

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS: 1181/92, 496/94, 1020/95, 1021/95,
1023/95, 916/94, 586/95, 1072/95,
230/97, 363/97, 366/97, 515/97,
531/97, 621/97, 736/97, 779/97,
797/97 and 798/97.

Mumbai this the 20th day of July, 2001

CORAM: HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN(J)
HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Applicant in OA No.1181/92

Ashok Narayan Kulkarni
presently working as
Inspector of Central Excise,
Panvel Division-II, Bombay III
Collectorate.

By Advocate Shri R.Ramamurthy

Applicants in OA No.496/94

1. Shri Aier D.R.
2. Shri Ajgaonkar R.S.
3. Shri Phawde P.Y.
4. Shri Deore G.D.
5. Shri Bhowal T.K.
6. Shri Ranade P.N.
7. Shri Samant C.S.
8. Shri Sawant S.B.
9. Shri Fernando Nelson
10. Shri Dalvi A.P.
11. Shri Sawekar D.K.
12. Shri Nare S.G.
13. Shri Save M.D.
14. Shri Singh C.J.
15. Shri Dhanumali R.S.

All applicants working as Inspectors
of Central Excise under the Collectors
of Central Excise, Collectorate I, II
or III, Bombay.

By Advocate Shri V.G.Rege

Applicant in OA No.1020/95

Shri D.V.Joshi
working as Inspector of Central Excise,
Range III, Division II, Bombay-II
at Polyshoor Building, L.B.S.Marg,
Vikhroli (West),
Bombay - 400 083

By Advocate Shri V.G.Rege

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16. The Commissioner of
Central Excise and Customs
Town Centre, N-5, Cidco,
Aurangabad - 431 003.

... Respondent No.1,3 &
16 in OA No.515/97

17. U.H. Jadhav
18. G.G. Keshwani
19. V.D. Tillu

... Respondent No.1,6,
17,18 & 19 in OA No
Nos.586/95 &
1072/95.

R.No.17,18 & 19 presently Superintendents
Central Excise, Bombay.

By Advocate Shri V.D. Vadhavkar proxy counsel
for Shri M.I. Sethna

(ORDER)(ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

By virtue of the Tribunal's order dated 13/10/98 read with the order dated 4/4/2000 in OA-496/94, the aforesaid 18 matters were placed in the Sine die list and were also ordered to be clubbed together to be decided in the light of the judgement of the Hon'ble Supreme Court in SLPs arising out of Hyderabad judgement in Subba Rao's case (OA 381/92) and other judgements referred to in Tribunal's order dated 4/4/2000.

2. Today the above cases have been listed for Final Hearing. It is noticed that some of these cases have been filed as far back as in 1992. Learned counsel for the parties have submitted that the judgements of the Apex Court referred to above have already been pronounced (see for example - Chief Commissioner of Income Tax & Ors V/s. Shri Subba Rao & Ors) in Civil Appeal No. 12414-12417/96, 12376/96, SLP(C) 7519/97 and 19683/97 by order dated 23/11/2000. It is also submitted by the learned counsel for the parties that no final decision has been taken by the respondents in the aforesaid pending cases till date. The learned

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proxy counsel for the respondents has submitted that the respondents vide their letter dated 29/6/2001 have informed him that the matter is still under consideration of the Board for taking further action in respect of the Apex Court judgements. He has, therefore, prayed that an adjournment may be granted in the above cases to enable the respondents to take appropriate decision in the matter.

3. It is noted that one of the judgements of the Hon'ble Supreme Court U.H.Jadhav & ORs V/s Union of India (SLP Nos.20037-20038/96), the order is dated 12/3/99 and it is also noted that the judgement of the Hon'ble Supreme Court in Subba Rao's case(supra) has been delivered on 23/11/2000. As mentioned above, the aforesaid OAs have also been pending in the Tribunal for a number of years. It is not disputed that the judgements of the Supreme Court which were awaited at the time of placing the OAs in the sine die list, have already been pronounced but the respondents have yet to take an appropriate decision on them by way of implementation of the Apex Court's judgements with regard to the claims raised by the applicants in the above mentioned Original Applications.

4. In the circumstances, the prayer of the learned counsel for the respondents for adjourning the cases has to be rejected especially considering the request in the light of the caption in the Cause List "No adjournment in cases prior to 1997 will be granted"

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5. In the facts and circumstances of the case, the aforesaid 18 OAs (1181/92, 496/94, 1020/95, 1021/95, 1023/95, 916/94, 586/95, 1072/95, 230/97, 363/97, 366/97, 515/97, 531/97, 621/97, 736/97, 779/97, 797/97 and 798/97) are disposed of with the following directions:-

1. The respondents are directed to consider the claims of the applicants, taking into account the relevant provisions of law, including the judgements of the Hon'ble Supreme Court referred to above, and pass detailed, speaking and reasoned order regarding re-fixation of their seniority in the cadre of Inspectors/Superintendents 'B', as the case may be. This shall be done within six months from the date of receipt of a copy of this order.
2. The applicants shall be entitled to consequential benefits as a result of the revision of seniority, if any, in accordance with the provisions of Law, Rules and extant Instructions.

No order as to costs.

6. Let a copy of the above order be placed in each and every case which is mentioned above.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P. No.: 72/2002 IN O.A.No. 586/95.

C.P.Nos.: 73/2002 & 74/2002 IN O.A. No.: 1072/95.

Dated this Monday the 9th day of February, 2004.

CORAM : Hon'ble Shri S. G. Deshmukh, Member (J).

Contempt Petition No.: 72/2002.

1. A.M. Tilak
2. G. S. Arekar.
3. V. G. Ghag.
4. S. D. Gadkari.
5. R. T. Khemani.
6. B. K. Naik.
7. V. M. Saunur.
8. Vasuadeo Ravi.
9. V. R. Kulkarni.
10. V. V. Chandran.
11. J. P. Sharma.
12. S. P. Punjabi.
13. D. Y. Raje.
14. S. D. Thakar.
15. S. M. Vaidya.
16. S. P. Chhabriya.
17. P. R. Deherkar.
18. D. G. Moghe.
19. S. T. Padte.

Petitioners.
... (Ori. Applicants).

Contempt Petition No.: 73/2002.

1. R. S. Singh.
2. B. B. Mohite.
3. S. K. Bhate.
4. A. D. Petkar.
5. N. A. Borkar.
6. V. K. Kulkarni.

Petitioners.
... (Ori. Applicants)

Contempt Petition No.: 74/2002.

1. R. D. More.
2. M. H. Bukelia.
3. R. K. Tuplondhe.
4. S. T. Shivsharan.

Petitioners.
... (Ori. Applicants)

(By Advocate Shri V. S. Masurkar)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 011.

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2. Commissioner of Central Excise
Mumbai-I, Central Excise Bldg.,
M. K. Road, Churchgate,
Mumbai - 400 020. ... Respondents.
(Ori. Respondents)

AND

1. Mr. M. K. Zutshi,
Chairman,
Central Board of Excise &
Customs, North Block,
New Delhi - 110011.
2. Mr. A. C. Buck,
Commissioner of Customs,
Mumbai-I,
Central Excise Building,
M. K. Road, Churchgate,
Mumbai - 400 020. ... Contemnors.

(By Advocate Shri R. R. Shetty)

ORDER

PER : Shri S. G. Deshmukh, Member (J).

On a difference of opinion between the Learned Judicial and Administrative Members constituting the Division Bench on a question of issue of notice in contempt petition, this case came up before me for hearing and resolving the difference on the said point. The contempt petitions are filed against the non-compliance of the judgement/order dated 20.07.2001 and the order passed on 22.02.2002 Both the O.As. No. 586/95 and 1072/95 have been disposed of by the common order, hence the contempt petitions filed for non compliance of the orders are taken for being disposed of by a common order.

2. O.A. No. 586/95 and 1072/95 and others have been disposed of by a common order dated 20.07.2001 with the following directions :

"1. The respondents are directed to consider the claims of the applicants, taking into account the relevant provisions of law, including the judgements of the Hon'ble Supreme Court referred to above, and pass detailed, speaking and reasoned order regarding re-fixation of their seniority in the cadre of Inspectors/Superintendents 'B' as the case may be. This shall be done within six months from the date of receipt of a copy of this order.

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2. The applicant shall be entitled to consequential benefits as a result of the revision of seniority, if any, in accordance with the provisions of Law, Rules and extant instructions."

It is the contention of the contempt petitioners that they had made representations even then the contemnors have wilfully and deliberately failed and neglected to obey the order in the case. They are exhibiting total indifference and disrespect for the orders and they are guilty of wilful disobedience to the orders dated 20.07.2001 and 22.02.2002. They have neither granted seniority nor granted consequential benefits to the petitioners even after their representations.

3. It appears that respondents had sought extension of six months for complying the order in question by moving a Miscellaneous Petition No. 148/2002. Six months period was over on 08.08.2002. The present contempt petitions are filed on 31.07.2002, 02.08.2002 and 01.08.2002 respectively. It appears that the respondents have finally passed the order dated 21.08.2002. The respondents had filed a M.P. for further extension of time, which was allowed by the Tribunal while passing the order on contempt petitions.

4. Heard the Learned Counsel, Shri V.S. Masurkar, for the Petitioners and Shri R. R. Shetty, for the respondents.

5. The Learned Counsel for the Respondents relied on the following case laws :

- (i) Chhottu Ram V/s. Urvashi Gulati & Another [2001 SCC (L&S) 1196].
- (ii) Union of India V/s. Madras Telephone S.C. & S.T. Social Welfare Association, etc. [2001 (1) AI SLJ 23].
- (iii) All India Regional Rural Bank Officers Federation & Others V/s. Government of India & Others [2002 SCC (L&S) 449].
- ml* (iv) J. S. Parihar V/s. Ganpat Duggar & Others [1997 (1) AI SLJ 236].

6. The Learned Counsel for the applicant relied on 2003 (3) ATJ 144 [V. Sathi Raju V/s. The Chief Commissioner of Income Tax, A.P., Hyderabad & Others].

7. In J.S. Parihar V/s. Ganpat Duggar & Others (supra) it is held "Seniority List-Engineers-Rajasthan Civil Engineering Service (Public Health Branch) read with Contempt of Courts Act, 1971-S.12-19-Declaration of seniority list prepared with retrospective effect on terms of the amended Rules, unconstitutional by High Court - Direction to prepare the list afresh - Initiation of contempt proceedings under Section 12 of Contempt Courts Act, 1971 when seniority list came to be prepared - Whether seniority list is open to review under contempt proceeding - Held that once there is an order passed by the Government on the basis of the direction issued by court there arises a fresh cause of action to seek redressal in an appropriate forum - No Contempt."

8. In Indian Airports, Employees Union V/s. Ranjan Chatterjee & Another [2001(1) SLJ 265 (SC)] it is held that "in order to amount to 'Civil Contempt' under Section 2 (b) of the Contempt of Courts Act, 1971 must be 'wilful' and proof of mere disobedience is not sufficient. Where there is no deliberate flouting of the orders of the Court but a mere misinterpretation of the executive instructions, it would not be a case of Civil Contempt."

9. The applicants in O.A. Nos. 586/95 and 1072/95 were seeking promotion to the selection grade pay scale of Inspectors of Central Excise and also to the posts of Superintendents of Central Excise from a date prior to or at least from the date of promotions of S/Shri U.H. Jadhav, G.C. Keswani, V.D. Tillu with all consequential benefits and to fix their seniority over the heads of S/Shri U.H. Jadhav, G.C. Keswani, V.D. Tillu as they

claim to be the natural seniors of Shri U.H. Jadhav & Others. The applicants in O.A. No. 496/94 were seeking promotion to the post of Superintendents Grade 'B' of Central Excise, ahead of S/Shri Padwale, Chandwani, Bakre and Naik alongwith consequential benefits such as seniority, pay, etc.


10. I have mentioned that the respondents have passed the order on 21.08.2002 when the contempt petitions were pending. It is also apparent from the orders that the M.P. for extension of time for complying with the order in question has been allowed. The petitioners' grievance is based on the factum of non consideration of their case. It is also apparent that the directions were to consider the claims of the applicants taking into account the relevant provisions of law, including the judgements of the Hon'ble Supreme Court and pass a detailed, speaking and reasoned order regarding re-fixation of their seniority. It appears from the order dated 21.08.2002 of the respondents that they have passed a detailed, speaking and reasoned order regarding the re-fixation of the seniority of the petitioners. The order appears to have been passed after taking into consideration the relevant provisions of law, recruitment rules and the judgements of the Apex Court in that respect. It appears that the authority has passed a reasoned order to arrive at its conclusion how the seniority in the grade of Inspector of Central Excise and Superintendent of Central Excise have been rightly fixed based on the judgement of U.H. Jadhav, S.R. Kadam and the Apex Court. According to petitioners, they have not been granted seniority and consequential benefits as per orders of this Tribunal and the Supreme Court judgements. I have mentioned that the direction to respondents was to consider the applicants' case.

11. Once there is an order passed by the Respondents on the basis of directions issued by the Tribunal, there arises a fresh

cause of action to seek redressal before appropriate forum. The order passed by the respondents may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for aggrieved party to avail the opportunity of judicial review. But that cannot be considered to be a wilful disobedience of the order. It would not be permissible to consider the matter on merit in contempt proceedings. The merits of the compliance of court orders cannot be examined in the contempt proceedings. There appears nothing to come to the conclusion that on facts the act of respondents tantamounts to obstruction of justice. It is not enough that there should be a technical contempt of court but there should be an act of contempt, which would otherwise substantially interfere with due course of justice. It appears that the respondents have complied with the orders of the Tribunal and passed a detailed speaking order.

12. I have mentioned that the merit of compliance of the Court's order cannot be examined in the contempt proceedings. A fresh cause of action will arise to seek redressal. Unless there is a wilful disobedience to the order made by the Court, the proceedings for contempt cannot be initiated. There could be serious disputes that whether petitioners fulfilled the necessary requirements as mentioned or not. In such matters, it could not be stated that concerned parties had acted wilfully in contempt of the Court. This is not a fit case where proceedings for Contempt should have been initiated.

13. Let the papers be now placed before a Division Bench for appropriate further orders on the contempt petitions.


(S.G. DESHMUKH)
MEMBER (J).