

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 31 of 2011 in O.A.No.348/2009

This the /^o th day of November, 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Sri D.C. Lakha, Member (A)

Arun Raj Krishna Misra (MES- 437847) aged about 62 years son of late Captain Ram Krishna Misra, resident of C-289, MIG, Rajajipuram, Lucknow (lastly working as Office Superintendent in the office of Chief Engineer, Headquarters, Central Command, Lucknow-226002).

Applicant

By Advocate: Sri R.C.Singh

Versus

1. Sri Shashikant Sharma, IAS, Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. Lieutenant General M.C. Badhani, AVSM, Engineer-in-Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ PO, New Delhi-110011.
3. Sri B.M. Kohli, Director General (Pers.) , Military Engineer Services, Engineer in Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ, PO New Delhi-110011.
4. Major General V.M.Tandon, Chief Engineer, Headquarters, Central Command, Lucknow-226002.

Respondents

By Advocate: Sri S.P.Singh

(Reserved on 8.11.2012)

ORDER

BY HON'BLE MR. JUSTICE ALOK KUMAR SINGH, MEMBER (J)

This contempt petition has been filed against the four respondents namely Sri Shashikant Sharma, IAS, Secretary, Ministry of Defence, Govt. of India, New Delhi (Respondent No.1), Lieutenant General M.C. Badhani, AVSM, Engineer-in-Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ PO, New Delhi-110011 (Respondent No.2), Sri B.M. Kohli, Director General (Pers.), Military Engineer Services, Engineer in Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ, PO New Delhi-110011 (Respondent No.3), and Major General V.M.Tandon, Chief Engineer, Headquarters, Central Command, Lucknow-226002 (Respondent No.4). The main

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allegation is against the Engineer-in-Chief, Integrated Headquarters of Ministry of Defence (Army), Kashmir House, DHQ PO New Delhi (Respondent No.2).

2. The relevant O.A. was filed for directing the respondents to correct the impugned seniority list circulated by respondent No.3 vide letter dated 3.8.2009 and to place the name of the applicant above the names of respondents No. 5,6 and 7.

3. Without going to the merit of the case, the O.A. was disposed of on 20.9.2010 with direction to the official respondents to consider the grievance of the applicant (as per annexure A-7) based on the rules and instructions of Govt. of India and based on judgments of CAT, Patna Bench in O.A. No. 892/2003 and also writ petition No.9012/2008.

4. In compliance of the order, the official respondents passed an order dated 10.10.2011 (Annexure CA-1). The relevant paragraphs No. 3 to 5 are as under:-

"3. WHEREAS during 1974 the E-in-C's Branch had delegated power to CE Command to make 1st appointments of Group 'C' civilian posts which interalia include LDCs and same practice was followed prior to 1974 thus CE Command is the appointing authority as well as disciplinary authority in respect of LDCs hence seniority list of LDCs are maintained on Command basis.

4. The recruitments are made on Command basis, it is, therefore, logical and legal that seniority list is maintained Command wise. As a result of the delegation, CE Command is the appointing authority as such LDCs selected/ appointed by particular Command cannot compare his seniority with a LDC of different Command. Hence promotion of LDC to UDC is made on Command basis. As per the existing policy each CE Command is the cadre controlling

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authority of all Group 'C' and 'D' civilian MES employees in his Command. Your contention is not agreed to.

5. With the issue of the Speaking order the Hon'ble CAT, Lucknow judgment dated 20 Sep., 2010 are complied with."

5. This compliance report was considered at length on 27.3.2012 and it was found that the direction contained in para 5 of the judgment of this Tribunal have neither been mentioned in the order nor the same have been complied with. It was further observed that though in para 2 of the order passed by the respondents, there is a mention that in response to the notices issued by them, the applicant appeared before them and stressed to follow the contents laid down in DOP&T O.M. No. 2701/7/86 (Estt (D) dated 3rd July, 1986 (para 2.2) and note endorsed under Col. 12 of SRO 122 dated 13th July, 1999 (Recruitment Rules for UDCs). Yet in the concluding paragraph, there is no mention at all about the above O.M. and SRO. Even if in the opinion of the competent authority, the above O.M. and SRO were not applicable, then also he ought to have mentioned about it by giving convincing reasons. Further, it was found that there is also no mention about the observations made by the CAT, Patna in O.A. No.892/2003 and W.P. N. 9012/2008 for which specific directions were given by this Tribunal. It was further observed by this Tribunal that the Engineer-in-Chief (O.P. No.2) is the competent authority and therefore, merely on the pretext of delegation of power during 1974 in favour of Chief Engineer Command to make first appointment of Group 'C' civilian post, the O.P. No.2 cannot escape the responsibility of ensuring compliance of the order of this Tribunal. Lastly, it was observed that the logic mention in the compliance order cannot prevail over specific instructions of Govt. of India and relevant rules and also the specific direction of this Tribunal. On the basis of these observations, this Tribunal reached the conclusion that the

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respondents have passed the alleged compliance order in utter defiance of this Tribunal's order. However, keeping in view the unconditional apology tendered by them, instead of calling them to appear to face charges of contempt, they were given one more opportunity to comply with the order within 4 months vide order dated 27.3.2012.

6. In compliance of the above order, now the official respondents have passed another order dated 25.5.2012 which has been enclosed with the compliance affidavit sworn by Major General V.M. Tandon, presently posted as Chief Engineer headquarters, Central Command, Lucknow.

7. This order consists of five paragraphs. In the first three paragraphs, a mention has been made about the orders passed in the O.A. and above order dated 27.3.2012.. In the remaining two paragraphs No. 4 and 5, the alleged compliance has been reported as under:-

"4. WHEREAS in compliance of the above CAT order dated 27th March, 2012, the case has been re-considered by the competent authority. The following points are emphasized:-

- a) That during 1974 E-in-C's Branch delegated the powers to CE's Command to make 1st appointment of all Group 'C' civilian posts vide letter No.27304/E I D dated 7th January 1974 and even No. dated 31 Aug 79 which interalia include LDCs and same practice was followed prior to 1974 thus CE Command is the appointing authority as well as cadre controlling authority for all purpose like posting/ transfer, promotion, discipline etc. hence seniority list of LDCs are maintained on Command basis.

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- b) That delegation of powers is very well covered under MES Regulations. The delegation was necessitated due to geographical /topographical situations of the different parts of the country. MES provides services to troops situated at remote areas / hard stations /High altitude areas in different situations. The service conditions of those hard stations are different / critical as well as challenging than in other plain parts of the country.
- c) That in MES the whole country has therefore, been divided into six Commands due to service and geographical conditions. The service conditions in one Command cannot be compared with the service conditions of the other Command.
- d) That as per the said delegation of powers, CEs Command is the appointing as well as cadre controlling authority of LDCs, hence the staff is allocated to all Commands based on their workload and the vacancies are allotted on their requisition as per their requirement.
- e) That the promotion from LDC to UDC is controlled by CEs Command. Thereafter , All India Seniority list is maintained at E-in-C's Branch for further promotion from UDC to Assistant/Office Supdt. The seniority list of UDCs is based on the DPC year of the promotion from LDC to UDC as per the panel issued by CEs Command.
- f) That during service period you have enjoyed the service liabilities/facilities at normal stations under CE Central Command. You have also accepted promotion form LDC to UDC as ordered by CE Central Command and further promotion to Assistant/O.S. as ordered by E-in-C's Branch without reservation.

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- g) That after prolonged period of more than 33 years raising of observations on All India Seniority List (AISL) circulated by E-in-C's Branch vide letter No. 41269/EIDPC-II dated 25 Feb. 2005 is not justified. Had the anomaly been pointed out at the early stage of your service the matter could have been dealt with accordingly.
- h) That you were placed at appropriate place in the All India Seniority List of UDCs on the basis of your date of seniority as UDC as per rules followed by the department as mentioned in para 4(e) above. Accordingly, you were promoted to Assistant on your turn without prejudice by properly safeguarding your career interest.
- i) That it is not possible to disturb/ unsettle the settled position of seniority of more than 40 years. Thus, your claim to follow the contents laid down in DOP&T O.M. No. 2701/7/86/Estt (D) dated 3rd July 1986 (para 2.2) and note endorsed under Col. 12 of SRO 122 dated 13 July 1999 (RR for UDCs) regarding rules of relative seniority for considering promotion is not considered justified, in this case, at this belated stage.

5. In view of the above facts and circumstances, your contention is not agreed to. With the issue of this Speaking order the Hon'ble CAT Lucknow Judgment dated 20 Sep. 2010 in O.A. No. 348 of 2009 and judgment dated 27 Mar 2012 in CP No. 31/2011 are complied with."

8. We have heard both the learned counsels at length and perused the entire material on record.

9. A careful perusal of para 4 of the above compliance report shows that in para 4(a) to (e), the background facts and prevalent practice has been reported. From para 4(f) to (h), it has been mentioned that the applicant enjoyed the service liabilities/ facilities

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till his promotion from LDC to UDC and then to Assistant /O.S. without any reservations and is now raising objections without any justification even though he has been placed at appropriate place in All India Seniority List of UDC. But the pith and substance of the entire order is contained in para 4(i) which shows that according to respondents, it is not possible to disturb /unsettle the settled position of seniority of more than 40 years. Regarding applicability of aforesaid DOP&T O.M. and SRO regarding Rules and relative seniority for considering promotion, it has been simply said that it is not justified in this case at this belated stage.

10. In respect of the directions of CAT, Patna and Hon'ble High Court, Patna, no mention has been made in the above order as pointed out from the side of the applicant. The copies of these judgments have not been brought on record in the contempt petition. Therefore, we had to summon from the office, the record of O.A. No. 348/2009 in which copies of these orders are available. The relevant paragraphs No.4,5 and 6 of the order of Patna Bench are as under:-

"4. We have heard the learned counsel for the parties and perused the record. It is an admitted fact that the promotion from LDC to UDC or UDC to Assistant is made on the basis of seniority subject to rejection of unfit. If so, the seniority of the persons considered fit for promotion at the same time shall be the same as relative seniority in the lower cadre from which they are promoted. The only question is whether it has to be counted based or on all India basis. The applicants allege that it has to be on all India basis. They have further alleged that as and when the promotion is made on the basis of seniority subject to rejection as unfit, persons who earned promotion at the same time, their inter se seniority shall be the same as relative seniority in the feeder cadre.

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5. The inter se seniority has to be decided after notice to all those who are likely be affected. We find that only five individuals have been arrayed as respondents .Thereafter, an exercise have to be under taken by the controlling authority, i.e. Engineer-in-Chief, Army Headquarters in accordance with the rules of recruitment, instructions issued by the Department of Personnel from time to time and our observations made above in the body of the judgment, after due notice to the applicants and all others who are likely to be affected. Personal hearing may also be granted. Thereafter a speaking order shall be passed. This exercise shall be completed within four months from the date of receipt of a copy of the judgment.

6. The O.A. is disposed of . No cost."

11. It can be seen from the above that the main directions of the Patna Bench was to consider the matter after issuing the notices to all concerned.

12. The above order was challenged before the Hon'ble High Court, where only a practical difficulty was pointed out that it was not possible to issue notice to all the persons likely to be affected and grant them personal hearing before passing any speaking order. The Hon'ble High Court, therefore, modified the directions to the extent to give notices to the applicants and only to private respondents who shall be treated as parties in representative capacity also. No interference was made in respect of other directions.

13. The learned counsel for the applicant submits that if there was any inhibition or difficulty the respondents should have referred the matter to the Ministry to amend the rules saying that for UDC and LDC, the original competent authority may be designated as Chief Engineer at Command level in place of Engineer -in-Chief or

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with any other suggestions. He further submitted that it has not been clarified as to what were the relevant instructions/provisions contained in the O.M. and the SRO mentioned in the order of the respondents and why the same could not have been applied in the case of the applicant. The perusal of the alleged compliance shows only two things. Firstly, that it is not possible to disturb/unsettle the settled position of seniority of more than 40 years. Secondly, at this belated stage, it is not possible to follow the contents laid down in the DOP&T O.M. dated 3 July 1986 (para 2.2) and the note endorsed under Col. 12 of SRO 122 dated 13 Jul 1999 (RR for UDCs). But such stand /plea was never taken by the respondents in the O.A. before this Tribunal or before CAT, Patna Bench or Hon'ble High Court, Patna.

14. Here it is worthwhile to mention that the aforesaid O.M. or the SRO (RR for UDCs) have neither been brought on record before us nor the same appear to have been adjudicated and discussed at length either before, CAT, Patna Bench or the Hon'ble High Court or this Tribunal. It appears that for the first time, these two could find mention when specific emphasis was for the first time laid by the applicant when he appeared before the authorities in response to the notices given to him for hearing in pursuance of the directions of the Tribunal/ Court, as mentioned in para 2 of the first compliance order dated 10.10.2011.

15. Let us also see as to what happened to the compliance in respect of order of CAT Patna Bench and Hon'ble High Court upon which the order of this Tribunal has been based. The compliance order dated 29.8.2011 passed in that respect has been brought on record by the respondents along with a Supple. Counter Affidavit sworn by Maj. General V.M. Tandon. The relevant paragraph of this order is as under:-

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"6. The recruitments are made on the Command basis, it is therefore, logical and legal that seniority list is maintained Command wise. As a result of the delegation, CE Command is the appointing authority as such LDCs of selected / appointed by particular command cannot compare his seniority with a LDC of different Command. Hence promotion of LDC to UDC is made on Command basis. As per the existing policy each CE Command is the cadre controlling authority of all Group 'C' and 'D' civilians MES employees in his Command. Your contention is not agreed to."

16. It was orally submitted from the side of the respondents that after the above order, the applicant of the above case has chosen to file afresh O.A. instead of pursuing contempt petition at Patna Bench.

17. In the matter before us, we feel that this Tribunal cannot go behind the order/judgment in the contempt jurisdiction. As discussed above, certain factors have cropped up which can probably be adjudicated in an effective and meaningful manner only in a fresh O.A. Moreover, it also appears that the present contempt petition is being pursued half heartedly. That is why, the present Engineer-in-Chief or Vijay Sharma, Lt. General Engineer-in-Chief who is the author of the second compliance order dated 25.5.2012 has not been impleaded/substituted even after a lapse of about six months. In the back drop of the aforesaid facts, probably the applicant has also an impression that after passing of the second compliance order, now probably the only effective relief, if any can be obtained by him by filing a fresh O.A. Be that as it may.

18. From the side of the respondents, reliance has been placed on the following three case laws:-

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i) ***J.S. Parhihar Vs. Ganpat Duggar and Others reported in (1996) 6 Supreme Court Cases 291:-*** In this case, a contempt petition was filed alleging that the seniority list drawn pursuant to High Court's order was not in conformity therewith. The Hon'ble High Court held that the disobedience was not willful and also opined that the Hon'ble High Court cannot give re-direction to redraw the list. The Hon'ble Apex Court held that once there is an order passed by the Govt. on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action and such matters cannot be considered on merits under the contempt jurisdiction.

ii) ***Anil Kumar Shahi (2) and others Vs. Prof. Ram Sevak Yadav and others reported in (2008) 14 Supreme Court Cases 115. (Para 50)-*** The Hon'ble Apex Court held in this case that when the Court directs the authority to consider the matter in accordance with law, it means the matter should be considered to the best of understanding by the authority and , therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of Court.


iii) ***Red Rose Senior Secondary School, Lucknow Vs. Amal Kumar Verma and others reported in 2011 (29) LCD 577 (Paras 18,19 and 24).-*** In this case besides considering other cases, the above mentioned case of J.S. Parihar (supra) and Anil Kumar Shahi (supra) were also considered and followed.

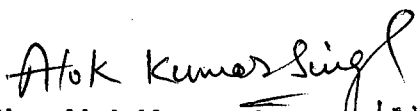
19. In view of the above discussion and having regard to the preposition of law laid down in the above cases, this contempt petition is struck off with an observation that if so advised, the



applicant may file a fresh O.A. in this regard in accordance with law.

Notices stand discharged.


(D.C. Lakha)
Member (A)


(Justice Alok Kumar Singh) 10.11.12
Member (J)

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