

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
CIRCUIT SITTING AT NAGPUR  
SEMINARY HILLS, CGO COMPLEX, NAGPUR.

CONTEMPT PETITION No. 35/96

in  
ORIGINAL APPLICATION No. 1156 of 1994

Dated : THIS 17 DAY OF OCTOBER, 1996

Coram : Hon. Shri B.S. Hegde, Member(J)  
Hon. Shri M.R. Kolhatkar, Member(A)

Dr. S.S. Srivastava  
Conservator of Forests  
Nashik Circle  
Nashik 422001  
(Maharashtra)

..Applicant

V/s.

1. Shri N R Krishnan  
Secretary to the Govt. of India  
Ministry of Environment, Forests  
and Wildlife,  
Paryavaran Bhavan,  
CGO Complex, Lodhi Road,  
New Delhi 110 003.

2. Shri Arun Kumar Mago,  
Secretary (Forests)  
Revenue and Forests Department,  
Government of Maharashtra  
Mantralaya  
Mumbai 400032

3. Shri M.H. Khedkar,  
Principal Chief Conservator of  
Forests, Maharashtra State,  
Jaika Building, Civil Lines,  
Nagpur 440001

(By Adv. Shri M.P. Badar,  
Counsel for Respondents 2 & 3)

..Respondents

ORDER ON C.P.No.35/96

(Per: M.R. Kolhatkar, Member (A))

In the Contempt Petition No.35 of 1996

the original applicant has alleged that the respondents  
especially respondents Nos. 2 and 3 have committed a

contempt of this Tribunal by failing to comply with the order of this Tribunal dated 30.1.1996 while disposing of the Miscellaneous Petition No. 11 of 1996 in the Original Application. The operative portion of the order was as below:

"... we hereby direct the respondents as a interim measure to consider the applicant to the Senior Scale and Junior Administrative Grade according to the Rules within a period of two months from the date of receipt of the order. Accordingly M.P.No; 11/96 is disposed of in the light of above."

Contempt Petition was filed on 3.4.96 and the Respondents Nos. 2 and 3 filed an M.P. No.312/96 dated 12.4.96 requesting for extension of time to comply with the order. It is not disputed that the respondents have formally complied with the order vide their letter dated 7.6.96 at Annexure-I to the written statement dated 1.8.96 in which the Government has conveyed the decision to reject the proposal regarding promotion of Dr.S.S. Srivastava, applicant in the senior time scale and the Junior Administrative Grade. Under the circumstances M.P.No. 321/96 becomes infructuous. Accordingly stands M.P.No. 321/96 ~~disposed~~ disposed of. In the C.P. however the applicant has sought the relief of directing the Respondent Nos. 2 and 3 to modify the notification dated 25.9.95 confirming the applicant, appoint the applicant in senior time scale from 1.4.91 and Junior Administrative Grade from 1.1.96 and to direct the respondents to issue posting order of the applicant to the post of Deputy Conservator of Forests, full

payment of consequential benefits apart from punishing Respondents (Contemners) 1, 2 and 3 for their wilful and deliberate disobedience of the Tribunal.

2. It may be noted that the relief sought by the applicant in his O.A. No. 1156/94 as amended by M.P. No.12/96, which M.P. was allowed by the Tribunal vide its order dated 30.1.1996, overlaps with the relief sought in the Contempt Petition excepting the relief relating to expunging of adverse remarks and the relief relating to release of withheld increments. All the same, the main issue before us is whether the Respondents Nos. 2 and 3 have complied with the interim relief by this Tribunal vide its order dated 30.1.1996. It is clear that we had passed the order directing the Respondents to consider the applicant to Senior Scale and Junior Administrative grade, 'According to the Rules of the I.F.S.O.'

3. In the written statement filed by the Respondents in reply to the C.P. the main reason given is that although the petitioner was entitled for consideration for promotion to the post of Senior Time Scale after 4 years, he was not found suitable for promotion and the reason for not promoting him to the Junior Administrative Grade which is given after 9 years is that since he was not found suitable for the post in the Senior Time Scale the question of considering him for Junior Administrative Grade does not arise. Respondents Nos. 2 and 3 however have not clarified as to why the officer was considered unsuitable and whether the position of the Rules was

considered while arriving at the decision. The Tribunal vide its order dated 7.8.96 directed the Respondents to produce the record. The same was perused by the Tribunal on 13.9.96. It appears that part of the reason was a letter received from the Chief Secretary, Uttar Pradesh, dated 5.1.96 in which it was alleged that the petitioner had been arrested on 21.9.94 on the basis of FIR dated 19.11.1993 filed by Mr. Maheshkumar Saxena in connection with charges u/s. 498(A), 506 and 322 of I.P.C. r/w. S.3 and 4 of Dowry Prohibition Act. A charge-sheet has been filed in the Court and the matter is subjudice since February 1994. The Chief Secretary further stated that the Petitioner had filed an FIR on 18.11.1993 against the same Mr. Maheshkumar Saxena who is the father-in-law of the Petitioner, which was found to be false and a final report has been filed. It was stated that Mr. Seema, the wife of the petitioner, is staying with her parents and the reports regarding her death were incorrect. It was reported that the petitioner and his relatives have been harassing Mrs. Seema since 1990 in connection with dowry. Finally it was recommended that the petitioner has committed an illegal act and has displayed conduct unbecoming of the office held by him and it was recommended to initiate departmental action against the applicant. <sup>Principal</sup> Similarly there was a letter from the <sup>A</sup> Chief Conservator of Forests dated 19.1.1996 in which it was stated that one Navinchand Tilakchand Shaha of Paratwada, District

Amravati had filed Criminal Application No. 432/92 in the High Court, Nagpur, regarding illegal seizure of Sandal Wood and demanding cash security of Rs.20,000/- in the offence case which was booked by Dr. Srivastava during his range charge of Paratwada. This matter was decided in favour of Shri Shaha and he has submitted application for seeking permission, to prosecute Dr. Srivastava, under Section 197 of Cr.P.C. Secondly Dr. Srivastava is alleged to have beaten up and detained a Range Forest Officer of the Social Forestry Division, Amravati for which offence under Section 342, 323, and 34 of IPC has been booked in Frazerpura Police Station, Amravati. Dr. Srivastava was arrested in this matter on 20.5.1995 at Nashik and released on Bail, and the Conservator of Forests, Amravati Circle has prepared a draft chargesheet for taking disciplinary action against the applicant and the matter is under consideration.

4. The Principal Chief Conservator of Forests has also referred to delay in confirmation of Dr. Srivastava. It appears that the recommendation of the Chief Secretary, U.P. to initiate departmental action against the applicant, the proposal to frame a charge sheet against the Applicant in connection with the incident in Amravati and <sup>the</sup> pending application U/s. 197 of Cr.P.C. weighed with the Government in deciding against the promotion of Dr. Srivastava. However, the position in the rules appears not to have been considered at all by the Government, and in the absence of any verdict against the applicant by a court of law, depriving him

of his promotion on flimsy grounds is not justified.

also  
This position is/brought out in various written statements filed by the respondents. First of all Respondent No.1 (Central Government) has stated that the matter is primarily for the Respondents Nos. 2 and 3 to decide. It is stated that the applicant joined I.F.S. on 6.7.87 and was due for confirmation on 6.7.90. However, the State Government did not recommend his confirmation. In fact it appears from the written statement dated 12.2.96 that the State Government considered the applicant for confirmation and reported that he was found unfit for confirmation. The Government of India by the letter dated 9.12.1993 informed that the maximum permissible period of probation of the applicant expires in July 1993 and in terms of the Judgment of the Supreme Court in CA No.1273 of 1989 it would not be possible to discharge the officer at the present stage and therefore the proposal in regard to confirmation of the applicant be reconsidered. Therefore, the State Government reconsidered the matter and taking into account the Confidential Reports of the officer for the year 1992-93 which had shown improvement recommended the applicant to be fit for confirmation. Accordingly, the officer was confirmed w.e.f. 1-4-92 i.e., with retrospective effect by notification dated 25.9.95.

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5. What are the conditions for considering the suitability of the officer for promotion to the Senior Time Scale? These are referred to by the

State Government vide Respondents' written statement dated 12.2.96. Rule 6A of Indian Forest Service (Recruitment Rules) 1966) lays down that no officer shall be appointed in senior time scale of pay unless the State Government is satisfied that he is suitable for an appointment in senior time scale of pay that is he is to complete the probation period satisfactorily, and immediately thereafter, to work for a minimum one year in the junior scale. These conditions have clearly been satisfied in the present case. The applicant has been confirmed from 1.4.92 and he has also completed as on 1.4.93 one year in the junior time scale. His Confidential Report for the year 1992-93 is also said to have shown improvement. There are no other criteria regarding suitability of the officer for Senior Time Scale. It is, therefore, clear that by operation of the Rules of which State Government is well aware the officer is entitled to be promoted to the senior time scale of I.F.S. from 1.4.93, if not from 1.4.91 as claimed by the applicant.

6. What are the reasons then for denying him the promotion? These reasons essentially relate to the incidents which are subsequent to the relevant period viz., the period 1992-93. The report from the Chief Secretary has been received on 5.1.1996 and the applicant has filed a rejoinder in connection with the Contempt Petition in which he has made it clear that he has been keeping the State Government informed from time to time about his side

of the picture viz., that his father-in-law allegedly kidnapped his wife from his custody and also caused him monetary loss in the process and that when he filed the FIR on 18.11.93 in that connection, his father-in-law as a counter blast had filed FIR relating to dowry offence on 19.11.1993. It is nobody's case that he was in police custody for more than 48 hours and he has also produced a copy of the order of the Ld. Magistrate enlarging him on bail. It is clear that the Ld. Magistrate, after referring to the sequence of incidents, observed that the applicant who is a Government servant if sent to jail by cancelling his bail application it would definitely affect his service career before the merits and demerits of the case are decided, which will go against the principles of natural justice. In view of the circumstances the applicant was released on bail. Even the Chief Secretary of the Uttar Pradesh has not stated that the applicant has been convicted. He has only stated that the matter is pending before the Court and as observed by the Ld. Magistrate the principles of natural justice have to be followed before holding the petitioner to be guilty of offences under IPC and Dowry Act. The State Government appears to have been influenced by the recommendations of the Chief Secretary, U.P. without further examination. Though the Government has power to conduct departmental proceedings about the conduct of the officer outside office, they failed to realise that it is very difficult to

conduct parallel proceedings as the offences are under Dowry Act, all the material is with the Police of U.P. and the witnesses would be from U.P. and they are all private persons. The nature of offence therefore is such that parallel departmental proceedings would be difficult to sustain. So far as the criminal case in Amravati District for which the applicant is alleged to have been arrested is concerned, the case has essentially arisen out of the action taken in relation to R.F.O. ~~one~~ Shri Chauhan against whom the applicant had taken action under provisions of Indian Forest Act on 25.12.1994. After 12 days of the incident an FIR came to be lodged by said Chauhan against the applicant. It is surprising to see that the Principal Chief Conservator of Forests has not bothered to keep the Government informed regarding the background of the criminal case at Amravati, or atleast place before the Government the applicant's side of the picture, because the same would be available by contemporaneous correspondence addressed by the applicant to all his superiors. Similarly the Principal Conservator of Forests has also not bothered to inform the Government regarding whether there is a fit case for granting sanction for prosecution U/s. 197 or Cr.P.C. as requested by N.T. Shaha, which is a pre-requisite for launching a criminal prosecution against a Government servant. It would thus appear that on the

basis of unexamined material including the recommendation of Chief Secretary U.P., and Principal Chief Conservator of Forests, Respondents have formed a view that the applicant cannot be promoted. However, as observed above, the State Government has ~~failed in~~ its elementary duty, to consider the ~~position~~ in accordance with the Rules which was what we directed. We have already observed that all the adverse incidents held against the Applicant are subsequent developments viz., the developments arising out of ~~events~~ which have taken place in 1993-94 (Dowry matter) about which the State Government came to know officially for the first time in January 1996. The State Government ought to have examined the matter a little more carefully because the whole correspondence with ~~U.P.~~ was started on the basis of Press Report that Mrs. Srivastava, wife of the Applicant, has died with a dark hint that the Applicant had something to do with the death of his wife. It is clear from the report of the Chief Secretary that Mrs. Srivastava, is very much alive. It is already observed by us that by operation of the Rules the applicant is entitled to promotion to Senior Time Scale from 1.4.1993, on the basis of notified date of confirmation which applicant has challenged.

7. The next question to be considered is whether the applicant is a fit person to be considered for promotion to the Junior Administrative Grade to which he is normally entitled after

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completion of 9 years of service i.e., from 1.1.1996 or any subsequent date. The State Government's reason for not considering the applicant for Junior Administrative Grade, which is a non-functional grade, to which an officer is normally promoted, is that the applicant has not been promoted to Senior Time Scale. We have already observed, that the applicant is fit to be promoted to Senior Time Scale by operation of Rules. We, therefore, direct that considering the fact that the applicant would be promoted to the Senior Time Scale from 1.4.93 the State government may further consider the case of the Applicant for promotion to Junior Administrative Grade, to which he is otherwise entitled from 1.1.1996. We further direct, that this should be done strictly in accordance with the Rules, and not on the basis of mere pendency of a criminal case against the applicant in a Court of Law in Uttar Pradesh or mere intention to proceed departmentally against the officer.

8. We, therefore, dispose of the matter by passing the following order:

i) The applicant is fit to be promoted to the Senior Time Scale by operation of the Rules atleast with effect from 1.4.1993 and the State Government should pass appropriate order and give appropriate posting to the Applicant within one month from the date of communication of this order.

ii) State Government should also consider the fitness of the Applicant for being promoted to the 'Junior Administrative Grade' from an appropriate date strictly as per Rules within two months from the date of communication of this order.

We make it clear that we are passing this order as an interim measure and the applicant will not be entitled for arrears, though the applicant would be entitled for notional fixation of pay on promotion to 'Senior Time Scale' from 1.4.1993.

iii) We also direct that if the Applicant is entitled to any increments for passing Departmental Examinations as per Rules, the same may be released to him within 2 months of the date of communication of this order.

The Contempt Petition is kept pending as our directions to-day are a follow up of the directions dated 30.1.1996.

9. Three files plus C.R. file of the Applicant i.e., in all four files, may be returned to the Counsel for Respondents Nos. 2 and 3 on pronouncement of this order.

List the case for orders on 18-11-96.  
at Mumbai

*M.R.Kolhatkar*

(M.R.Kolhatkar)  
Member(A)

*B.S.Hegde*  
(B.S.Hegde)  
Member(J)

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