

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA



No.M.A.350/194/2019

Date of order : 15.02.2021

Arising out of

O.A.350/66/2019

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

UNION OF INDIA REPRESENTED THROUGH
THE DIRECTOR, INTELLIGENCE BUREAU,
MINISTRY OF HOME AFFAIRS, GOVT. OF INDIA,
NORTH BLOCK, NEW DELHI-110001 REPRESENTED
BY ASSISTANT DIRECTOR/E, S.I.B KOLKATA,
GOVERNMENT OF INDIA, MINISTRY OF HOME
AFFAIRS, 9/1 GARIAHAT ROAD, P.O. BALLYGUNJ,
KOLKATA-19 BEING AUTHORISED BY THE
RESPONDENT NO.2



- VERSUS -

ATANU KUMAR DAS

For the applicants : Mr. S. Paul, counsel

For the Opposite Party : Mr. A.K. Behera, counsel
Mr. T.K. Biswas, counsel

ORDER

Bidisha Banerjee, Judicial Member

Ld. Senior Counsel Mr. A.K. Behera leading Mr. T.K. Biswas and

Ld. Counsel Mr. S.K. Paul for the respondents (applicants in M.A.) were
heard

2. This Miscellaneous Application numbered as M.A.350/194/2019
has been preferred to seek the following relief:-

"It is therefore most humbly prayed that your lordships may be graciously pleased to allow the M.A. vacating the interim order which was passed on 16.01.2019 in O.A.350/0066/2019 and pass necessary order as your Lordship may deem fit and proper for the interest of justice."

The application has been preferred due to the reason elucidated therein, as extracted hereunder with emphasis for clarity:-

"That before service of the copy of the O.A. upon the Respondent Authority the matter was moved before the Hon'ble Bench and considering the prayer of the applicant Hon'ble Tribunal was pleased to dispense with the service of the notice upon the Respondent Authority under the provision of the Rule 11(1)(iii) of the CAT(Procedure) Rule and was further pleased to take up the hearing on the interim prayer and was pleased to pass the order which is as follows:-

"5. In view of such, since the balance of convenience and or inconvenience is heavily tilted in favour of the applicants and judicial propriety demands that the respondents have to be restrained from going ahead with DPC without complying with the direction of this Tribunal by issuing appropriate seniority list of section officers, so long it is not reversed on appeal, we pass the following directions:

(ii) However, pending such clarification, the DPC scheduled to be held on 21st January, 2019 for considering the promotion of section officers to the post of Assistant Director/NP in the Intelligence Bureau for the vacancy year 2015-2016(SUPPL) supposedly for 53 vacancies as reported, would not be held till the next date of listing."

That the allegation of the applicant has been placed in such a manner as if the Respondent Authority are going ahead with the DPC proposal scheduled to be held on 21.01.2019 for promotion of the S.Os who have been promoted in the vacancy year 2005-2006, which is barred due to pendency of the order passed by Principal Bench.

That two separate court cases O.A.No.47/2015 and 66/2016 were filed by Shri Shiv Charan and Charan Singh Chauhan respectively before Hon'ble CAT Allahabad, Circuit Bench, Nainital for refixation of their seniority. The Hon'ble Tribunal passed the interim order dated 18-08-2015 in



O.A.No.47/2015 and stayed the regular promotion of S.Os on the basis of seniority list dated 09.06.2015. Thereafter UPSC was requested to convene a supplementary DPC 2015-2016 for promotion of 16 S.Os (14 of seniority year 2003-2004 and 2 of seniority year 2005-2006 figuring in seniority list dated 15.07.2014(Part-i). Subsequently, Hon'ble CAT vide its judgment dated 27.02.2017 completely quashed the seniority list dated 09.06.2015 (part-ii). Having no order obtained till now in the appeal from the Hon'ble High Court against the said order of Hon'ble CAT, no regular promotion could be effected on the basis of the seniority list dated 09.06.2015(part-ii) and waiting to be resolved in the court of law. Hon'ble CAT passed another interim order dated 14.10.2015 in O.A.No.66/2016 and directed not to effect any regular promotion in the grade of AD/NP on the basis of the seniority list dated 15.07.2014(part-i), from amongst the promotes in the 60% quota of vacancy year 2005-2006, thereafter Hon'ble CAT vide its judgment dated 21.02.2018 quashed the seniority list dated 15.07.2014 (part-i) to the extent it pertains to the applicant and said applicant(Sri Charan Singh Chauhan) was seeking seniority from the seniority from DPC 2005-2006. It automatically makes it clear that the seniority of S.Os of DPC year 2003-2004 i.e. upto Sl.No.27 in the seniority list dated 15.07.2014(Part-i) seems unaffected from the judgment passed by the Hon'ble Tribunals, hence, Department has decided to process the regular promotion case of these 14 S.Os who were appointed in the present rank in 2003-2004. That the order dated 21.02.2018 passed by the Hon'ble CAT, Principal Bench by quashing the seniority list dated 15.07.2014 to the extent it pertains to the applicant and this applicant Charan Singh Chauhan is seeking seniority from the DPC year 2005-2006 and the seniority of S.Os upto the Serial No.27 of the said Seniority List dated 15.07.2014(Part-1) is of the DPC year 2003-2004 and is



unaffected from the judgment passed by the Hon'ble Tribunals, hence department has decided to process the regular promotion case of these 14 S.Os who were appointed in the present rank in 2003-2004 and are suffering for more than 3 years due to the pendency of court cases. The order which had been passed by the Hon'ble Tribunal on 16.01.2019 solely based on the submission of the Ld. Counsel who placed the matter in such a manner which helped Hon'ble Tribunal to form its opinion that the entire seniority list dated 15.07.2014 is quashed and present attempt of the Respondent to proceed for DPC for the year 2005-2006 is against the spirit of the said order but in reality the seniority list dated 15.07.2014 is quashed and set aside to the extent it pertains to the applicants and the applicant was appointed in rank of 2005-2006 but not 2003-2004, hence the decision to process the regular promotion case of these 14 S.Os who were appointed in 2003-2004 does not interfere with the arena of the order which the Principal Bench had passed."



3. At hearing Ld. Counsel Mr. S.K. Paul in support of his application would argue as under:-

- (i) One Mr. Jena, senior to Mr. Atanu Kumar Das (applicant) has retired. There are other seniors inducted in 2003-2004 who deserve promotion but for the interim order, they are languishing, therefore, this Tribunal should vacate the interim order and allow the DPC to go ahead with their promotion
- (ii) In the seniority list of 19.03.2010, such officers (inducted in 2003-2004) were ahead of the applicant and seniority list dated 19.03.2010 has not been quashed, therefore, the respondents in O.A. be allowed to promote such senior officers;

Ld. counsel would draw our attention to Annexure R/8 at page 90.

4. Ld. Senior Counsel Mr. Behera to oppose the vacating application would submit as under:-

(i) That the judgment of C.A.T., Allahabad Bench vide its order dated 27.02.2017 completely quashed the seniority list dated 09.06.2015 that was drawn including all the promotees etc. of previous benches (2003-2004). Therefore, it cannot be allowed to operate in part.

(ii) The Lucknow C.A.T. order dated 21.02.2018 quashing the seniority list dated 15.07.2014, qua the applicant, was not a decision *in personam*, rather it was *in rem* which was rendered to benefit all, even to those who had not approached the court . In support Ld. counsel would cite the following :-

(a) (2015)1 SCC 347 [State of Uttar Pradesh and Others versus Arvind Kumar Srivastava and Others, where the Hon'ble Apex Court ruled as under:-

" 22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1. The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated



persons did not approach the Court earlier, they are not to be treated differently.

22.2. However, this principle is subject to well-recognised exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.

22.3. However, this exception may not apply in those cases where the judgment pronounced by the court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated persons. Such a situation can occur when the subject-matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma v. Union of India [K.C. Sharma v. Union of India, (1997) 6 SCC 721 : 1998 SCC (L&S) 226]). On the other hand, if the judgment of the court was in personam holding that benefit of the said judgment shall accrue to the parties before the court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

(Emphasis applied)

(b) In AIR 2016 Cal 26 [Suresh Tulshan, Trustees of K.P. Foundation & Others versus Marco Polo Restaurant Pvt. Ltd.], it was held that:-

"29. The Supreme Court, in that decision made a wonderful distinction between disputes that could be decided by a private forum like an arbitrator and those which could be decided by a court of law. It ruled that the disputes which resulted in a judgement in rem or in other words a judgement which binds the world at large are not to be decided by an arbitrator. Such disputes include matrimonial disputes like divorce and judicial separation, testamentary matters and eviction of tenants in tenancy matters governed by Special statutes where the tenants enjoy special protection against eviction and Special courts are conferred jurisdiction to decide disputes. This is opposed to actions in personam where only the rights of contesting parties are decided. The



decree or order does not affect any third party, let alone being binding on the world at large. These disputes can be referred to arbitration and decided by an arbitrator.

Placing the aforesaid Ld. Counsel would contend that the decision of C.A.T. , Lucknow Bench was a decision *in rem* as it was likely to affect all incumbents in the seniority list.

(iii) That, the authorities should not espouse the cause of any of the contesting parties (private respondents herein) as an employer is expected to remain impartial. In support Ld. counsel would place the decision of Hon'ble Apex Court in **Sub-Inspector Rooplal and Another versus Lt. Governor Through Chief Secretary, Delhi And Others** reported in (2000)1 Supreme Court Cases 644, wherein it was held that :-

"24. Before concluding, we are constrained to observe that the role played by the respondents in this litigation is far from satisfactory. In our opinion, after laying down appropriate rules governing the service conditions of its employees, a State should only play the role of an impartial employer in the inter-se dispute between its employees. If any such dispute arises, the State should apply the rules laid down by it fairly. Still if the matter is dragged to a judicial forum, the State should confine its role to that of an amicus curiae by assisting the judicial forum to arrive at a correct decision. Once a decision is rendered by a judicial forum, thereafter the State should not further involve itself in litigation. The matter thereafter should be left to the parties concerned to agitate further, if they so desire. When a State, after the judicial forum delivers a judgment, files review petition, appeal etc. it gives an impression that it is espousing the cause of a particular group of employees against another group of its own employees, unless of course there are compelling reasons to resort to such further proceedings. In the instant case, we feel the respondent has taken more than necessary interest which is uncalled for. This act of the State has only resulted in waste of time and money of all concerned."



(iv) That mere pendency of an appeal before a higher forum would not amount to stay. In support, Id. counsel would place the decision of Hon'ble High Court at Calcutta in **Basir Ahmed vs. State of West Bengal in W.P.7809(W) of 2019 [2019 SCC Cal 6694]**. It was held :-

"12. It is settled principle of law that mere pendency of an appeal does not operate as a stay and the Supreme Court also while directing that the writ petition to be filed be heard along with the appeal did not grant any stay of the operation of the impugned judgment and order."

(v) The Joint Director while preparing his reply to the Writ Petition filed in Allahabad High Court has stated as under:-



"45..... the matter of fixation of seniority of promotees SO vis-à-vis examinee SOs is disputed in the court. Therefore, seniority list of 2010 cannot be considered as undisputed to effect promotion of SOs."

XXXXX

XXXXXX

XXXXX

51.....despite having 56 unfilled vacancies under promotion quota of AD/NP, promotions of SOs could not be effected as at present both the seniority lists of SOs has been quashed by the CAT order dated 27.2.17 & 21.2.18. Though Department has made efforts to effect ad-hoc promotion of effected SOs, the same could not be materialised. Therefore, till the matter of fixation of seniority of promotee SOs vis-à-vis examinees SO is settled in court of law, no promotion can be affected and not even on the basis of seniority list of 2010."

The respondents here are taking a counter stand which is not permissible.

(vi) Last and not the least, the C.A.T. orders of Lucknow Bench and Principal Bench are challenged before High Courts and the issue is sub judice. It would not be proper for this forum to allow the respondents to go ahead with the seniority lists so long the correctness of quashing/stay of seniority list itself is not decided by the High Court.

5. We have given our anxious consideration to the rival contentions and materials on record. We have carefully perused our interim order dated 16.01.2019 where the following directions were given :-

"5. In view of such, since the balance of convenience and or inconvenience is heavily tilted in favour of the applicants and judicial propriety demands that the respondents have to be restrained from going ahead with the DPC without complying with the directions of this Tribunal by issuing appropriate seniority lists of Section Officers, so long it is not reversed on appeal, we pass the following directions:-

(i) *Issue notice to the respondents to clarify by way of a reply on the legality and propriety of their decision to convene a DPC without recasting the seniority qua the present applicant(Section Officers) in terms of the directions of Principal Bench of this Tribunal in O.A.No.1227/2016 and O.A.No.1399/2016;*

(ii) *List on 11.03.2019 for further orders;*

(iii) *However, pending such clarification, the DPC scheduled to be held on 21st January, 2019 for considering the promotion of Section Officers to the post of Assistant Director/M.P. in the Intelligence Bureau for the vacancy year 2015-2016(SUPPL) supposedly for 53 vacancies as reported, would not be held till the next date of listing.*

(iv) *Pendency of this O.A. shall not preclude the authorities from recasting the seniority of the present applicants in terms of the directions of Principal Bench of this Tribunal in O.A.No.1227/2016 and O.A.No.1399/2016."*




6. OUR INFERENCES

(i). Seniority list that is subject matter of challenge before the higher for a cannot be allowed to be operated;

(ii) The respondents in O.A.(applicants in M.A.) have been permitted to recast seniority list in accordance with the Tribunal's orders, which are not yet reversed on appeal. If they desire to promote the senior officers, they ought to seek leave from the higher forum to recast the list and promote such officers, if they sincerely feel that such 2003-2004 inductee

officers are unaffected by any orders of C.A.T. or would be unaffected by any subsequent decision of the Hon'ble High Courts.

7. In the aforesaid backdrop, the M.A. fails.


(Dr. Nandita Chatterjee)
Administrative Member
sb


(Bidisha Banerjee)
Judicial Member

