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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 52/91
Transfer Application No.

Date of Decision : 2-2-95

Smt. Sandhya K. Sahasrabudhe & 2 Ors. Petitioner

Shri. D.V. Gangal Advocate for the
Petitioners

Versus

Director General, ESI Corporation Respondents
& 5 Others

Shri. M.I. Sethna, Advocate for the
respondents

C O R A M :

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

The Hon'ble Shri P.P. Srivastava, Member (A)

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal? NO.


(M.S.DESHPANDE)
VICE-CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 52/91

Smt. Sandhya K. Sahasrabudhe
& 2 Ors. .. Applicants

Vs.

Director General, ESI Corporation
& 5 Ors. .. Respondents

CORAM : 1. Hon'ble Shri Justice M.S.Deshpande, V.C
2. Hon'ble Shri. P.P. Srivastava, Member (A)

APPEARANCES :

1. Shri.D.V.Gangal, Counsel
for applicants
2. Shri.M.I.Sethna, Counsel
for respondents

JUDGMENT

DATED : 2/2/95

(Per Shri.M.S.Deshpande, Vice-chairman)

By this O.A, three applicants are seeking direction to respondents No. 1 to 3 that they should be promoted to the post of UDCs and that respondents No. 4 to 6 who have been illegally promoted are liable to be reverted and seek monetary and non-monetary benefits based on such promotions as per rules. The position of the applicants in the matter of seniority is set-out at Exhibit '1' to the reply. The applicants No. 1, 2 and 3 were respectively appointed on 10-9-90, 6-8-81 and 14-4-81 and granted regular

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appointment on 25-9-81, 13-7-82 and 13-7-82 respectively and their serial numbers in Gradation List as on 1.3.1985 being 317, 406 and 407. Respondents No. 4 to 6 were appointed on 31-10-79, 15-12-79 and 12-12-79 and were regularised respectively on 11-5-81, 11-5-81 and 12-5-81, Their serial No. in the Gradation List being 250, 248 and 262. They were granted promotion as U.D.Cs on 29-4-85, 2-7-85 and 7-5-86 respectively. One Mr.V.S.Waghmare who belongs to Scheduled Caste was appointed on 11-2-1980 and was given regular appointment on 11-5-81 and was granted ad-hoc promotion in July 1987. His serial number in Gradation list was 281. Waghmare has passed the limited competitive examination in 1984. The conditions of service of the applicants are governed by "Employees' State Insurance Corporation (Recruitment) Regulations 1965" and promotions are governed by Rule 28(2) thereof which prescribes that promotions to the post of Upper Division Clerks/Care Taker shall be made in the following manner :

- (a) 75% of the vacancies shall be filled by promotion on the basis of seniority subject to rejection of unfit ;
- (b) the remaining 25% vacancies shall be filled by promotion on merits on the basis of departmental competitive examination.

2. There is no dispute about the position that applicants No. 1 to 3 had passed ^{the} departmental examination prescribed and would be entitled to be given promotion in the 25% quota which is to be filled on that basis. Waghmare made a

representation in 1987 on the basis of his success in the departmental examination and he came to be appointed on promotion against that quota. The applicants could not have made any claim until the promotion of Waghmare in 1987 and the first applicant made a representation on 6/3/90 in respect of 25% quota. There is no dispute about the fact that these 3 applicants came to be promoted in the year 1993.

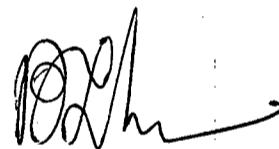
3. The first contention on behalf of the applicants is that the respondents No. 4 to 6 were promoted on ad-hoc basis without having passed the departmental examination and such a promotion could not have been made by superseding the present applicants who had passed the departmental examination. The contention on behalf of respondents No. 1 to 3 was that certain persons at Pune had urged that their unitwise seniority should be based within each of three units, one of which was Pune Unit and that no regional seniority list for the state of Maharashtra could be framed. This contention was not accepted and their petition T.A.No. 8 to 10 of 1989 came to be dismissed by the order of Tribunal passed on 16/02/1990. The Tribunal observed that the scheme of decentralisation had not been implemented and separate seniority list had not been prepared in respect of each unit. There is no dispute before us that seniority should now be based on the seniority on regional basis. Shri. M.I. Sethna, learned counsel for the respondents 1 to 3 stated that seniority list is being prepared on the regional basis and since the applicants have

already been promoted in the year 1993, that is during the pendency of the petition, all that we need say in this petition is that the preparation of the seniority list shall be completed within four months from the date of communication of this order.

4. With regard to the second prayer, Shri.Sethna stated that it would not be necessary to revert Respondents No. 4 to 6 as they were legitimately promoted on the basis of their seniority and Shri.Gangal, learned counsel for the applicants stated before us that he would not press for the reversion of respondents No. 4 to 6 if their promotions are not prejudicial to the applicants and we find that there is no need for directing that Respondents No. 4 to 6 should be reverted, if their holding the post of U.D.C is not likely to affect the position of the applicants on the basis of the quota which they claim.

5. The third relief sought is about monetary and non-monetary benefits as per rules. Shri. Gangal states that the applicants should be given the same monetary and other reliefs as the applicants' juniors have got. It must be noted that the seniority list has not yet been prepared and it is not yet clear what would be the position of the applicants and who would be their juniors. That can be crystallised only after the seniority list is prepared. All that we need now say is that the respondents shall pay to the applicants such monetary benefits as they may be entitled to in accordance with the rules.

6. In the result, we direct the respondents No. 1 to 3 to finalise the seniority list within four months from the date of communication of this order and that all such monetory benefits that the applicants would be entitled to in accordance with the rules shall be paid to them soon thereafter. Should there be any anomaly in the monetory benefits which the applicants get and applicants' juniors might get as a result of the seniority assigned in the seniority list to be prepared and if the applicants would be entitled to any monetory benefits as per rules, the applicants would be at liberty to approach the Tribunal for the purpose.



(P.P. SRIVASTAVA)
MEMBER (A)



(M.S. DESHPANDE)
VICE-CHAIRMAN

J*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.No.73/96 in OA.NO.52/91

Tuesday this the 21st day of October, 1997

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri M.R.Kolhatkar, Member (A)

Smt. S. K. Sahasrabudhe & Ors.

By Advocate Shri D.V.Gangal ... Applicants
v/s.

Director General, ESI Corporation & Ors.

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna, C.G.S.C. ... Respondents

Tribunal's Order

This is a contempt petition taken out by the original applicants in OA.NO.52/91 alleging that the respondents have not complied with the order dated 2.2.1995. The respondents have filed ~~stating~~ the reply that they have complied with the orders passed by this Tribunal. They have also taken a plea that the contempt petition is barred by limitation. We have heard the learned counsel for both the sides and perused the records.

2. In the OA. filed by the applicants this Tribunal granted the relief as could be seen from the operative portion of the judgement which reads as follows :-

" In the result, we direct the respondents No. 1 to 3 to finalise the seniority list within four months from the date of communication of this order and that all such monetory benefits that the applicants would be entitled to in accordance with the rules shall be paid to them soon thereafter. Should there be any anomaly in the monetory benefits which the applicants get and applicants' juniors might get as a result of the seniority assigned in the seniority list to be prepared and if the applicants would be entitled to any monetory benefits as per rules, the applicants would be at liberty to approach the Tribunal for the purpose."

3. It is, therefore, seen from the operative portion of the order that respondents were directed to finalise the seniority list within four months from the date of communication of the order. The respondents have brought to the notice of the Tribunal that in terms of the order even without waiting for four months they published a draft seniority list on 10.4.1995. Whether the seniority list is correct or not is a different question. The respondents were directed to prepare the seniority list as per rules within a period of four months which has been promptly complied with by the respondents by publishing a draft list on 10.4.1995. The respondents could not have published a final list for without calling objections from all officials in addition to parties here. As per rules, they have to publish draft seniority list, call for objections and then to finalise the seniority list. It is brought to our notice that objections were filed and draft seniority list came to be finalised on 26.7.1996. It is interesting

to note that the seniority of the applicants is not changed from the one which founded place in draft list and the one which found place in final list.

4. The argument on behalf of the applicants that the seniority list is not correctly prepared and the applicants should have been given promotion from 1985 etc. does not arise in this contempt petition. If the applicants are aggrieved by the seniority list, the remedy of the applicants is elsewhere. It is seen that even during the pendency of OA., the applicants were promoted on adhoc basis in 1993 and were regularised in 1994. We may also notice that the main prayer in the application in the OA. was seeking an order to direct the respondents to promote the applicants in the ratio of 3:1. During the pendency of OA. the applicants got first promotion and regularised in the second instance. The seniority list published clearly points out that the respondents have adopted and followed the ratio of 3 : 1 as per rules. Prima facie the seniority list prepared satisfies the requirement of law. It may be that on detail examination and scrutiny the court has to decide whether the seniority list is prepared correctly or not and the applicants' seniority is correctly shown or not but these matters are not open to discussion in a contempt petition. The short point which we are call^{ed} upon to decide is whether the respondents have complied with the directions of the judgement in question or not..

5. As far as the other relief granted in the OA. is that respondents should pay all monetary benefits to which the applicants are entitled as per rules, now a statement is made on behalf of the respondents that since the applicants got adhoc promotion in 1993 and regular promotion in 1994, they are not entitled to any monetary benefits as per rules. Even assuming for a moment, the contention of the L is not sustainable in law, it does not and cannot amount to contempt of court. It is well settled that a wilful disobedience of order only invites action for contempt. Now, the respondents have stated that the preparation of seniority list is correct and on that basis the applicants are not entitled to any monetary benefits. That is why the operative portion of the order clearly states that regarding monetary benefits the applicants may approach the court according to law. Therefore, if the applicants are aggrieved by the correctness of the seniority or that the monetary benefits are not paid, their remedy is elsewhere. After hearing, prima facie, we are satisfied with the preparation of seniority list and as far as monetary benefits are concerned, the respondents have taken the stand that the applicants are not entitled to any monetary benefits in the circumstances of the case. This itself is sufficient to hold that no question of contempt L is involved and if the applicants are aggrieved by the action taken by the respondents, they should take remedy in accordance with law. No case for contempt is made. We need not go into the question of limitation which was pressed by the learned counsel for the respondents. Accord

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ing to the learned counsel for the respondents, since the application is filed for contempt under Section 20 of the Contempt of Courts Act, it has to be filed within one year from the date of contempt and there is no power to the Court to condone the delay. Reliance is placed on decisions of this Tribunal. On the other hand, the learned counsel for the applicant contends that the C.P. is within limitation by placing reliance on a case reported in (1995) 29 ATC 696, Mohan Singh vs. J.P. Singh (Dr) & Anr., where there is an observation that contempt petition is in a nature of execution but what the Bench observed in the case was that being in a nature of execution court cannot grant interest and cannot go beyond the final order passed in this case. The Bench was not strictly considering the question of limitation or delay.

It is also argued on behalf of the applicant that is since order passed by the Tribunal and since the Tribunal has all the powers of the Civil Court execution petition will lie and the limitation is 12 years from the date of order by placing reliance on Article 136 of Limitation Act.

6. In our view, we need not give any positive finding on limitations, since on merits, the applicant is not entitled to get the relief.



7. In the result, the C.P. is dismissed.

In the circumstances of the case, there is no order as to costs. However, this order is without any prejudice, if any, for applicants to take any action to agitate about the correctness of seniority list and getting monetary benefits etc. according to law.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

R.G.Vaidyanatha

(R.G.VAIDYANATHA)
VICE CHAIRMAN

mr.j.

dd. 21/10/97
order/Judgement despatched
to Applicant/Respondent (s)
on - 12/11/97

20/11/97