

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**CP NO. 652/2010  
in  
OA NO. 1994/2004**

New Delhi, this the 20th day of December, 2010

**HON'BLE SHRI JUSTICE S.D.ANAND, MEMBER (J)  
HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)**

1. Smt. Sushma Rani  
Wd/of Late Narayan Lal Sharma,  
E-68, Dabua Colony,  
Air Force Road, Gali No. 5,  
Faridabad, Haryana.
2. Mr. Pankaj Sharma,  
S/o late Narayan Lal Sharma,  
E-68, Dabua Colony,  
Air Force Road, Gali No. 5,  
Faridabad, Haryana. .... Applicants.

(By Advocate Shri Aftab Alam)

Versus

1. Shri Navin Kumar,  
Secretary,  
Ministry of Urban Development,  
'B' Wing Nirman Bhawan,  
New Delhi.
2. Mr. Vijay Kumar Sharma,  
Director,  
Directorate of Printing,  
Ministry of Urban Development,  
B Wing, Nirman Bhawan,  
New Delhi.
3. Shri S.R. Bodra,  
Manager,  
Govt. of India Photolitho Press,  
NIT, Faridabad, Haryana. .... Respondents.

(By Advocate Shri Amit Anand)

**ORDER**

**Justice S.D.Anand:**

The controversy in the Contempt Petition (CP 652/2010) can better be appreciated by a perusal of the factual scenario leading thereto as under.

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2. The applicants are wife and son of Shri Narayan Lal Sharma, who died in harness, on 10.12.1998, while holding the post of Bindery Assistant in the Respondent Department of Govt. of India Photo Litho Press, NIT, Faridabad, Haryana, (hereinafter referred to as 'the Respondent Department). Applicant No. 1 Smt. Sushma Rani filed an application to the Competent Authority for appointment of her son Mr. Pankaj Sharma, applicant No. 2 herein, on compassionate ground. Even after obtaining some information in the context of processing of that request, the Respondent Department did not indicate any concrete action in the context, thereby impelling the applicants to file OA 1360/2003, which was disposed of by a learned Single Bench of this Tribunal, on 27.05.2003 with the following order:

"3. O.A. is disposed of at the admission stage itself with directions to the respondents to treat the present OA as a supplementary representation of the applicants and dispose of the claim of the applicant in the light of the fact that he is at Sl. No. 1 in the list of deserving cases subject to the availability of vacancies in the requisite quota of 5% in direct recruitment as highlighted in the representation of the applicant by a detailed and speaking order within two months from the date of receipt of a copy of this order."

3. Nothing concrete emerged even thereafter, thereby compelling the applicants to file another OA No. 1994/2004 which, too, was allowed in limine, on 15.07.2005. The order granted therein is extracted hereunder:

"2. It is trite law that compassionate appointment is to be accorded only with respect to assigned quota of 5% of direct recruitment. It is not disputed that the name of the applicant figures at Serial No. 1 (As per records).

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3. O.A. is disposed of with a direction to the respondents that as and when vacancy occurs in 5% quota for compassionate appointment, respondents shall consider the case of the applicant and offer the appointment to applicant No. 2."

4. In view of the fact that the averred contemner/Competent Authority has still not complied with the directions issued by this Tribunal, the applicants had no other option but to file a contempt petition. The averments made in the course of the contempt petition, indicate a grievance that the respondents have refrained from complying the orders granted by this Tribunal in spite of the fact that a number of appointments on compassionate basis came to be made in the meantime. Reliance, in the relevant behalf, was placed upon a documentation dated 18.05.2007 (Annexure CP-5), which indicates "Category-wise requirements of posts in Govt. of India Presses after modernization". Item 50 therein indicates that there were as many as 39 posts of Machine Attendants (Offset) at Faridabad.

5. In response to the contempt charge, the respondents have applied for exoneration by averring that the applicant No. 2 could not be offered appointment on compassionate basis as no vacancy (for appointment to the post of Offset Machine Attendant) was available till the year 2007 and that the appointment could not be offered to him even thereafter due to his crossing the maximum permissible period of retention on the waiting list. The further averment is that a vacancy had become available in the year 2007 but the appointment could not be offered to the applicant in view of the DOPT instructions dated 05.05.2003 which provide that the name of an applicant for appointment under that category would stand deleted, if no

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appointment comes to be made within three years. In terms of O.M. No.14014/19/2002-Estt (D) dated 05.05.2003, the name of such an applicant has to be deleted from the list.

6. The following facts are evident from the pleadings raised by the averred contemner and the enclosures enclosed therewith:-

(A) The name of applicant Pankaj Sharma "was included on 22.11.1999 in the deserving list for the post of Offset Machine Attendant and placed at SI. No. 1.....his case for appointment was reviewed every year from 2000 to 2003 but unfortunately, as per available record, no vacancy in the aforesaid post of Offset Machine Attendant occurred till 2007, even though some compassionate appointment vacancies occurred in other posts like Labourer, Machine Assistant, Assistant Binder, LDC etc." By the time, the relevant vacancy became available in the year 2007, the DOPT instructions dated 05.05.2003 had come into play. In terms thereof, the name of the applicant Pankaj Sahrma, had to be deleted as no appointment could be offered to him for want of vacancies for a period of three years.

(B) There is also an averment that the Ministry of Law had repeatedly tendered advice to the DOPT that the Department ought to announce the policy decision of the Government to the various

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courts (which had granted orders which were not in accord with the DOPT instructions), but the latter did not do so. The Directorate of Printing was not satisfied with the advice tendered by the DOPT and Ministry of Law, the former advocating deletion of names and the latter advising a resort to the latter course of making an announcement of the policy decision of the Government to the courts. "Since the Directorate of Printing was not satisfied with the aforesaid advice of DOP&T and Ministry of Law, the case of Shri Pankaj Sharma and others was again taken up with the Ministry of Urban Development, DOP&T and Ministry of Law..... The DOPT reiterated their stand to stick to the 3 year time limit for retention of the names and Ministry of Law in the latter two cases modified their stand leading to endorsing DOPT's advice".

7. It was argued by the learned counsel for the applicants that the respondents not having resorted to the filing of a review plea or an appeal against the orders dated 27.05.2003 and 15.07.2005 granted by this Tribunal, could not be heard to deny implementation thereof by placing a reliance upon administrative instructions.

8. On the other hand, the learned counsel appearing on behalf of the respondents, argued that the Respondent Department/averred contemner could not be said to have committed Contempt of Court

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in view of overwhelming material available on record to the effect that the latter had been repeatedly advocating the appointment of applicant Pankaj Sharma in compliance with the orders granted by this Tribunal. The only predicament, the learned counsel for the respondents proceeded to argue, was that the grant of an appointment in the circumstances of the case, would be violative of the DOPT instructions dated 5.5.2003. The learned counsel was, however, not in a position to deny that the Respondent Department neither applied for review nor filed an appeal against the orders granted by this Tribunal.

9. We quite understand that, in the scheme of things, a compassionate appointment may not be ordered to be made after a long duration, inasmuch the only purpose of opening that source of recruitment is to help the dependent members of the deceased employee to tide over their immediate economic hardship. At the same time, we cannot be unmindful either of the fact that there are two orders by Single Benches of this Tribunal directing consideration of the plea for appointment of applicant Pankaj Sharma on compassionate basis against the 5% quota of the relevant category. The former order required the respondents to consider the representation made by the applicants in the relevant behalf "in the light of the fact that he is at Sl. No.1 in the list of deserving cases subject to the availability of vacancies in the requisite quota of 5% in direct recruitment as highlighted in the representation of the applicant by a detailed and speaking order within two months from the date of receipt of copy of this order."

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10. The latter order while noticing that the name of the applicant Pankaj Sharma figures at Serial No.1, directed the respondents to consider the case of the applicant and offer the appointment to applicant No.2. The direction was to be implemented as and when a vacancy occurred in 5% quota for compassionate appointment.

11. Though both the orders aforementioned came to be granted by the learned Single Benches of this Tribunal in limine, and the respondents had no opportunity to offer any pleadings-based resistance to the averments made in the course of the O.As, there is sufficient material available on record to indicate that the factum of those orders was to the notice of the Respondent Department and, in its wisdom, no challenge to the validity of those orders (either in the form of a review plea or a Civil Writ Petition) came to be filed. The respondents, thus, conceded the finality of those orders. We do not have to elaborate that accepted proposition of law. It would suffice to indicate that a party which does not accept the validity of a judicial order, whether granted in limine or after a contest, is entitled to either apply for review thereof or to challenge it by filing an appeal before an appropriate forum, which has not been concededly done in this case.

12. It is further evident from the record that the name of applicant Pankaj Sharma was placed at Serial No. 1 in the list of deserving cases, who had to be offered appointment on compassionate basis. There is also material to prove that though no vacancy for the post of Offset Machine Attendant occurred till the year 2007, there were a number of vacancies of the other posts which occurred all through and

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appointments on compassionate basis also came to be made thereto. There is not even a word in the counter to indicate that appointment to any such post was ever offered to applicant Pankaj Sahrma. Though it is apparent from the record that Pankaj Sharma had applied for appointment to the post of Offset Machine Attendant, it was for the respondents to announce to him that no vacancy for that post was available and that he could be appointed to any of the other available posts, which may be comparatively lesser placement. If such an offer had been made, and declined by applicant Pankaj Sharma, he could have been non-suited (in the context of the contempt charge) by this Tribunal. Nothing of the type was, however, done by the Department in that context.

13. The position that, thus, can be culled out from the above conceded factual narration of events is that the orders granted by this Tribunal (though in limine) had been allowed by the respondents to attain finality. One post of Offset Machine Attendant had indeed become available in the year 2007. The grant of an offer of appointment to him was impeded solely due to the DOPT instructions. Our choice in the matter is very clear. In order to uphold the majesty of law, we have no other option but to hold that an order granted on judicial side must necessarily attain primacy over the instructions issued on the administrative side. Since we are neither sitting in appeal over the orders granted by Single Benches of this Tribunal nor can we exercise the power of judicial review, we have to accept the inevitability of the fact that the orders aforementioned have to be implemented by the Respondent Department.

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14. In view, however, of the proven position that the Respondent Department/averred contemner, did not indicate any intentional disinclination to implement the orders granted by this Tribunal and it had, in fact, been pressing the Administrative Department to grant the appointment, we cannot hold the averred contemner to be accountable for contumacious violation of the orders of this Tribunal, for the time being.

15. We are, however, foxed by the fact that the respondents refrained from challenging the correctness of the relevant orders, either on the basis of executive instructions or other counts available in the context which (counts) we would not like to enumerate.

16. The following propositions are, thus, evident from the narration of facts in the preceding paras:

- (a) The relevant orders having been granted by the Tribunal on judicial side, are entitled to compulsive primacy over the executive instructions;
- (b) The respondents having allowed those orders to attain finality are estopped from denying the implementation thereof on any count including the administrative instructions qua the period of currency of the list of those to be appointed on compassionate basis;
- (c) The relevant orders having been allowed by the respondents to attain finality, the validity thereof cannot be questioned in this CP, Whether those orders are or are not in accord with the law is presently foreign to the realm of consideration insofar as this Bench is concerned. We have to proceed to get those orders implemented on As Is

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Where Is Basis, particularly when it were none else or other than the respondents themselves who enabled those orders to attain the character of finality.

17. In the peculiar circumstances of the case, we would grant one month's time to the averred contemner to implement the orders granted by this Tribunal, on 27.05.2003 in O.A. 1360/2003 and 15.07.2005 in O.A.1994/2004, respectively. This order of ours is reiteration of the obvious that a judicial order must get precedence over administrative instructions. We do hope and trust that it would clear the air in the matter of whatever impeded the implementation thereof. Since the appointment has to be made by the averred contemner and we have clarified the mist created by the instructions dated 05.05.2003, we do expect meticulous compliance to uphold the majesty of law.

18. If the order is not complied with by that time, the applicant would be entitled to validly raise a plea for contempt against the Respondent Department/averred contemner, who would find the non-compliance indefeasible.

19. CP 652/2010 shall stand disposed of accordingly.

  
**Dr. veena Chhotray**  
**Member (A)**

  
**(S.D. Anand)**  
**Member (J)**

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