if eligible. The operative part of the order reads as follows:-

"12. Taking into consideration the above factors, the OA succeeds and is allowed. The order dated 29.4.2004 (Annexure 'A') as well as the seniority list (Annexure 'B') issued by the respondents are quashed and set aside. The respondents are directed to grant regularization to the applicants from the date of their ad-hoc appointment, i.e. 12.12.1988, and also reckon their seniority from this date for all purposes, including promotion, pension and other retirement benefits. In case the applicants are eligible for grant of any benefit under the Career Advancement Scheme, the same would also be allowed, as per rules. These instructions shall be complied with by the respondents within 4 months from the date of a copy of this order is received by them".

3. Soon thereafter further orders were passed, and the MA for correction of typographical errors in respect thereof had been allowed on 23.03.2006, the petitioner No.1 approached the respondents through her letter dated 03.05.2011, praying for grant of regularization from the date of 12.12.1988, as ordered by this Tribunal. However, the respondent, Govt. of NCT of Delhi filed a Writ Petition (C) Nos. 12292-93/2005



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before the Hon'ble High Court of Delhi, in which orders came to be pronounced on 04.04.2011; refusing to interfere with the orders of this Tribunal in exercise of its jurisdiction under Article 226 of the Constitution of India, and the Writ Petition was, therefore, dismissed.

4. Before the orders of the Hon'ble High Court could be passed, a few of the petitioners before us had retired during the pendency of the case. At para-9 of the present Contempt Petition, it has been mentioned that Petitioner No.1 Smt. Usha Anand still had one year's service left, and petitioner No.2 Mr. D.N.K. Gawri still had 2 years 6 months of service left, and that they can enjoy all the benefits if the respondents comply with the orders promptly.

5. It was submitted that the respondents are deliberately and intentionally not implementing the orders dated 03.03.2005 passed by this Tribunal, in spite of their having been upheld by the Hon'ble High Court.

6. On behalf of Respondent No.3, a reply submission was filed in this case on 12.07.2011, stating that since the concerned named respondent has demitted office of the Secretary, UPSC, w.e.f. 28.06.2011, and since till that date no officer had taken over charge of Secretary, UPSC, on behalf of



the UPSC, the Under Secretary had been authorized by the Commission to file the reply. It was submitted that the necessary action to implement the orders of this Tribunal is required to be taken by the Govt. of NCT of Delhi, and that the UPSC does not have any role in the grant of regularization to the applicants of the OA/petitioners of the CP from the date of their ad hoc appointments, and also to reckon their seniority and issue any revised seniority list etc., and that the Secretary, UPSC has been unnecessarily impleaded as the respondent in this Contempt Petition.

7. The respondents No.1 & 2 however submitted on 26.09.2011 that the Delhi Government was planning to file a SLP before Hon'ble Supreme Court. The Bench that day directed the respondents Nos.1&2 to comply with the aforesaid order, subject to the outcome of the SLP, if any, which they are planning to file.

8. During the hearing on 24.10.2011, an order dated 18.10.2011 was produced mentioning that the seniority of the petitioners herein/applicants of the OA was being reckoned from the date of their ad-hoc appointment with effect from 12.12.1988, and that their services since then are being considered as qualifying service for issuance of tentative



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seniority list, which shall be circulated afresh in terms of the DoP&T guidelines.

9. The learned counsel for the petitioners, however, submitted that this does not meet the directions as issued by this Tribunal in the concerned order, while the learned counsel for the respondents submitted that all the consequential follow up benefits such as promotion and the benefit of Career Advancement Scheme will be taken up as soon as the seniority list was finalized. On 12.01.2012, it was submitted that this matter was still under consultation with the UPSC, and the clarifications sought by the UPSC had been supplied, and that no one junior to the petitioners had been promoted, and that they would be given promotion as per their revised seniority and fitness. Two months' time was thereafter granted by the Bench for full and final compliance of the directions of this Tribunal.

10. On 03.04.2012, a copy of the order dated 02.04.2012 was filed on behalf of the respondents and taken on record, and it was submitted that the applicants have been regularized w.e.f. 12.12.1988, and the seniority has also been fixed accordingly, and further consequential benefits like Senior Scale and Selection Grade had also been granted, and that the monetary benefits would also be disbursed to the



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applicants within 10 days. It was again submitted on behalf of the respondents that no one junior to the petitioners in their respective disciplines has been given promotion, while the learned counsel for the petitioners submitted that many officers junior to the petitioners had been given promotion to the posts of HOD. The Bench, therefore, granted further time to the respondents to file a full compliance report, and also directed that the respondents shall pass a speaking order as regards the claim of the petitioners for promotions to the posts of HOD.

11. On 02.05.2012, respondents once again filed the reply stating that the petitioners herein/applicants of the OA have been regularized w.e.f. 12.12.1988 vide order dated 02.04.2012, their seniority fixation order has also been issued on 08.11.2011, their Selection Grade has been granted vide orders dated 01.03.2012, and 19.01.2012, and the orders dated 01.03.2012 and 19.01.2012 and the order for grant of their Career Advancement Senior Scale as Lecturers has also been issued vide order dated 29.12.2011, and with regard to their requests for promotions as HOD also, the speaking order dated 20.04.2012 has been passed, and it was, therefore, prayed that the Contempt Petition may be dropped.



12. However, the Petitioner No.1/applicant No.1 of the OA appeared in person, and stated that till date arrears have not been paid to them, and that she has not been promoted as HOD. It was submitted by the departmental representative present in the Court that the arrears will be paid to the petitioners/applicants within two weeks, and on the question of promotion as HOD, it was submitted that the petitioner No.1/applicant No.1 is not eligible. However, the Bench that day found that in order dated 20.04.2012 there was no final decision, as it was only mentioned that the case of promotion of the applicant as HOD was taken up, but not decided due to ongoing litigation. The departmental representative, however, submitted that there had been a subsequent development, and that they may be given a chance to file further speaking orders on the question of promotion of petitioner No.1 as HOD. The Bench, therefore, directed to release the arrears of salary of the petitioners/applicants within two weeks, and pass a speaking order on the question of promotion of applicant No.1/petitioner No.1 of the OA to the post of HOD.

13. Thereafter, on 18.05.2012, the respondents produced a copy of the order dated 14.05.2012 issued by them stating that the petitioner No.1 is not eligible for the promotion for the post of HOD (Electronics). Since it was observed by the



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Bench that the earlier compliance affidavit dated 20.04.2012 was not found satisfactory, another comprehensive compliance affidavit was then directed to be filed. Thereafter the respondents filed a comprehensive compliance affidavit dated 24.05.2012 and the petitioners filed a reply to the Office Memorandum dated 14.05.2012.

14. It is trite law that in contempt jurisdiction, the scope of the original order as passed cannot be enlarged by this Tribunal by further interpreting the order passed in the O.A. in a manner which was not contained in the original order itself. It is seen from the operative Paragraph-12 of the order in the OA as re-produced above that there were the following three limbs of that order:-

- i) The order dated 29.04.2004 impugned therein as well as the seniority list issued by the respondents were quashed and set aside. This is no longer an issue now before us.
- ii) The respondents were further directed to grant regularization of the applicants of the OA from the date of their ad hoc appointment dated 12.12.1988. It is clear from the compliance affidavit as filed by the respondents that this has been done through their order dated



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02.04.2012, filed as Annexure R-1 in the comprehensive compliance affidavit filed on 24.05.2012.

iii) The Bench had also directed to reckon the seniority of the applicants from the date of 12.12.1988 for all purposes; including promotion, pension and other retirement benefits. It is seen that through Annexure R-3 dated 29.12.2011, the 5 applicants of the OA have since been granted revised pay scales, Senior Scale under 1989 AICTE Scheme w.e.f. 28.05.1996, and the revised date of grant of scale of Lecturers to them has also been declared to be 01.01.1996. It is also seen that through Annexure R-4 dated 19.01.2012, the petitioners No. 2 & 5 have been granted the Selection Grade w.e.f. 12.12.2004, and through order dated 01.03.2012 the petitioner No.1 has been granted Selection Grade with the advanced date of 01.01.2001, instead of the earlier notified date of 28.05.2001. It is also seen that through Annexure R-6 dated 20.04.2012, the case of the petitioners, and particularly Petitioner No.1, has been considered for promotion for the post of



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HOD (Electronics), and a speaking order has been passed as to the circumstances in which and reasons because of which this could not be granted.

15. In Contempt Petition, we have to only ensure that the orders of the Tribunal as passed in the OA are fully complied with or not. The orders of the Tribunal were to the effect of counting the services of the applicants from 12.12.1988, and to reckon their seniority from that date for all purposes, including promotion, pension and other retirement benefits. There was no direction in the order passed in the O.A. to necessarily give promotions as H.O.Ds. to all the applicants of the OA, if such promotions were not due to them, nor were there any directions to promote any particular applicant among the five to a particular post, like that of HOD (Electronics), which the applicant No.1 has continued to press in this Contempt Petition.


16. The ingredients which go into the making of an act as contumacious act have been examined in detail in the Courts in U.K. and in India over the last 250 years. As was mentioned by Justice Williams in Miller vs. Knox (1838) 6 Scott, 1 : 4 Bing. N.C. 574, page 589, the contempt of Court is so manifold in its aspects that it is difficult to lay down any



exact definition of the offence. It is defined or described to be a disobedience to the Court, an opposing or a despising of the authority, justice, or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process, order, or decree, of the Court. In the case of In Re-Johnson (1887) 20 QBD 68, at page No.74, it was mentioned that the main question in considering case of contempt always is as to whether or not there has been an interference or a tendency to interfere with the administration of justice by any of the actions of the respondents/alleged contemnors.

17. It was laid down in the case of R. vs. Almon (1765), Wilm 243; R. vs. Davison (1821), 4 B&A 329, and in Miller vs. Knox (supra), that a Court of justice without power to vindicate its own dignity, to enforce obedience to its mandates, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly which could not be permitted to exist in any civilized community.

18. In the case of St. James's Evening Post (1742), 2 Atk 469 at page No.471, Lord Hardwicke, L.C., held that there cannot be anything of greater consequence than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their characters.



19. In the light of the above observations, which have been cited and upheld in numerous judgments of the Hon'ble Supreme Court of India and various Indian High Courts, the only thing we have to see in a contempt petition is as to whether the respondents have in any way shown disrespect towards the authority of the Tribunal in the sense of the authority, or dignity of the Court or Tribunal to have been despised.

20. The respondents have in their order dated 14.05.2012 stated as follows:-

"Whereas, CAT vide dasti order dated 03.05.2012 of CP No.553/2011 in OA No.1501/2004/WP (C) No.12292/2005 in the matter of GNCT of Delhi V/S Usha Anand and Ors. has directed that the department to pass a speaking order on the question of promotion of applicant No.1 i.e. Smt. Usha Anand to the post of HOD.

Whereas, it is informed that previously name of the applicant No.1 Smt. Usha anand was also considered in the promotion for the post of the HOD (Electronics and Communication) as dealt with the UPSC between 2008-2011 as per RR (2003).

Whereas, eligibility for the post of HOD (Electronics), includes 10 years of service in the grade of Lecturers and accordingly she becomes eligible w.e.f.12.12.1998 as per 2003 RR as she was regularized w.e.f.12.12.1988. However, while processing of aforesaid case, the judgment in the case of V.K.Verma and Ors. V/s GNCTD of Delhi OA 2753/2010 was pronounced on 13.08.2010 by giving references of series of Apex court orders in the matter of Janay J.R. V/s S.Rajeevan 2010, Hema Raj Singh Chauhan's Case (Supra) etc. Accordingly, candidature for the promotion to the post of HOD (Electronics) is to be considered for the period in which the vacancies



have occurred/accrued (i.e 03 vacancies arose due to (i) Ms.Shanti Goel was promoted to the post of Principal on 18.02.1995 (ii) One post of HOD (Electronics) was created for GND Poly in 12.06.1996 (iii) Mr.P.K.Jain retired from Head post 31.12.2001). Therefore, it was examined in reference to the 1992 RR prevailing during accrual of vacancies and she could not be promoted as all the posts were to be filled by Direct recruitment.

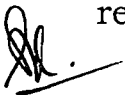
Whereas her claim for the post of HOD was examined in reference to the 2003 RR, but as the existing three vacancies were accrued prior to revision of RR in 2003 and so she cannot be considered for the promotion as all these are to be filled by Direct Recruitment as per CAT judgment passed in the matter of V.K.Verma and Ors. as mentioned above.

Whereas, the details of action taken by the department in the matter of promotion to HOD (Electronics) have been already communicated to her in the speaking order passed vide dated 20.04.2012 in this matter.

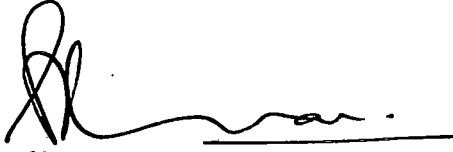
Whereas it is also submitted that Department so far has not granted promotion to posts of HOD from the date of their eligibility or date of accrual of vacancy or with retrospective effect. These submissions were admitted by the Hon'ble CAT in CP 973/2010 in OA 2753/2009 pronounced on 21.10.2011 in a similarly placed contention and the litigants in that case were given promotion to the post of HOD (Electrical) w.e.f.19.05.2011 in the scale of 10000-15300 as the vacancies accrued in this matter since 1999.

In view of the above, applicant No.1 Smt. Usha Anand is not eligible for promotion to the post of HOD (Electronics)".

21. Since no contumacious act or willful defiance of the orders of this Tribunal, as passed in OA No. 1501/2004 on 03.03.2005, is made out, therefore this Contempt Petition is dismissed, as not maintainable. Notices issued to the respondents/alleged contemnors are discharged. However,



the petitioners shall have the liberty to challenge the order dated 14.05.2012, if so advised.



(Sudhir Kumar)
Member (A)



(Mrs. Meera Chhibber)
Member (J)

cc.