

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

M.A. No.398 of 2001  
CPC No.4 of 2000  
(O.A. No.90 of 1996)

Present: Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman  
Hon'ble Mr. B.P. Singh, Administrative Member

Nanda Dulal Dutta & 196 Others

... Applicants

VS

1. Sri T.R. Prasad, Secretary, Ministry of Defence, Ayudh Bhawan, New Delhi-1

2. Sri D. Rajagopal, the Chairman, Ordnance Factory Board, 10A, Auckland Road, Calcutta-700 001

3. Sri Soumya Kanti Ray, The General Manager, Rifle Factory, Ichapore, 24-Parganas (North), Pin-743 144)

... Respondents

For the Applicant: Mr. R. K. De, counsel

Ms.B. Banerjee, counsel

For the Respondents: Mr. M.S. Banerjee, counsel

: : Date of order: 21.12.01

O R D E R

Per Mr. Justice G. L. Gupta, Vice-Chairman

This order disposes of the CPC No.4/2000 and the M.A. No.398/2001 which have arisen out of the order dated 23.8.99 passed in OA 90/96.

2. It is not necessary to state the facts of the case in detail. Suffice it to say, 196 Fitters in the Rifle Factory, Ichapore filed O.A. on 17.1.96 seeking a declaration that Fitters in RFI are entitled to be upgraded from the skilled grade to the Highly Skilled grades in RFI on the basis of the policy decision of GOI clarified by Presidential Order and upheld in the judgment dated 04.12.89 in TA No.1369 of 1986 (Chiranjib Kanungo and others vs. Union of India & Ors.) and also in the order dated 22.08.94 in O.A. 923/90 (Durga Pada Mukherjee & Ors. vs. Union of India & Ors.) and further a



direction to the respondents to upgrade the applicants from High the Skilled Grade to Highly Skilled Grades No.II and III and to pay all arrears of salary and allowances.

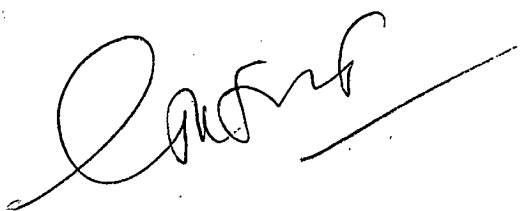
3. The OA was resisted by the respondents by filing a reply. The Tribunal after hearing both the parties decided the O.A. vide order dated 23.8.99. The operative part of the order is reproduced hereunder :-

"In the result, the O.A. is allowed and the respondents are directed to consider the promotions of the applicants in the Fitter skilled grade in the RFI against the upgraded posts in higher category on the basis of authorised strength as sanctioned by the Ministry of Defence under their order dated 15.10.84 and clarified subsequently by the order dated 19.4.85, within four months from the date of communication of this order. We also make it clear that if some of the applicants have already retired or otherwise ceased to be in service on account of death etc., the service benefits shall be extended to them and to their legal heirs in appropriate cases as per extant rules with all consequential benefits."

4. Since the order was not implemented the applicants filed CPC on 18.1.2000 alleging that the respondents have wilfully disobeyed the order of the Tribunal and therefore, showcause notice be issued to them and they should be punished. Vide order dated 9.1.2001 notices were issued to the respondents as to why proceedings under the Contempt of Courts Act be not initiated against them.

5. The respondents have filed reply in the form of affidavit.

6. During the pendency of the CPC the applicants filed aforesaid MA challenging the notice issued to the applicants on 3.5.2001 asking them to submit their options. Reply to the MA has also been filed.

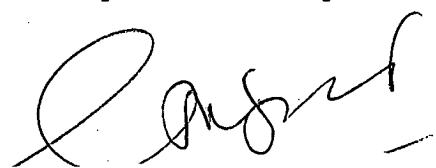


7. We have heard the learned counsel for the parties and perused the various documents placed on record.

8. Mr. De, learned counsel for the applicants contended that the respondents were required to implement the order of the Tribunal, but as they having omitted to implement the order, they are liable to be punished. He contended that when the Tribunal had directed the respondents to give benefit to the applicants, it necessarily meant that all the applicants are entitled to the relief irrespective of the fact that the respondents had given the benefits of the judgment to the persons who were senior to the applicants and had retired or expired.

9. As against this, Mr. Banerjee, learned counsel for the respondents contended that the respondents have implemented the order as was done in the matter of T.A. 1369/86 and OA 923/90 and the applicants cannot claim the benefit when the Fitters senior to them, have been given the benefit of the judgment. He contended that in the order when it was directed that the applicants be given the benefit, it meant that all the Fitters be given benefit as per their seniority which has been done in this case. Mr. Banerjee also contended that the application for contempt should be dismissed on the ground of limitation as cognizance of the contempt was not taken within the period of limitation.

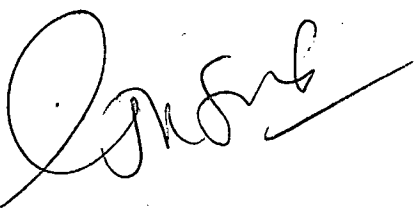
10. Mr. De, learned counsel in reply submitted that in view of the decision of the Apex Court in the case of Pallav Sheth v. Custodian & Ors. [JT 2001 (6) SC 330] the objection of limitation in initiating the contempt proceeding cannot be validly taken as applicants had already filed the application for contempt within the period of limitation.



11. We have given the matter our thoughtful consideration. First it may be seen as to whether, because of not initiating the contempt proceedings within the period of one year the contempt application is liable to be dismissed, as has been urged by the respondents in the written submission.

12. The contention of the respondents on limitation was obviously based on the decision of the Supreme Court in the case of Om Prakash Jaiswal v. D.K. Mittal and Another, [JT 2000(2) SC 293]. However, after that decision the matter was considered by the Larger Bench of the Hon'ble Supreme Court in the case of Pallav Sheth v. Custodian & Ors., [JT 2001(6) SC 330]. In that case the decision in the Om Prakash Jaiswal was considered and their Lordships held that in the cases of contempt the initiation can only be by a party filing an application and the proper construction to be placed on Section 20 must be that action must be deemed to have been initiated, either by filing of an application or by the court issuing notice suo motu within a period of one year from the date on which the contempt is alleged to have been committed. That being so, now it is the date of filing the application for contempt that is material and the date of the order of the court of issuing notice is not material. That being so, the objection as to the limitation raised in the written submission of the respondents is overruled.

13. Now the question for consideration is as to whether the respondents have not implemented the order of the Tribunal in right spirit. The operative part of the order has already been reproduced herein before (at para No.3 of this order). It may be stated that the OA 90/96 was disposed of on the basis of the



decisions given in TA 1369/86 and OA 923/90. In this connection the following observations of this Tribunal appearing at para 10 of the order dated 23.8.99 are worth mentioning:

"We are of the view that the present petitioners are also entitled to get the same benefits as extended to their counterparts by this Tribunal in T.A. No.1369 of 1986 and O.A. No.923 as per final orders dated 4.12.89 and 22.8.94 respectively taking note of the fact that the order passed in Durgapada Mukherjee's case has been affirmed by the Supreme Court in appeal."

14. It has, therefore, become necessary to read the operative part of the order dated 4.12.89 passed in TA 1369/86 which is hereunder :

"We, therefore, allow T.A. 1369 of 86 with a direction to the respondents to consider the case of the applicants for promotion on the basis of the authorised strength as clarified in Annexure-C within 90 days from date. There will be no order as to costs."

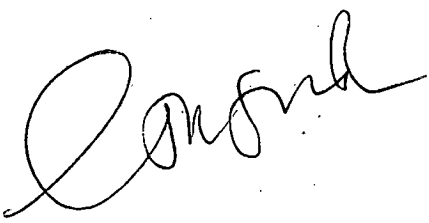
What was directed in TA 1369/86 was that the respondents were to consider the case of the applicants of that case for their promotion on the basis of the authorised strength. A similar direction was given in the order dated 23.8.99 when it was directed that the respondents would consider the promotion of the applicants in the feeder scale Grade in the RFI on the basis of the authorised strength.

15. The obvious interpretation of the order dated 23.8.99 is that the respondents would consider the case of the applicants for promotion and if they are eligible and entitled to promotion they will be given promotion in the higher grades. It cannot be accepted that there was positive direction to give promotion to the applicants of OA 90/96. The respondents authorities were required to consider the case of the promotion of the applicants keeping in view the authorised strength as sanctioned by the Ministry of Defence under their order dated 15.10.84 and clarified vide order dated 19.4.85. The Tribunal had also directed that the service benefits shall be extended to all the persons who had retired or otherwise ceased to be in service on



account of death etc. Of course the word "applicants" has been used in this part of the order, but it is obvious that when the Tribunal directed that the benefit of the order be given to all the eligible Fitters, it will have to be understood that the benefit has also to be given to those Fitters, who had already retired or otherwise ceased to be in service on account of death or any other reason. It has to be kept in mind that the respondents were required to consider the promotion of the applicants keeping in view the authorised strength. Therefore, if as per the authorised strength on a particular date the persons senior to the applicants were entitled to the promotion in the higher grade, the applicants obviously cannot claim promotion from the same date.

16. This is what has been done by the respondents in this case. The respondents have stated that they have given promotion to all the employees who were in the employment of the respondents keeping in view the authorised strength on the particular date. It has been stated in the reply that on 15.10.84 the authorised strength was of 1746 and because of the directions given by the Tribunal for promotion, 241 additional vacancies were available. It has been further stated that there are 289 workmen who were senior to the seniormost applicant and there were 379 workmen who were senior to the juniormost applicant. The respondents, therefore, keeping in view the seniority of the workmen each year have given promotion to them. It may be that the persons who had not come to the Tribunal had got the advantage of the order, and the applicants have not got the benefit of the order, but on that ground it cannot be said that the respondents have committed contempt of the order of the Tribunal.

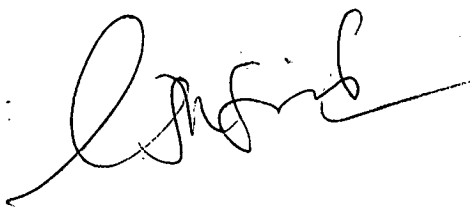


17. The respondents were bound to consider the case of those persons also who were senior to the applicants and had either retired or had expired or ceased to hold office for any other reason. The case for the applicants could be considered on the basis of their seniority. So, if the persons senior to some of the applicants had got the benefit of the order as per the authorised strength, the applicants cannot successfully plead that they should have also been given promotion from the earlier date. If the argument of the applicants is accepted it would mean that the respondents were required to give the promotion to the workmen at a particular point of time, more than the authorised strength which was never the intention of the order of this Tribunal.

18. It was not pointed out by the learned counsel for the applicants that keeping in view the seniority position of the applicants in the list of workmen they were entitled to get promotion on the earlier dates as per the authorised strength. In other words, no mistake has been pointed out in calculating the date from which the applicants have been given promotion.

19. In our considered opinion it cannot be said that the respondents have violated the directions of the Tribunal and have committed contempt, rather they have implemented the order in the right spirit.

20. The applicants' case has been considered by the respondents in the manner the case of employees of Cossipore Gun Factory has been considered and orders issued. Therefore, the applicants should not have any grudge in the matter.

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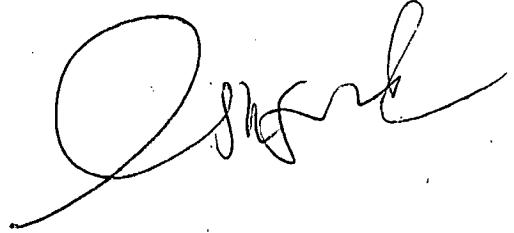
21. Since the promotions have been given under the orders of the Tribunal, there is no need of obtaining the options of the applicants. The respondents should pass necessary orders, if needed keeping in view the directions given by this Tribunal.

22. For the reasons stated above, we do not find any merit in the contempt application. It is dismissed. MA stands disposed of.



(B. P. Singh) 2/12/2001

MEMBER (A)



(G. L. Gupta)

VICE-CHAIRMAN