

**CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI**

Coram: Hon'ble Shri Justice A.S.Bagga - Member (J)
Hon'ble Shri Sudhakar Mishra - Member (A)

Dated this Monday the 19th day of January, 2009

Contempt Petition No.18 of 2008
in
Original Application No.86 of 1999

J.Y.Marne
R.V.Zande
P.Patrick
V.K.Bokil
M.B.More
A.K.Paigude
G.R.Gaikwad
A.G.Madne
K.K.Salunke
K.B.Valotre
A.S.Masih
L.P.Masih
J.H.Gaikwad
S.P.Mate
G.D.Sangle
G.B.Gaurav
D.Kamble
R.Gham
R.Thorat

All the applicants are posted
at Khadakwasla, Pune).

(By Advocate Shri S.V.Marne)

- Applicants

Versus

V.M.T.S.Randhawa,
Air Marshall, Commandant,
National Defence Academy,
Khadakwasla, Pune

(By Advocate Shri R.R.Shetty)

- Respondent/Contemnors

Received for
S.V. marne
21/1/09

Received
R.R.Shetty
23/1/09




ORDER

This Contempt Petition has been filed by the applicants alleging non-compliance/disobedience of the order dated 25.6.2002 passed in OA 86 of 1999.

2. Notice as to why contempt proceedings should not be initiated came to be issued and respondents filed their reply. The respondents stated that in pursuance of the orders passed in OA 86/99 and in the light of the observations made by the Hon'ble High Court and the Hon'ble Supreme Court, they have passed the order dated 28.4.2008. In view of the said orders,

nothing survives in the Contempt Petition and the Contempt Petition deserves to be dismissed.



It would be appropriate to state briefly the facts leading to the filing of the present Contempt Petition. The applicants in their OA stated that they were Laboratory Attendants. The promotional avenues for Laboratory Attendants is Laboratory Assistants. The educational qualification for the post of Laboratory Attendant is Middle School while for Laboratory Assistants it is Higher Secondary or

equivalent from a recognised Board with Physics and Chemistry as main subjects. Laboratory Attendants with three years service in the grade are entitled to be promoted provided they have educational qualification of Higher Secondary or equivalent from a recognised Board. None of the applicants could be promoted for the reason that they lacked educational qualifications. It was in this background that the applicants filed OA 86/99 for direction, to the respondents for creating of promotional avenues for them.

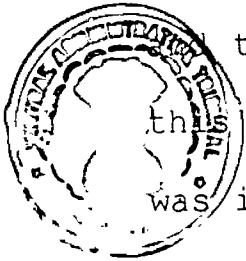
4. Placing reliance on the observations made by the Hon'ble Supreme Court in the case of **Council of Scientific and Industrial Research and another Vs. S.Bhatt & another**, 1989 SC 1972 and the case of **Raghunath Prasad Singh Vs. Secretary, Home (Police) Department, Government of Bihar & ors.**, AIR 1988 SC 1033



this Tribunal allowed the aforesaid OA and passed the order, relevant extract of which is reproduced below -

".....We direct the respondents to consider the case of the Laboratory Attendants regarding promotional avenue and provide minimum two promotional avenues within a period of three months from the date of receipt of copy of this order....."

5. The respondents filed Review Petition No.46/02 in the aforesaid OA 86/99 stating that the respondents failed to bring to the notice of the Tribunal the details of the financial upgradation under the Assured Career Progression Scheme (ACP for short) pursuant to the recommendations of the Fifth Central Pay Commission in favour of the applicants. The Review Petition came to be rejected with the observation that grant of financial upgradation cannot be said to be promotion that it would not have made any difference even if the fact was brought to the notice of the Tribunal or was ignored at the time of deciding the OA.



The respondents took up the matter to the High Court in Writ Petition No.9409 of 2004 challenging the order passed by this Tribunal in the aforesaid OA. The Writ Petition came to be dismissed by the Hon'ble High Court vide order dated 23.12.2005 observing as under. -

".....This is not the case where the Tribunal has issued any direction directing the promotional avenues by creating posts. What the Tribunal has set out is that the respondents are bound to follow the law declared by the Apex Court. That being the case, we see no merit in the present Writ Petition. Rule discharged. Writ Petition is accordingly dismissed....."

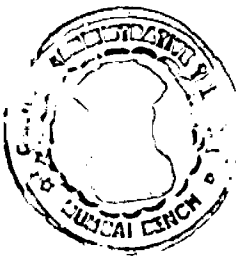
However, the Hon'ble High Court in the concluding sentence stated -

".....Needless to say that it is for the petitioners to create promotional avenues bearing in mind the various aspects."

Still not satisfied the respondents took up the matter in SLP before the Hon'ble Supreme Court. The said SLP was disposed of vide order dated 19.11.2007 which is reproduced as under -

" Since the High Court has only directed the petitioners to consider the prayer for promotion of the respondents, we are not inclined to interfere with the impugned order. The Special Leave Petition is accordingly dismissed.

We, however, make it clear that it would be open to the petitioners to consider the said directions in accordance with law."



The respondents, as stated earlier, in pursuance of the orders quoted above, have passed order dated 28.4.2008. The order which is passed by the respondents is reproduced below -

ORDER

1. WHEREAS Shri J.Y. Marne and 22 other Laboratory Attendants, National Defence Academy (NDA) filed OA N.86/1999 in Central

Administrative Tribunal (CAT) Mumbai for creation of two promotional avenues for Lab Attendants.

2. AND WHEREAS judgement delivered by Hon'ble CAT Mumbai on 25 June 2002 directed Respondents to consider the case of Lab Attendants regarding promotional avenues and providing minimum two promotional avenues within a period of three months from the date of receipt of copy of the order.

3. AND WHEREAS Respondents filed Review Petition No.46/2002 in CAT Mumbai, on 24 Sep 2002 for reconsideration of their judgement given on 25 Jun 2002 in view of introduction of ACP Scheme and grant of two financial upgradations in higher pay scales.

4. AND WHEREAS Hon'ble CAT Mumbai dismissed the Review Petition on 19 Feb 2004 stating that there is no error apparent on the face of the record and there is no discovery of the facts within meaning of order XXXVII Rule 1 C.



5. AND WHEREAS Respondents filed WP No.9409/2004 in High Court Mumbai against the above CAT order on 29 Oct 2004.

6. AND WHEREAS High Court, Mumbai granted Stay on implementation of CAT Mumbai order on 06 Dec 2004.

7. AND WHEREAS the Respondents in the WP (Original Applicants of the OA 86/99) filed a Civil Application No.2234/2005 in WP 409/2004 in the High Court, Mumbai on 16 May 2005.

8. AND WHEREAS the Respondents filed reply to the Civil Application in the High Court on 07 Oct 2005 requesting for dismissal of the Civil Application.

9. AND WHEREAS High Court Mumbai vide their order dated 23 Dec 2005 dismissed the WP and by allowing Civil Application No.2234/2005, directed the Petitioners in the WP to comply with the directions of CAT within a period of six months from the date of their order.

10. AND WHEREAS as per directions given by Hon'ble CAT, Mumbai, the Respondents considered the case regarding creation of two promotional avenues to Lab Attendants at appropriate level and observed as under:-

(a) Out of 23 Lab Attendants in OA 86/1999 four Lab Attendants had already got one promotion as they were initially appointed as Messengers. The remaining 19 Lab Attendants have been directly appointed as Lab Attendants.

(b) Because as per Recruitment Rules, SRO No.140/1976 and 141/1975, two promotional avenues are available for Lab Attendants i.e. from Lab Attendant to Lab Asst and then from Lab Asst to Demonstrator (Laboratory), provided they have the educational qualifications as per Recruitment Rules, but none of the applicants had acquired or was in possession of the requisite higher educational qualifications, as prescribed in the Recruitment Rules for the posts of Lab Asst and Demonstrators (Laboratory), they cannot be given these promotions.

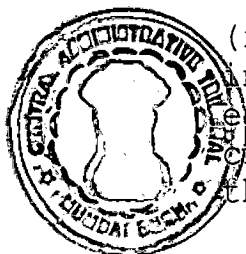
(c) Based on the recommendations of Fifth Central Pay Commission, the Govt had considered the problem of genuine stagnation and hardship faced by the employees due to lack of adequate promotional avenues and introduced two financial upgradations under ACP Scheme vide Department of Pers & Trg OM No.35034/1/97-Estt (D) dated 09 Aug 1999.



As per this Scheme, an employee who has got no promotion will get two financial upgradations (higher pay scales) first after 12 years of service and the second after 24 years of service. In case, an employee got only one promotion, he will get second financial upgradation after 24 years of service.

(d) All the Lab Attendants including applicants of OA 86/1999, have been given/will be given one or two financial upgradations, as admissible to them as per (c) above, after 12/24 years of service.

(e) The above Scheme took care of stagnation of employees and relieves them of financial hardship.



(f) Keeping in view the various aspects including financial requirements and efficiency in work, it is not feasible to create posts for functional promotions to the Lab Attendants.

(g) If promotional avenues for the category of Lab Attendant are made by creating new posts without any functional justification, the same will have to be done for a number of other similarly placed categories under Govt of India. This measure will seriously hamper the smooth functioning of the administration and adversely affect day to day functioning of the training at NDA which is not in the interest of the State.


11. Whereas an SLP (Civil) No.15710/2006 was filed in the Supreme Court of India and the Hon'ble Supreme Court vide its order dated 19 Nov 2007 disposed of the SLP with the following order:-

Since the High Court has only directed the petitioners to consider the prayer for promotion of the respondents, we are not inclined to interfere with impugned order. The Special Leave Petition is accordingly dismissed. We, however, make it clear that it would be open to the petitioners to consider the said directions in accordance with law.

12. WHEREAS the case has been re-examined in the light of the orders of the Hon'ble Apex Court dated 19 Nov 2007 to consider the prayer for promotion of the respondents and it would be open to the Petitioners to consider the said direction in accordance with law.

13. WHEREAS this is not a case where the Hon'ble Tribunal has issued any direction directing the promotional avenues by creating posts.

14. WHEREAS the Govt of India have already created the ACP Scheme in 1999 for two financial upgradations on the basis of service rendered, after 12/24 years of service.



15. WHEREAS the Vith Central Pay Commission has, after taking into consideration demands of all categories of employees submitted its recommendations on 25 Mar 2008 for merger of grades/pay scales recommending a Modified ACP Scheme, elongated Pay Bands and fitment of Group 'D' staff having requisite qualifications in Group 'C' pay scales/posts. The recommendations are under consideration of the Govt of India.

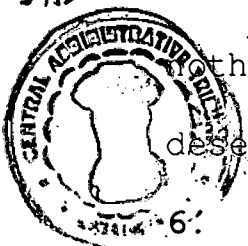
16. AND WHEREAS after due circumspection and consideration of the case in the light of the position explained above. After a balanced and objective assessment of totality of the circumstances of the case, it was found by the competent authority that two higher grades

exist for promotion of Lab Attendants. Providing two promotional avenues to Lab Attendants who do not possess educational qualification prescribed in the Statutory Recruitment Rules for promotion to the higher grade lacks justification, in view of the fact that Govt have already created the ACP Scheme in 1999 which provides for two financial upgradations on the basis of service, on completion of 12/24 years of service. Hence, creation of posts to provide two additional promotional avenues for Lab Attendants who do not possess requisite qualifications, merely on the basis of service rendered, is regretted.

(PP Singh)

Under Secretary to Govt of India".

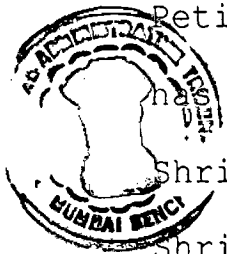
It is contended by Shri Shetty learned counsel for the respondents that ^{in view of the above} ~~by this~~ the orders passed by this Tribunal in OA 86/99 in the light of the observations made by the Hon'ble High Court and Hon'ble Supreme Court, ^{should be held to} have been duly complied with and obeyed and ^{that} nothing survives in this matter and contempt notice ^{deserve} to be discharged.



While Shri Shetty learned counsel for the respondent contends that the orders of the Tribunal have been duly complied with, the case of the applicants is that the respondents were directed to provide minimum two promotional avenues within a period

of three months. Writ Petition moved by the respondents also came to be dismissed and direction was given to provide two promotional avenues within a period of six months. SLP moved by the respondents before the Hon'ble Supreme Court also came to be dismissed since the respondents did not create two promotional avenues. Therefore, according to them, it was a case of disobedience of the orders passed by this Tribunal as confirmed by the superior Courts.

7. We have carefully perused the order passed by this Tribunal in OA 86/99, the observations made in the Review Petition as also the observations made by the Hon'ble High Court and Hon'ble Supreme Court in Writ Petition and in SLP respectively, reference to which has been made in the earlier paras. We have also heard Shri S.V.Marne, learned counsel for the applicant and Shri R.R.Shetty, learned counsel for respondents. On perusal of paras 9 and 10 of the order in OA 86/99 it would be seen that the Tribunal was aware of the observations made in the case of **I.C.A.R. & anr. Vs. Manmohan Batra**, 1999 SCC (L&S) 787 and as such it could not have issued directions to create posts in higher



grades. It was for this reason that this Tribunal in para 10 of its order stated that -

".....we restrain ourselves from directing the respondents for creation of post, but we are of the considered view that the respondents can be directed to consider for promotional avenues for the cadre of Laboratory Attendants."

Thus, there are no directions by this Tribunal to the respondents for creating promotional avenues for the applicants. The Hon'ble High Court also while dismissing the Writ Petition of the respondents, in para 3 of the order, observed that this is not the case where the Tribunal has issued any direction directing the promotional avenues by creating posts. The Hon'ble Supreme Court also while dismissing the SLP observe that the High Court has only directed the petitioner to consider the prayer for promotion of the respondents.

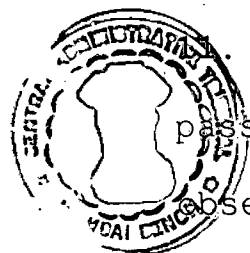
8. In view of the aforesaid we do not accept the contention of the applicants that there were directions to the respondents to create promotional posts for the applicants. The respondents were directed by the order of this Tribunal to consider creating of higher posts. The Hon'ble High Court and Hon'ble Supreme Court while



disposing of the Writ Petition and SLP respectively observed that it would be open to the petitioners to consider the directions in accordance with law.

9. In our considered view there are two aspects of the matter in this case - one is whether or not the respondents have complied with the directions of this Tribunal and second as to whether the respondents have acted in accordance with the law on the subject.

10. The scope of a Contempt Petition is limited. We have to see whether the orders by this Tribunal have been complied with or not. Whether or not the orders passed by the respondents are in accordance with law, ^{is} is not within the ^{scope} ~~purview~~ of the contempt petition.



The respondents in pursuance of the orders passed by this Tribunal and in the light of the observations made by the Hon'ble High Court in Writ Petition and Hon'ble Supreme Court in SLP, have passed the order which has been reproduced in earlier paragraphs. Holding that directions to the respondents were to consider the case of the applicants for promotion and for providing promotional avenues and that there were no direction to create two tiers of

promotional posts, we hold that the order passed by the respondents is in compliance with the orders passed in A. We see no reason why we should proceed further with the Contempt Petition. We dismiss the Contempt Petition and discharge notice.



C. P. No. 18/2008
NO/ CAT/MUM/JUDL/OA86/1999
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Filed True Copy
21/1/09
DATE:
21/1/09
1 Officer
J. Adnan, Tribune
Bombay Bench

Shri S. V. Mame, counsel for the applicant.

Shri R. R. Shetty, for the respondents.

21/1
Section Officer.

Despatched on 22/01/09
[Signature]
DESPATCHED

OC.

[Signature]
20/1/09