

1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH**

O.A.No.365/05

Dated the 7.10.2008

CORAM:

HON'BLE MR.SHANKAR PRASAD, MEMBER(A)
HON'BLE MS. SADHNA SRIVASTAVA, MEMBER(J)

Sri Daya Nand Pandey, Son of late Shanti Sharan Pandey,
resident of mohalla Khajpura, P.O. Mendru, P.S. Sulan ganj,
District Patna at present working on the post at the Sr. compiler
Directorate of Census operation, Bihar, Patna, Boring Canal Road,
Patna.

.... Applicant

By Advocate :Sri Pradeep Kumar

VS.

1. The Union of India through the Secretary, Ministry of Home Affairs, Cabinet Secretariat, New Delhi.
2. The Registrar General of India, Kotah House Annexe 2/A Mansingh Road, New Delhi.
3. The Director, Census Operations, Bihar, Boring Canal Road, Patna.
4. The Joint Director, Census Operations, Bihar,Boring Canal Road, Patna.
5. The Deputy Director of Census Operations, Bihar, Boring Canal Road, Patna.

.... Respondents

By Advocate: Sri P.N.Kumar

ORDER

HON'BLE MR.SHANKAR PRASAD, MEMBER(A):

In this second round of litigation, the applicant seeks quashing of the order dated 16.3.2000 and a direction to the respondents to extend to him the same benefits as was given to the applicants in O.A. Nos.172/93 and 181/93 pursuant to orders *l.*

passed in CCPA Nos.76/2000 and 80/2001 respectively.

2. The facts lie in a narrow compass. The applicant had approached this Tribunal earlier by filing O.A. No.157/93. He had sought for the following reliefs in that O.A.:-

- “(i) For issuance of direction to respondent no.1 to 3 to finally determining the seniority of the applicant as Computer with effect from 1.3.1971 and grant of consequential benefits.
- (ii) In the alternative, respondent no.1 to 3 be directed to dispose of the representations of the applicant dated 10.12.1991(A/11) and 21.12.1992(A/12) pending before respondent no.2 and 3 respectively.
- (iii) The letter dated 11.1.1991 (Annexure-10) be quashed.
- (iv) The applicant be considered and promoted in grade of Computer with effect from 1.3.1971 when respondent no.6 was promoted.
- (v) The letter dated 30.12.1992 (Annexure-13) reverting the applicant from the post of Statistical Assistant to the post of Computer with effect from 1.1.1993 be quashed.
- (vi) The letter dated 20.3.1976 (Annexure-4) reverting the applicant from the post of Computer to the post of Assistant Compiler be quashed.”

The said O.A. was decided vide order dated 26.10.99. The relevant part of the order reads as under:-

“In the aforesaid circumstances, it would be only appropriate that the case of the applicant for determining his seniority as Computer with effect from 1.3.1971 with consequential benefits be examined and considered by the respondents in the light of the principle laid down by the Hon'ble Apex Court as stated above.

14. In view of the above analysis of the above, we dispose of this O.A. by directing the respondents to consider the case of the applicant for his promotion and determining his seniority in the grade of Computer with effect from 1.3.1971 in the light of the principle laid down by the Hon'ble Apex Court in Civil Appeal No.3819/89(supra) and observations made by us hereinabove.

and pass appropriate order within a period of four months from the date of receipt of a copy of this order."

3. The respondents thereafter issued an order dated 16.3.2000 indicating therein *As the said A.* that for the reasons stated in that order Sri Daya Nand Pandey cannot be given any relief. The applicant preferred CCPA No.106/2000.

4. The Tribunal in its order dated 6.5.03 took note of the factual position brought out in the order dated 16th March, 2000. It notes that none was present for the petitioner. The CP was dismissed. The operative part of the order reads as under:-

"3. In view of the factual position in the matter, we are of the considered opinion that the petitioner has failed to make out any case against the respondents for holding them for contempt of Court. Moreover the applicant has other remedies available to him to challenge that order, if he still feels aggrieved by that order."

5. One Sri Vijay Kumar Sinha, who was working as a Statistical Assistant in the same office had also preferred O.A. No.172/93. The reliefs sought for in the said O.A. were as under:-

"(i) The respondents be directed to consider the case of the applicant as computer from 16.9.1970 or at least grant continuity of service as computer with effect from 1.3.1971 and then consider his case for promotion as Statistical Assistant(SA) from the date his juniors have been promoted.

(ii) The order dated 20.3.1976(Annexure-4) reverting the applicant from the post of Computer to the post of Assistant Compiler(AC) be declared as non-est in the eye of law.

(iii) The respondents be directed to restore the seniority of the applicant in the grade of Computer as well as S.A."

The O.A. was disposed of with the following directions:- *A.*

"12. In view of the above analysis of the case, we dispose of this O.A. in terms of our direction as contained at para 8 above and further by directing the respondents to consider the case of the applicant for granting him continuity in service as Computer with effect from 1.3.1971 in the light of principle laid down by the Hon'ble Apex Court in Civil Appeal No. 3819/89 (supra) and observations made by us hereinabove and pass appropriate order within a period of four months from the date of receipt of a copy of this order."

6. The respondents issued an order dated 16.3.2000 (copy not on record). The Tribunal noted in para-18 of the judgment in the Contempt Petition that the contemner has tried to dilute the facts of the case of the petitioner in as much as there was only one DPC in the case of the present applicant. The Tribunal accordingly in its order dated 31.8.04 in the aforesaid Contempt Petition came to the following conclusion:

"22. Therefore, after overall discussion and analysis of the matter, we are of the considered opinion that though the contemner have tried to dilute the orders passed by this Court merely on their own understanding and though, it is not a permissible defence but taking into consideration that the contemners have also tendered unconditional apology, therefore, we hold that though the condemners are not guilty of contempt of courts, but they are also directed to be careful in future while such occasion arises for compliance of the orders of the Courts. If the respondents find any ambiguity or are not able to get clarification they should approach the appropriate forum, for such clarification by the Court, if necessity arises, but not in the manner as has been done in the present case."

and directed the respondents to comply with the orders in letter and spirit. The orders passed were also quashed.

7. One Sri Arun Kumar Sinha who working as Computer had also preferred O.A. No.181/93. The Tribunal held as under:-

"13. In view of the above analysis of the case, we dispose of this O.A. in terms of our direction as contained at para 9 above and further by directing the respondents to consider the case of the applicant for granting him continuity in service as computer with effect from 1.6.1971 in the light of principle laid down by the Hon'ble Apex Court in Civil Appeal No.3819/89 (supra) and observations made by us hereinabove and pass appropriate order within a period of four months from the date of receipt of a copy of this order."

8. The respondents thereafter issued an order dated 16.3.2000 in the case of the said applicant. A perusal of this order communicated vide Memo dated 16.3.04 to the said Sri Arun Kumar Sinha working as Statistical Assistant shows that the order contains one more paragraph. He has also preferred a CCPA and the Tribunal in its order dated 13.9.04 came to the conclusion that the case is identical to CCPA No.76/2000 and followed the reasoning therein. It is thereafter that the applicant has preferred the present Contempt Petition relying on the decisions in the case of the two remaining applicants.

9. The respondents have filed a reply indicating therein that the decision of the Apex Court in Civil Appeal No.3819/89 was in the case of Statistical Assistants and not to the cadre of Computers. They have further indicated that the Tribunal in the CCPA was satisfied with the explanation given by the respondents. It reiterated that the applicant was promoted on short-term basis only and was reverted as and when the post was abolished.

10. We have heard the learned counsels. *A.*

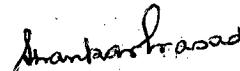
11. The Apex Court in Bhoop Singh vs. Lt.Governor, Delhi, AIR 1992 SC 1414; has held as under:-

“ A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention that the petitioner is entitled to the relief of reinstatement like the others dismissed with him and then reinstated and the question of delay or laches does not arise would upset the entire service jurisprudence. It is expected of a government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. The impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. The lapse of a much longer unexplained period of several years in challenging termination in the case of the petitioner is a strong reason not to classify him with the other dismissed constables who approached the Court earlier and got reinstatement. Secondly inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. Art. 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. Grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory.”

12. The above decision makes it clear that the judgment in another O.A. does not provide a cause of action and the case of each applicant has to depend on its own facts. *Ans.*

13. The reliefs sought for by Vijay Kumar Sinha are different from that sought for by the applicant. The directions given by the Tribunal are also different. In the CP arising out of the non-implementation of this order, the Tribunal has noted some distinguishing facts also. In the Contempt Petition filed by Arun Kumar Sinha the Tribunal has followed the reasoning in the order of Vijay Kumar Singh without noticing the earlier decision in the case of the applicant. The applicant has brought no other pleadings on record. The O.A. is therefore fit to be dismissed and is dismissed. No costs.


 (SADHNA SRIVASTAVA)
 MEMBER (J)


 (SHANKAR PRASAD)
 MEMBER (A)

/njj/