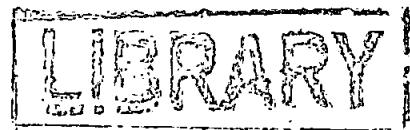


(Through video conferencing)

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA



No. CPC. 350/00056/2020
O.A. 350/00208/2016

Date of order: 3.9.2021

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

1. Diptam Biswas,
Son of Late Tapan Kumar Biswas.
2. Smt. Lily Biswas,
Wife of Late Tapan Kumar Biswas.

- Both of the applicants are
Residing at
"Na Hanyate" Apartment, Flat No. B-5, (3rd Floor),
3/3, M.B. Road, Belgharia,
Kolkata – 700 056.

.... Petitioners/Applicants

- V E R S U S -

1. Union of India,
Through the AC & ARS (N),
Office of the Comptroller & Auditor General of India,
Packet – 9, Deen Dayal Upadhyay Marg,
New Delhi – 110 124.
2. Accountant General of India,
Audit and Accounts Department
(Receipt, Works & Local Bodies Audit),
W.B. Local Audit Department,
CGO Complex, 'C' East Wing (Floor),
Salt Lake City,
DF Block,
Sector – 1,
Kolkata – 700 064.

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3. Principal Accounts General (SSA),
Local Audit Department,
2, Government Place (West),
Treasury Building,
Kolkata – 700 001.
4. Deputy Accountant General (SS-III),
Local Audit Department,
2, Government Place (West),
Treasury Building,
Kolkata – 700 001.
5. Sr. Deputy Account General, (Local Bodies),
Local Audit Department,
CGO Complex, Salt Lake City,
Kolkata – 700 064.

AND

1. Shri Sarat Chaturvedi,
Working for gain as Principal Accounts General
(G & SSA),
Local Audit Department,
2, Government Place (West),
Treasury Building,
Kolkata – 700 001.
2. Dr. Lingaraj Naik S,
Working for gain as Deputy Accountant General
(SS-III),
Local Audit Department,
2, Government Place (West),
Treasury Building,
Kolkata – 700 001.

..... Contemner Respondents

For the Applicants : Mr. B.R. Das, Counsel

For the Contemner Respondents : Mr. S.K. Bhattacharyya, Counsel



O R D E R (Oral)**Per Dr. Nandita Chatterjee, Administrative Member:**

The instant CPC has been filed by the petitioners alleging violation of this Tribunal's orders dated 25.9.2019 in O.A. No. 350/00208/2019.

2. Heard Ld. Counsel for the both sides, who are satisfied with the quality of audio and video during hearing.
3. This Tribunal had disposed of the Original Application with the following orders:-

"7. Admittedly, the respondents vide their letter dated 21.2.2012 communicated that application for compassionate appointment would be under consideration for three years. Said undertaking was recorded by this Tribunal in its decision dated 09.12.2014. However, case of the applicant No. 1 was not placed before the DSC on 30.09.2013 nor on 22.09.2014. From the reply it is apparent that the applicant scored 95 merit points but his case was not placed before the DSC and the candidate scoring 80 merit points was considered solely and was recommended for compassionate appointment, and accordingly she was appointed. It transpires from the perusal of last sub para of page 11 of the written statement that the respondents had advised the bereave family to change their nominee so that his/her case can be considered for compassionate appointment. In the case of Shreejith L (supra), the Hon'ble Supreme Court had held as under:-

"We do not see any obligation on the part of the institution or the Manager to go in search of the legal heirs of deceased employees or educate them about their right to seek an appointment under the scheme."

Though the respondents tried to impress us that the DSC could not properly evaluate the determining factors in arriving financial eligibility, fact remains that a duly constituted empowered DSC had awarded 95 merit points to the applicant but his case was not considered by the DSC in 2013 and 2014 and candidate scoring much lesser merit points (80) was considered solely and recommended which shows that applicant No. 1 was more deserving than the candidate scoring 80 marks who was appointed. Therefore, the case requires reconsideration. Learned counsel forcefully contended that since the applicant No. 1 is more deserving case, he may be appointed on compassionate ground even by creating a supernumerary post in the event there is no vacancy. The Hon'ble Supreme Court while dealing with a compassionate appointment matter in the case of Sushama Gossain (supra) held as under:-

"If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

hsl

8. In view of the above, the respondents are directed to reconsider the case of the applicant no. 1 for compassionate appointment in the light of the above observations and the decisions of the Hon'ble Supreme Court in the case of Shreejith L and Sushama Gossain as cited and extracted above within a period of three months from the date of receipt of this order."

4. Ld. Counsel for the petitioners would allege that despite such clear mandatory orders of this Tribunal, the alleged contemnors have failed to comply with the same, resulting in purported violation of the orders of this Tribunal.

5. During hearing, it is brought to our notice that the respondents in O.A. No. 350/00208/2016 had approached the Hon'ble High Court at Kolkata in **WPCT No. 41 of 2020 (CAN. 1 of 2020)** in the matter of **Union of India & ors. v. Diptam Biswas & anr.** challenging the said order of this Tribunal in O.A. No. 350/00208/2016.

The Hon'ble High Court at Calcutta while disposing of the said **WPCT No. 41 of 2020 (CAN. 1 of 2020)**, directed as follows:-

" The recommendation for appointment of Neha is dated 22.9.2014. On such date the original applicants were entitled to 95 marks and admittedly the said marks awarded to the original applicant No. 2 is higher than the marks awarded to Neha. It may so happen that Neha's case was considered during the pendency of the original application but the facts remain that original applicant No. 2 was entitled for appointment on compassionate ground, had the case of the petitioner was considered during 2013 when the family of Tapan Kumar Biswas approached the authorities concerned. It is not in dispute that in 2013 itself the authorities were approached for consideration of the case of the original applicants for compassionate appointment and as on the date of such application i.e. 2003 the petitioners were entitled to 95 marks in because of changing circumstances. The status and eligibility needs to be decided in 2013 itself. It was on such consideration that the tribunal directed the present writ petitioners to reconsider the case of the original applicant no. 2 for compassionate appointment.

We are alive to the fact that supernumerary posts are allowed only in exceptional circumstances and may be in a rare situation and ordinarily the Court should not direct creation of such post but extra-ordinary situation requires reliefs to be moulded in such a fashion that the scale of justice is evenly tilted and no injustice is caused to a litigant merely because the authority concerned has delayed in taking a decision and in the meantime interest of others have accrued. No benefit ought to have accrued in favour of

hph

Neha had the writ petitioners acted promptly and consider the application for compassionate appointment in the year 2013 itself or as and when the occasion arises for consideration as in the given case by reason of the extension of period of three years the original applicants became eligible for consideration.

In view thereof, we do not find any reason to interfere with the order passed by the learned tribunal.

The writ petition stands dismissed."

6. Ld. Counsel for the petitioners, would, therefore, contend that since the WPCT and the CAN has been dismissed by the Hon'ble High Court at Calcutta upholding the directions of this Tribunal, non-compliance of the orders of this Tribunal constitutes a contemptuous action on behalf of the respondents.

7. Ld. Counsel for the respondents would submit that the respondents have preferred a Review Application before the Hon'ble High Court at Calcutta, and, accordingly, would seek further time until the disposal of the Review Application by the higher judicial forum.

8. We find, however, that the Hon'ble High Court at Calcutta did not agree to interfere with the orders of this Tribunal, upon which, the orders of this Tribunal had reached a finality. No stay of the orders of this Tribunal has been brought before us. The respondents have not also furnished before us any orders of successful challenge arising of the Review Application reportedly preferred by the respondents against the orders of this Tribunal. Hence, there is little option for the respondents but to comply with the orders of this Tribunal.

9. Accordingly, we would direct the respondent authorities to furnish their compliance report within a further period of 4 weeks from the date of receipt of a copy of this order:

hch

In the event, the respondents are able to successfully challenge the orders of this Tribunal as per their Review Application, the same may be brought to the notice of this Tribunal, failing which they are mandated to submit their compliance report within the above mentioned time period.

10. List this matter on 8.10.2021.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

