

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CPC 33 OF 2002 (OA 1052 OF 1997)

Present : Hon'ble Mr. B.P.Singh, Administrative Member
Hon'ble Mr. N. Prusty, Judicial Member

Sukumar Maity
S/o Sri Asutosh Maity,
(Ex-Casual Worker/GSI/Chq)
R/o Durdarshan Kendra,
Room No. E-7, Golf Green,
Calcutta-45

VS

1. Shri A.K.Kundra,
Secretary, M/o Mines,
Shastri Bhawan,
New Delhi
2. Shri P.K.Mondal,
Director General,
Geological Survey of India,
27, J.L.Nehru Road,
Calcutta-16
3. Sri Bhaskar Kanti Das,
Director Personnel,
Geological Survey of India,
4, Chowringhee Lane,
Calcutta-16

.... Respondents.

For the petitioner : Mr. A.K.Bairagi, Counsel

For the respondents : Mr. P.Chatterjee, Counsel

Heard on : 18.7.2002 : Order on : 30.7.02

O R D E R

N.Prusty, J.M.:

This contempt petition has been filed by the applicant No. 1 of OA 1052 of 1997 complaining that the respondents have deliberately violated the order of this Tribunal passed in the OA on 13.7.2001 and as such they should be proceeded against under the Contempt of Courts Act.

2. OA 1052 of 1997 was filed by 18 applicants, who had worked under the respondents as casual labours, praying for regularisation of their services in terms of Ministry of Home Affairs/ DOPT OM dated 26.10.84. According to this OM, services of casual workers are to be regularised provided inter-alia they had put in 2 years service as casual workers with 240 days/206 days of work in a year.



3. The Tribunal while disposing of the OA on 13.7.2001 directed the respondents to verify the service records of the applicants in terms of the provisions of the OM dt. 26.10.84 within a period of three months and to consider the cases of eligible applicants for absorption in Group D posts in preference to outsiders in accordance with their seniority and subject to availability of vacancy, as has been directed by the Tribunal in an identical order earlier in OA No. 1071 of 1993 vide order dt. 1.5.2000.

4. The petitioner states that aforesaid order of the Tribunal was communicated to the respondents on 20.7.2001 but even after expiry of three months, the respondents have not yet regularised the service of the petitioner and as such they have committed contempt of this Tribunal. It is also stated that two persons, who were not parties to the aforesaid OA have been regularised whereas the petitioner has been left out inspite of the order of the Tribunal.

5. The respondents have filed a reply affidavit in which it is stated that they have complied with the order though with some delay. It is averred that verification of records of 18 applicants of OA 1052/97 was done in terms of DOPT OM dt. ~~26~~ 26.10.1984 and it was found that 10 of them fulfilled the requisite conditions of the OM dt. 26.10.82 except that their names were not sponsored by employment exchange. They are Shri Bhanu Mondal, Shri Ashok Kumar Singh, Shri Raj Kumar Yadav, Shri Nakul Ghosh, Shri Kanu Dey, Shri Dhananjoy Saha, Shri Sukumar Maity (present petitioner), Shri Shyamal Kumar Pututundi, Shri Gaur Chandra Mondal and Shri Dipak Kumar Singh. It is further stated that Shri Bhanu Mondal was already absorbed against SC vacancy. But the remaining eligible candidates including the present petitioner could not be absorbed as there was a ban on filling up posts as per Office Memorandum/Order of the Ministry of Finance dt. 5.8.99. It is pointed out that ban is not applicable to fill up SC/ST vacancy. It is also stated that the names of two persons mentioned by the petitioner were absorbed earlier before imposition of ban. It is, therefore, submitted that no contempt was committed and as such the



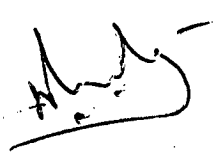
petition should be dismissed.

6. A rejoinder has been filed against this reply in which the averments made in the contempt petition have been reiterated.

7. We have heard the ld. counsel for the parties and have gone through the pleadings and the documents placed on record.

8. Mr. A.K.Bairgai, ld. counsel for the petitioner contended that in a similar case, viz. CPC No. 30 of 2001 arising out of OA 1071 of 1993 (Barun Chakraborty & Ors -vs- Dipak Kr. Chatterjee & Ors), this Tribunal held that regularisation does not depend on availability of vacancy or lifting of ban. He further contended that if the petitioner is eligible, the respondents ought to have regularised his service as vacancies are available as will appear from a letter dt. 30.7.2001 annexed to the rejoinder as annexure-B1. He has further contended that non-sponsoring of name through employment exchange cannot be a bar to the regularisation as one time relaxation was granted by the Government and moreover, the petitioner is entitled to regularisation in terms of Court's order and hence the plea of ban cannot be taken. Mr. Bairagi, has also produced before us a copy of the order dt. 5.4.2002 by which approval for regularisation was given to three persons who were directed to be regularised in terms of the order of the Tribunal in OA 1071 of 1993 and CPC 30 of 2001. Thus, according to him, the respondents cannot take the plea of ban when they did not raise this plea at the time of hearing of OA and when they regularised other applicants of OA 1071/93.

9. Ld. counsel for the respondents, on the other hand, has stated that the direction of the Tribunal has been substantially complied with inasmuch as verification of service records of the applicants of OA has been done, but only due to ban imposed by the Govt. of India, no appointment could be given against unreserved quota. He has also pointed out that steps have already been taken for relaxing the ban in respect of regularisation of the petitioner and others in compliance with the directions of the Tribunal. Thus, according to him, no contempt was committed.



10. We have considered the rival arguments carefully. The direction issued by the Tribunal by its order dt. 13.7.2001 in OA 1052/97 is quite clear. It reads as follows :-

" Considering the facts and circumstances of the case, we dispose of this OA with a direction to the respondents to verify the service records of the applicants in terms of the provisions contained in OM dt. 26.10.1984 within a period of three months from the date of communication of this order and to consider the case of eligible applications for absorption in Group D posts in preference to outsiders, in accordance with their seniority and subject to availability of vacancy.Q"

11. It is not disputed that the respondents have already verified the service records of the applicants of the OA and found that 10 out of them are eligible for regularisation. The present petitioner of this petition has also been found to be eligible. Thus it is quite clear that they have partially complied with the order.

12. The only contention raised by the respondents in not regularising the petitioner and others is that because of ban they could not be regularised. They have annexed a copy of the ban order dated 5.8.99 to their reply. In para 2 of this order it is stipulated as follows :-

" Ban on filling up of vacant posts :

Every Ministry/department shall undertake a review of all the posts which are lying vacant in the Ministry/Department and in the Attached and Subordinate offices, etc. in consultation with the Ministry of Finance (Deptt. of Expenditure). FAS will ensure that the review is completed in a time bound manner and full details of vacant posts in their respective Ministries etc. are available. Till the review is completed no vacant posts shall be filled up except with the approval of the Ministry of Finance (Department of Expenditure)."

13. The petitioner has annexed a copy of letter dt. 30.7.2001 at Annexure-B1 to the rejoinder. This letter is written by the Director (Personnel) GSI, to the Secretary, Ministry of Mines, New Delhi. In para 6 of this letter is stated that recently there was an order dt. 13.7.2001 from CAT, Kolkata on OA 1052 of 1997. Approval of the Ministry was sought for filling up 48 posts to comply with the order of the Tribunal in various cases including the present case. Thus, it



cannot be said that the respondents have not complied with the order or that they have deliberately disobeyed the order. In fact, steps have been taken by them for filling up the posts and it is categorically stated by the ld. counsel for the respondents that once the ban is lifted or clearance is obtained from the Ministry, the petitioner and other eligible applicants will be regularised as per order of the Tribunal.

14. In a contempt proceeding, it has to be seen whether there was deliberate or wilful disobedience on the part of the allegedd contemners. If the order of the Tribunal could not be complied with fully for some technical reasons, it cannot constitute contempt. As already pointed out, the respondents have partially complied with the order.

15. However, the ld. counsel for the petitioner has pointed out that recently by an order dt. 5.4.2002, the respondents have granted approval to the appointment of three petitioners of CPC 30 of 2001 arising out of OA 1071 of 1993. We find that this order was issued with the approval of the Ministry of Finance (Deptt. of Expendditure). As already quoted above, the ban order dt. 5.8.99 mentions that till review is completed no vacant posts shall be filled up except with the approval of the Ministry of Finance. It is obvious that the respondents for complying with the order of the Tribunal in the aforesaid OA and the connected CPC, obtained necessary approval from the Ministry of Finance. It is, therefore, expected that the in respect of the petitioner of the present Contempt Petition also the same procedure will be adopted by the respondents as expeditously as possible so that he or other eligible applicants can be regularised especially when vacancies are said to be available.

16. Ld. counsel for the petitioner has contended that a division Bench of this Tribunal consisting of Hon'ble Mr. Justice G.L.Gupta, Vice-Chairman and Hon'ble Mr. S.Biswas, A.M. held in a similar matter that regularisation does not depend on the availability of vacancy or lifting of ban. Therefore, the respondents should have



regularised the petitioner without taking the plea of ban. We have gone through the records and relevant order dt. 11.1.2002 passed in CPC 30 of 2001 arising out of OA 1071 of 1993. In para 5 of the order it is observed as follows :-

"5. It is not the case where fresh recruitment is to be made. The three applicants have a right of regularisation because of their putting in service for a particular period and their case is covered by the O.M. dt. 1984. The regularisation does not depend on the availability of the vacancy or lifting of ban."

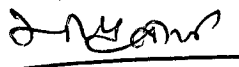
From the records of CPC 30 of 2001 it appears that the respondents took the same plea and had filed a copy of the OM dated 5.8.99 of the Ministry of Finance, Deptt. of Expenditure. The Bench after going through the documents filed by the respective parties, passed the above order dt. 11.12.2002 in CPC 30 of 2001.

17. When a coordinate Bench of this Tribunal has held thus, we are not going to differ with the same. Be that as it may, as we have noted earlier the respondents having complied with the order of the Tribunal partially, have not willfully violated the order, rather taken steps for implementing the order, we do not want to proceed with this contempt proceeding and it is liable to be dropped. However, we direct that the petitioner and other applicants of the OA shall be regularised in the same manner as has been done in the case of 3 applicants of OA 1071 of 1993 by the respondents within a period not later than six months from the date of communication of this order failing which the applicant shall be at liberty to move application seeking the punishment for defaulting in complying with this order

18. The CPC is accordingly disposed of and there shall be no order as to costs.


(N. PRUSTY)

MEMBER(J)


(B.P. SINGH) 30 07 02

MEMBER(A)