

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Civil Contempt Application No. 61 of 1998

In

Original Application No. 1354 of 1993

Allahabad this the 11th day of April 2002

Hon'ble Mr.Rafiquddin, Member (J)
Hon'ble Mr.C.S.Chadha, Member (A)

1. Sri KantChaubey S/o Rajmani Chaubey, R/o Village Badewara, P.O. Jigna, Mirzapur.
2. Ram Narain S/o Rameshwar Dayal, R/o Village Chak Salempur, P.O. Kukawali, Distt. Etawah.
3. Shyam Sundar S/o Paras Nath Mishra R/o Village Bharari, Meja, Allahabad.
4. Kripa Shankar Shukla S/o Indramani Shukla, R/o Village & P.O. Benda, Karchchana, Allahabad.
5. Prem Shankar Pandey, S/o Adinath Pandey, R/o Vill. Khedaupur, P.O. Keirauna, Varanasi.
6. Ram Parawan Mishra, S/o Matuk Dhari Mishra, R/o Village Nibi Bhatan, Meja, Allahabad.
7. Ashok Kumar Ojha, S/o Rama Shankar Ojha, R/o Village Tain Saraiya, P.O. Amilia Kalan, Meja, Allahabad.
8. Dharamraj, S/o Giridhari Pradad, R/o Village Chhitauli Jigna, District Mirzapur.
9. Harish Chandra Yadav, S/o Rameshwar Prasad, R/o 632-B, Traffic Colony, Civil Lines, Allahabad.
10. Vidya Shankar S/o Achyutanand R/o Sukulpur, Rampur Varanasi.
11. Ram Pujan Shukla, S/o Shambhoo Nath Shukla, R/o Bahpura, P.O. Ithara, Varanasi.
12. Vishwanath, S/o Bechan Lal, R/o Mahewa Khurd, P.O. Nahwai, District Allahabad.

By Advocate Shri A.K. Sinha

Applicants

Abbas

1. Shri Sukhvir Singh S/o Not Known, Presently working as Divisional Railway Manager, N.C. Railway, Allahabad.
2. Virendra Kumar S/o Not Known, presently working as Asstt. Personnel Officer-2, N.C. Railway, Allahabad.

Respondents

By Advocate Shri A.K. Gaur

O R D E R

By Hon'ble Mr.C.S.Chadha, Member (A)

This is a Contempt Application filed for the alleged non-compliance of the order of this Tribunal passed in O.A.No.1354 of 1993 on 08.01.97. Through that O.A. the applicants had sought directions to be issued to the respondents to declare the result of the screening test held between August and October, 1989 for selection of group 'D' posts and to grant them appointments and pay with effect from the dates their juniors were regularised in group 'D' posts. In that O.A. the respondents had alleged that the applicants were not found suitable in the screening and were, therefore, not included in the approved panel. However, the Tribunal had directed the respondents to produce the original record of the Screening Tests, which they failed to provide. Therefore, the Tribunal drew in an adverse inference that the records had not been produced because their production would have proved the case of the applicants. As a result of this adverse inference the Tribunal considered the applicants eligible to be granted the same benefits as their

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B.S.Chadha

juniors who had qualified in the Screening and therefore directed that :-

"In the result we dispose of this application with a direction to the respondents to consider the case of the applicants and accord them similar benefits as have been accorded to their juniors and interpolate their names in the panel dated 3.2.1990 at appropriate places and consider them for regularisation in their own turn. They will be entitled to seniority for all service purposes from the date their juniors have been regularised except back wages."

2. As a result of this order the applicants represented to the respondents to give them their due in accordance with the Tribunal's directions. However, it is alleged that the respondents rejected their claim vide their letter dated 26.5.1998 (annexure.4).

3. The stand taken by the respondents is that they had no intention to disobey the orders of the Tribunal and in all seriousness they wished to carry out its orders, but in order to interpolate the names of the applicants above their juniors it was necessary to know the exact number of days of working of the applicants for this alone could help to ascertain where to place them. In order to ascertain this the respondents formed a Committee of three officers to enquire into the details and give their recommendations. The Committee notified the applicants to appear before them on 17/10, 18/11, 19/11, 18/12, 23/12, and 30/12/97 and on 19/01/98, and to produce the original records of their Casual Labour Cards or any other documentary proof of their days of working. However,

the respondents alleged, that the applicants only produced a photocopy of a circulated list of working days, 'which is itself disputed' and therefore they rejected their claim. The respondents, in their counter-affidavit, have also averred that the juniormost candidate regularised by them had worked for 337 days, whereas the applicants by their own admission, had worked for a far lesser number of days and were therefore not eligible to be regularised. It has been further argued by the respondents that in order to strictly comply with the order of the Tribunal the exact number of days of working by the applicants was necessary to be known without which exact interpolation in the list of regularised candidates would not be possible.

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4. ~~minimum~~ In one of the several rejoinders and supplementary rejoinders filed by the applicants they have contended that the position that the juniormost regularised candidate had worked for 337 days is incorrect and they have also furnished the names of several such candidates who, though empanelled, had put in less than 337 working days. Now, this remains a contended fact and the only way the applicants could nail the alleged lie of the respondents is by filing their original records of working, which they failed to do.

5. In such contempt petitions, the important thing to be seen is whether the respondents exercised

due diligence and caution and common prudence in trying to execute/carry out the orders of the Tribunal. Even if, for arguments sake, it is assumed that the averment of the respondents about the juniormost regularised candidate having worked for 337 days, is false, it is still necessary to know the exact number of days of working of the applicants to be able to interpolate their names above their immediate juniors. For example, if for the sake of discussion, it is found a certain applicant has put in 400 days of work he will have to be put exactly above a person who has put in 399 days or less and below a person who has put in 401 days or more. Merely making a general averment that some of the regularised candidates have put in less 337 days still does not help the applicants. To illustrate this point further, in their rejoinder dated 30.01.2001, on page 3 thereof, the applicants have, inter-alia, stated that Shri Kishori Lal S/o Lal Bahadur, date of birth 04.12.37, date of joining 26.12.76 had a total number of 130 days of working was placed at serial number 52 of the panel dated 03.02.90, but until and unless at least one of the applicants proves, by documentary evidence, that he worked for 131 days or more and that Kishori Lal had in fact been appointed, he cannot be regularised and his name cannot be interpolated above Kishori Lal's or immediately below a person who has put in 132 days or more and also regularised. Interpolation of the names of the applicants in the list of selected candidates is only possible on knowing exactly where the applicants stand, above whom and below whom.

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6. We further find that in all sincerity the respondents formed a committee of three officers to report the exact position of each of the applicants but they were unsuccessful in their attempt because the applicants produced no original record, whatsoever, of the number of days of their working. We are afraid that in the absence of such record, the failure of the respondents to interpolate the names of the applicants above their juniors, cannot be construed to be contemptuous on their part. They, using their common prudence, and exercising due diligence and caution, tried their best but it was not possible to carry out the order of the Tribunal to its letter and spirit in the absence of the necessary record.

7. Another important issue, worth nothing, is that the Tribunal drew an adverse inference against the respondents when they failed to produce the original record of the Screening Tests held between August and October, 1989. On the same analogy the respondents could not be considered to be at fault at all if they draw an adverse inference from the failure of the applicants to produce the original record of their working. In fact we could draw this adverse inference that the applicants failed to produce any such record despite being given several opportunities, because they did not have such authentic record and their claim would have been proved to be wrong had they produced such a record.

8. In the above circumstances we come to the conclusion that the respondents failed to carry

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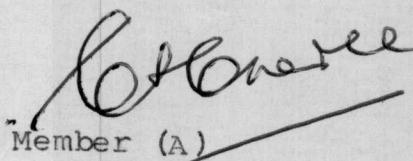
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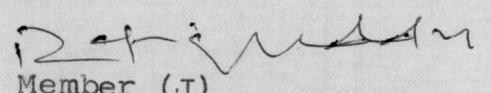
out the orders of Tribunal passed in O.A.No.

1354 of 1993 passed on 08.01.1997 for the reasons
beyond their control and they could not be held

~~to be held~~ to be guilty of contempt. It is still
open to the applicants to produce documentary evidence
about the number of days of their working and get
their due. The Tribunal did not nominate the position
or serial number where each applicant had to be placed
but merely, on the basis of the adverse inference,
held the applicants to have to passed the Screening
Test and eligible for empanelment. The interpolation
at the exact place will however depend upon their
own record. We therefore, feel that no case of
contempt is made out. The contempt proceedings
are dropped and notices issued earlier, are
discharged.


Member (A)

|M.M. |


Member (J)