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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P.No.73/96in 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.

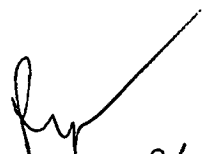
By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna, C.G.S.C.

... 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 :-


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" 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 monetary 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 monetary 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 monetary 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

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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 ^{respondents} ~~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

[Signature]

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 since order^{is} 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.

.. 6/-



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

mrj.

std. 21/10/92
Order/Judgement despatched
to Applicant/ Respondent (s)
on 12/11/92
20/11/92