

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD

~~G.A. No.~~ Contempt Application No. ~~199~~ 26-A of 89
T.A. No. In
T.A. No. 1307 of 1987
DATE OF DECISION _____

R.K. Deewan & others. Petitioner

Shri V.K. Burman Advocate for the Petitioner(s)
Versus

K.K. Sikka & others. Respondent

Shri A.K. Gaur Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.K. Agrawal, Judl. Member.

The Hon'ble Mr. K. Obayya, Adm. Member.

1. Whether Reporters of local papers may be allowed to see the judgment ? ✓
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether to be circulated to all other Benches ?

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Ghanshyam/

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Civil Contempt Application No. 26-A/89

In

T.A. No. 1307 of 1987

R.K. Deewan & others

Applicants

versus

Krishan Kumar Sikka & others

Respondents.

Hon. Mr. D.K. Agrawal, Judl. Member.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. K. Obayya, A.M.)

The above Contempt Application arises out of judgment and order dated 22.2.89 passed in Transferred Application No. 1307 of 1987 'R.K. Deewan & others vs. General Manager (P), Northern Railway and others. The operative portion of the judgment as contained in para 7 is as follows:

"In the absence of any reason for not adhering to the quota prescribed under the Rules, it is reasonable and proper that the respondents 1 to 4 should reconsider the whole issue of seniority in the circumstances highlighted above, taking it into account the points urged by the petitioners and other promotees in the representations made after the publication of the seniority list. The plea of the petitioners for proper seniority vis-a-vis. the 80 direct recruits appointed during the period 1975 to 1981, has to be considered in accordance with the Recruitment Rules prescribing the quota and the respective claims on both the sides. The Railway Department should consider the issue of seniority in the light of the fact that potential promotees during the said period were denied their rightful claim for consideration for

promotion and thereby pushed down in the seniority list due to default on the part of the Railway Department. They should also consider the alternative request of the petitioners that they should be placed above the 51 direct recruits. Pending consideration of the said representation in the light of the above, the seniority list in question should be considered as tentative and it should be reviewed within three months from the receipt of this order and it should be finalised only after deciding the representations in accordance with the rules. The stay order is vacated with the direction that any promotion made should be subject to the seniority list being drawn up and finalised after considering the representation in accordance with the direction above. The case is disposed of accordingly and there will be no order as to cost."

2. The Railway Administration, by order dated 31.5.89, has disposed of the representation of the petitioner as contained in Annexure 5 to the Original Claim Petition holding that the names of promotees cannot be interpolated in between, i.e. the Railway Administration has confirmed its earlier seniority list.
3. In view of the above facts, there is no doubt that the Railway Administration has made prompt compliance of the judgment of the Tribunal. Therefore, the opposite parties-contemnors cannot be held guilty of any deliberate or wilful disobedience as alleged by the applicant.
4. The learned counsel for the applicant vehemently urged at length that the Railway Administration has, in fact, refused to make compliance of the order of the Tribunal by

confirming the same seniority list. We have given our anxious consideration to the submissions made on behalf of the applicants. The facts in this regard are that the recruitment rules for appointment to the post of T.C.I. Grade III provided for two sources of recruitment in equal proportion i.e. 50% posts were to be filled up by promotion and 50% by direct recruitment. In between the years 1975 to 1981 about 80 direct recruits were appointed but no promotions were made. The promotions were made only on 25.3.82. The promotees claimed that their names be interpolated in between the years 1975 to 1981 as to give them seniority over and above 51 direct recruits. The Railway Administration in its order dated 31.5.89 has mentioned the circumstances under which promotions were delayed and promotions could ~~not~~ be made only on 25.3.82. The learned counsel for the applicant submitted that if the Railway Administration made a default in making the promotions in between the years 1975 to 1981, the applicants i.e. the promotees promoted vide order dated 25.3.82 cannot be made to suffer.

5. We do not find a direction contained in the body of the judgment that the promotees are entitled for placement in the seniority list in proportion to their quota available to the promotees between the years 1975 to 1981. The direction, on the other hand is to the effect that the Railway Administration shall consider as to why should they not be placed in the seniority list according to the quota available to the promotees in between the years 1975 to 1981. The Railway Administration considered and came to the conclusion that it may not be proper to do so. The legal position is also the same. In *Bishan Swarup Gupta v. Union of India* (1973) 3 S.C.C. 1, Supreme Court

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observed:

"Since the quota rule collapsed, the rota rule having a link with the quota rule would meet the same fate."

In A. Janardhana's case, (1983) 3 S.C.C. 601 Supreme Court observed:

"It is equally well recognized that where quota rule is linked with the seniority rule if the first breaks down or is illegally not adhered to giving effect to the second, would be unjust, inequitable and improper."

In A.K. Subraman v. Union of India, (1975) 1, S.C.C. 319, Supreme Court observed:

"the existence of quota and rotational rule, by itself, will not violate Article 14 or Article 16 of the Constitution. It is the unreasonable implementation of the same which may, in a given case, attract the frown of equality clause."

In P.A. Mahal vs. Union of India, (1984) 4 S.C.C. 545, Supreme Court reiterating the observation in A.K.

Subraman's case observed:

"The rotational rule of seniority is inextricably linked with the quota rule and if the quota rule is not strictly implemented and there is a large deviation from it regularly from year to year, it would be grossly discriminatory and unjust to give effect to the rotational rule of seniority."

In G.P. Singha v. Union of India, (1984) 4 S.C.C. 405 Supreme Court held:

"promotees could not be told that they will rank junior to direct recruits who were appointed 5 to 10 years after them."

In G.S. Lamba & others v. Union of India & others, (1985) 2 S.C.C. 604, Supreme Court held:

"In the absence of any other valid principle of seniority it is well established that the continuous officiation in the cadre, grade or service will provide a valid principle of seniority".

In Direct Recruit Class II Engineering Officers Association & others v. State of Maharashtra & others, (1990) S.C.C. (L&S) 339, Supreme Court laid down:

"Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date."

6. In the result, we are of the opinion that this Contempt Application is liable to fail. The same is rejected. Notice issued is hereby ^{rejected} rejected. No order as to costs.

A.M.

J.K. Agrawal
J.M. 13.2.91

Allahabad Dated: 13th February, 1991.