

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CPC 70 OF 1998 (OA 162 OF 96)

Present: Hon'ble Mr. Justice R. N. Ray, Vice-Chairman
Hon'ble Mr. B. P. Singh, Administrative Member

Supriya Kumar Deb

VS

1. Shri Arvind Varma, Secretary,
Dept. of Personnel & Training,
Govt. of India, North Block,
New Delhi- 110 001.
2. Shri B.K. Mishra, Secretary,
U.P.S.C. Dholpur House,
New Delhi- 110 003
3. Shri Manish Gupta, Chief Secretary,
Govt. of West Bengal, Writers' Bdg.
Calcutta-1
4. Smt. Manjula Gupta,
Principal Secretary, Home (P&AR)
Govt. of West Bengal
Writers' Buildings,
Calcutta-1

..... Respondents

For the applicant : Mr. S.K. Ghosh, Counsel
Mr. K.K. Pathak, Counsel
For respondent No.1 : Mr. M.S. Banerjee, Counsel

For respondent No.2 : Ms. K. Banerjee, Counsel

For respondents 3&4 : Mr. R.N. Das, Counsel
Mr. P.K. Dutta, Counsel

Heard on : 12.1.2001 : Order on : 19.3.2001

ORDER

R.N. Ray, V.C.:

This contempt petition has been filed by the applicant of OA 162 of 1996 alleging that the respondents have wilfully violated the directions contained in the order of this Tribunal dt 3.6.96 disposing the aforesaid OA and thus have committed contempt. He has also prayed for his promotion to the IAS cadre from 8.2.96 i.e. the date from which his junior Shri Narayan Ch. Majumdar was so promoted with arrears of salary and to fix his position above Shri Majumdar in the civil list.

2. By filing a separate MA bearing No. 296 of 98, the applicant had also prayed for condonation of delay in filing the contempt petition. However, ld. counsel for the applicant did not press this MA and on that ground it was rejected by order dt. 10.12.99 with the observation that the question of limitation as raised by the ld. counsel for respondent No. 1 might be considered along with the merit of the contempt petition.

3. The facts giving rise to this contempt petition may be stated very briefly at the outset.

4. The applicant was a senior member of West Bengal Civil Service (Executive). The name of the applicant was forwarded by the State respondents to the UPSC for consideration of his case for inclusion in the select list for promotion to the IAS cadre and the UPSC considered his case in March 1995. His name was included in the select list of 1994-95 and was placed at serial No. 6 provisionally subject to grant of integrity certificate by the State Govt. i.e. Govt. of West Bengal. As the integrity certificate was not issued, he could not ^{be} appointed to IAS. He was again considered for the next selection and this time also his name was included in the list provisionally. Challenging his non-promotion to the IAS and his supersession by his junior i.e. Shri Narayan Chandra Majumdar, the applicant filed OA 162 of 96 before this Tribunal. The main reason for non-issue of the integrity certificate was that a vigilance enquiry was going on against the applicant in respect of certain incident which occurred long 13 years back while the applicant was posted at Hooghly district as SDO and was also acting as the Competent Authority under the Urban Land (Ceiling & Regulation) Act, 1971. Meanwhile a disciplinary proceeding was also initiated against him by issuing a charge-sheet dt. 10.11.95. After considering the matter, the Tribunal disposed of the OA by issuing the following directions :-

"i) We direct that the UPSC and the Central Govt. and the State Govt. respondents to treat the petitioner provisionally in the select list for the relevant year in case the same has

not already been done.

ii) After the petitioner's name figures thus provisionally in the select list, respondent No. 4 of the Govt. of West Bengal shall make recommendation to the Central Govt. for appointment of the petitioner to the IAS immediately with the clear stipulation that any such appointment to the IAS shall be subject to review after conclusion of the DA proceeding initiated against the petitioner through the charge-memo dt. 10.11.95 (annexure-A11) and that for such appointment he would be provisionally allotted seniority above respondent No. 5 in case respondent No. 5's name is shown as junior to the petitioner in the select list. Respondent No. 4 shall make such recommendation within a fortnight from the date of communication of this order.

iii) Within one month of such communication from the State Govt. ~~of the~~ Central Govt. (respondent No. 1) shall appoint the petitioner to the IAS on condition that such appointment shall be subject to the review after conclusion of the aforesaid DA proceeding and he shall be allotted appropriate seniority in the IAS accordingly.

iv) In the facts and circumstances of the case, for making such appointment, it is not necessary for respondent No. 2 i.e. UPSC to make the inclusion of the name of the petitioner in the select list unconditional with reference to condition of first proviso to Regulation 9 of IAS (Appointment by Promotion) Regulation, 1955.

v) After the conclusion of the DA proceeding against the petitioner, respondent No. 4 shall communicate the latest position to the UPSC and the Central Govt. so that final orders regarding regular promotion of the petitioner to the IAS and his inter se seniority can be issued appropriately."

5. Alleging that the respondents have violated these directions of the Tribunal, the instant contempt petition has been filed. It is

alleged that the charge-sheet issued against the applicant was quashed in terms of the order of the State Administrative Tribunal on 5.8.97. Still he has not been appointed to the IAS as per above order of the Tribunal.

6. All the respondents have filed separate replies to contest this contempt petition to which we shall make reference at appropriate place.

7. We have heard the ld. counsel for all the parties and have gone through various documents produced including the replies filed on behalf of respondents.

8. First we refer to the the reply of UPSC, respondent No. 2. It is averred that the UPSC have already complied with the order of the Tribunal so far it relates to them. They have already included the name of the applicant in the select list of 1994-95 and his name was placed at Sl. No. 6 and that it is for the Central Govt. i.e. respondent No. 1 and the State Govt. i.e. respondent Nos. 3 and 4 to proceed further according to the recommendation of the UPSC for appointment of the applicant to the IAS as per rules. In this view of the matter, no further order needs to be passed in respect of respondent No. 2.

9. The State respondents i.e. respondent Nos. 3 and 4 have filed two separate replies. It is averred by them that within one month from the date of communication of the Tribunal's order, necessary recommendation was sent to the Central Govt. by letter dt. 25.6.96 (annexed to the reply) for promotion of the applicant to the IAS. However, the Central Govt. issued necessary order on 27.8.98 appointing the applicant to the IAS provisionally with effect from 16.2.96 on probation subject to the final outcome of the disciplinary proceeding pending against him. It is, therefore, contended by the State respondents that there was no disobedience on their part and they acted promptly by sending appropriate recommendation to the Central Govt. But necessary appointment order was issued by the Central Govt. only on 27.8.98 and thereafter, necessary posting order

has been issued on 24.9.98 posting the applicant as Addl. Dist. Magistrate, Howrah.

10. Respondent No. 1 i.e. Secretary, DOPT has filed two replies - one in respect of MA 296 i.e. the application for condonation of delay in filing the contempt petition and another the main reply. In the reply to MA 296 it is contended that the contempt petition is barred by limitation u/s 20 of the Contempt of Courts Act inasmuch as it was filed long two years after the original order. We shall discuss this matter in subsequent paragraph.

11. In the main reply, respondent No. 1 has stated that the petitioner was treated to remain provisional in the select list for the year 1994-95 and in terms of relevant rules and regulations, prior to his actual appointment, the petitioner is required to furnish a declaration of his marital status and consent for termination of lien in the State Service on eventual substantive appointment to the IAS which were called for from the State Govt. on 20.6.98. The certificates were furnished by the State Govt. on 7.8.98 and after due consideration of the proposals the appointment of the petitioner with retrospective effect from 16.2.96 to the IAS was notified on 27.8.98. Thus the order of the Tribunal was complied with fully. It is further stated that the year of allotment of the applicant has been fixed as 1988 and he has been assigned seniority in the cadre above Shri Narayan Ch. Majumdar and below Shri Asim Kr. Das and a notification in that regard was issued on 9.8.98.

12. From the above, it is clear that after the judgement was passed by this Tribunal in the OA on 3.6.96, the State respondents sent its recommendation promptly on 25.6.96 to the Central Govt. for promotion of the applicant to the IAS provisionally from the select list of 1994-95. However, the Central Govt. issued necessary order ^{there} of promotion on 27.8.98 i.e. more ~~than~~ two years thereafter, of the applicant to the IAS on provisional basis w.e.f. 16.2.96 subject to the outcome of the disciplinary proceeding pending against him. Thereafter, another order was passed on 8.9.98 whereby the year of

allotment of the applicant was fixed as 1988 and his seniority was also fixed above Shri Narayan Ch. Majumdar and below Shri Ashim Kr. Das. This was the relief claimed by the applicant. Though it is mentioned by the applicant that Shri Narayan Ch. Majumdar was appointed to the IAS from 8.2.96, but it is asserted by the respondents that he was so appointed on 16.2.96. Thus the main grievance of the applicant has been redressed. However, as it appears, apparently the delay occurred at the level of the Central Govt.

13. It appears from the record that after the judgement of the Tribunal was passed on 3.6.96, the respondent No. 1 i.e. Union of India filed a review petition bearing No. RA 78 of 1996. This RA was dismissed by this Tribunal on 13.9.96 as nobody appeared on behalf of the review petitioner on the date it was fixed. Thereafter, the same respondent filed another MA bearing No. 392 of 1996 along with MA 393 of 96 which was for recalling the order dt. 13.9.96 dismissing RA 78 of 96 and MA 393/96 was for condonation of delay. It was contended by the 1d. counsel for the petitioners of the MA that the same may be treated as an application under rule 16 of the CAT (Procedure) Rules instead of a review petition as no second review was permissible under the rules. However, both the MAs were dismissed on the ground of delay as also on merit by a detailed order dt. 22.5.98. It seems that after this, the Central Govt. initiated action to implement the order of the Tribunal in the OA and necessary promotion order of the applicant was issued on 27.8.98. In his rejoinder, the applicant has referred to a letter dt. 20.7.98 from the DOPT addressed to his counsel wherein it was stated that while sending the recommendation on 25.6.96, the State respondents did not send the requisite "no deterioration" certificate, marital declaration and consent for termination of lien from State Service and those certificates were called for from the State Govt. on the same date. On receipt of those documents, necessary promotion order was issued on 27.8.98. Be that as it may, it is quite clear that due to pendency of the review

petition and the second review petition filed by the Union of India the delay has occurred. It is within the right of a party to seek available legal remedies against any adverse order passed by a court of law. Thus, if the Union of India sought review of the order of the Tribunal dt. 3.6.96 by filing review petition, they cannot be blamed. It is unfortunate for the applicant that there was delay in disposal of the second so called review petition for which his appointment order was delayed. He is thus a victim of circumstances. In that view of the matter, the contention raised by the ld. counsel for the respondent No. 1 that the contempt petition is barred by limitation cannot be accepted. When the Union of India filed review petition, the applicant had to wait for a final decision on the same and he just can not rush to file a contempt petition immediately after the time for implementation of the order was over without waiting for the outcome of the pending review petition. We, therefore, hold that the contempt petition is not barred by limitation as contended by Mr. M.S.Banerjee, ld. counsel for the respondent No. 1.

14. Be that as it may, it now appears that the applicant has been appointed to the IAS w.e.f. 16.2.96 and his seniority position has also been fixed above Shri Narayan Ch. Majumdar. Therefore, there cannot be any grievance of the applicant in that regard.

15. It is, however, contended before us that due to such delay in actual appointment to the IAS post, which was 13.10.98, the pay of the applicant has been fixed at a lower stage as per pay fixation order dated 30.7.99. It is the grievance of the applicant that he is drawing lesser pay than his junior. The State respondents have, however, supported the pay fixattion order as correct and for the purpose they rely on a letter dt. 16.4.99 issued by the DOPT in which it was stated that the State Govt. may fix the pay of the applicant keeping in view the fact that though the applicant was appointed to the IAS on 16.2.96, his pay fixation is to be done only from his actual date of joining the IAS cadre post i.e. w.e.f. 13.10.98. It is contended by the applicant that it was the Central Govt. which was

responsible for the delay in his actual joining the IAS cadre post and therefore, he cannot suffer perpetual loss of pay for the same. We find justification in this contention of the applicant. However, pay fixation was not the subject matter of the OA and no such order was passed by this Tribunal while disposing the OA. Therefore, in this contempt petition, there is no scope for adjudication of this grievance of the applicant. We find, that the applicant has made representation on 19.11.99 to the respondent No. 3 in this regard. It is expected that the authorities will consider the same in the light of the observation made by us above. If he is still aggrieved, he may approach this Tribunal by filing a separate application according to law.

16. Another grievance raised by the applicant is that the disciplinary proceeding pending against him stood quashed as per order of the State Administrative Tribunal on 5.8.97 and the writ petition filed by the State Govt. against the said order of the State Administrative Tribunal before the Calcutta High Court also stood dismissed on 5.4.99. Still no final order has been passed by the State Govt. or Central Govt. in this regard. However, we find that the High Court's order was passed after the reply was filed in this contempt petition. Any way, it is now for the State Govt. to follow up the matter as per law. This Tribunal cannot pass any order in respect of judicial orders passed by the State Administrative Tribunal or the High Court. In the OA, this Tribunal only gave direction that after conclusion of the DA proceeding against the petitioner, respondent No. 4 shall communicate the latest position to the UPSC and Central Govt. so that final orders regarding regular promotion of the petitioner to the IAS and his inter se seniority can be issued appropriately. The applicant's seniority has already been fixed as per his claim as per order dt. 8.9.98. No final order in the DA proceeding issued by the appropriate disciplinary authority based on the orders of the State Administrative Tribunal or the Hon'ble Calcutta High Court has been produced before us. We are, therefore,

unable to issue any direction in this regard.

17. In view of our discussion made above, we find no sufficient reason to hold that there was any intentional or wilful violation of the order of this Tribunal by the respondents and hence, we dismiss this contempt petition and the respondents/alleged contemners are discharged from this proceeding. However, the State respondents are directed to consider and dispose of the representation of the applicant dt.19.11.99 relating to his pay fixation in the IAS in the light of the observations made by us above within two months from this day and if the applicant is still aggrieved, he will be at liberty to file appropriate application for redressal of his grievance in that regard, if so advised. There will be no order as to costs.

B.P.Singh

(B.P.SINGH) 19032001

MEMBER(A)

R.N.Ray

(R.N.RAY)

VICE CHAIRMAN