

(51)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

CONTEMPT PETITION NO.139/98

in
ORIGINAL APPLICATION NO.59/95

DATE OF ORDER : 07-4-1999.

Between :-

P.V.Sriram Chand

And

Shri A.V.B.Menon
A.P.Chief Postmaster General.

... Applicant

... Respondents

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Counsel for the Applicant : Shri K.Sudhakar Reddy

Counsel for the Respondents : Shri B.N.Sharma, Sr.CGSC

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CORAM:

THE HON'BLE JUSTICE SHRI D.H.NASIR : VICE-CHAIRMAN

THE HON'BLE SHRI H.RAJENDRA PRASAD : MEMBER (A)

ORDER

(Per Hon'ble Justice Shri D.H.Nasir, Vice-Chairman).

It is alleged by the applicant in this contempt proceedings that the respondents have wilfully disobeyed the order dated 9.12.1997 passed by this Tribunal in O.A.No.59/95. (Parties shall be known in this C.P. by their respective status in the O.A.) The said O.A. was disposed of with the following order :

"6. This Tribunal while deciding the OA 1293/93 categorically stated that the seniority of the applicant as ~~respondent~~ the respondents are aggrieved by that order, then the remedy left to them is to file Review Application for reviewing that judgement or to file an appeal. The respondents took no action in that connection and that judgment has become final. Hence reversing the judgment by the impugned order dated 10.1.1994 is uncalled for. Hence we are left with no other alternative except to set-aside the impugned order No.ST/47-5/VII/93 dated 10.1.94 and confirm that the direction given in OA 1293/93 dated 25-11-93 should hold good. As per the judgment, the applicant is entitled for seniority as per the letter dated 9.9.1993 and that seniority will decide the position of the applicant in the seniority list for any consequential benefits."

2. The learned counsel for the contempt petitioner submitted that the applicant became entitled for seniority as per letter dated 9.9.1993 and other consequential benefits including promotion to the post of Office Superintendent (HSG I ~~SHG I~~). Several representations were made by the applicant for implementation of the directions given in the aforesaid O.A., but no action was taken by the authorities till the date of filing the

contempt petition, according to Mr.K.Sudhakara Reddy, learned counsel for the applicant and that due to inaction on part of the respondent authorities, the applicant had to work under his juniors. Non-implementation of the judgment of the Tribunal by the respondent authorities, according to the learned counsel, was deliberate and wilful and that such inaction was clear disobedience of the directions given by the Tribunal.

3. On perusing the counter affidavit filed by the respondents and on hearing the learned Standing Counsel for the respondents it appears that the authorities reconsidered the fixation of the seniority of the applicant in LSG cadre and issued a notice dated 6.7.1998 to Sri Prakash Rao, 4th Respondent in OA 59/95. Sri Prakasha Rao, however, filed O.A.No.941/98 challenging the notice dated 6.7.1998 which was disposed of by this Tribunal on 31.7.1998 with a direction to the respondents to consider the claim of the applicants in O.A.941/98 (Sri Prakash Rao and Sri P.V.Sriramchand) and to take further action to determine the inter se seniority of the applicants and Sri K.Prakash Rao by issuing a part seniority list and in compliance with the said directions, the respondents examined the representation of Sri K.Prakash Rao dated 3.8.1998 and that of the applicant dated 10.8.1998 and gave reply to the applicant on 7.1.1999 vide Memo No. ST/476. The part seniority list was also issued on 11.1.1999.

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4. Further according to the respondents, the delay occurred only due to protraction of the proceedings in O.A.941/98 and the direction of this Tribunal and there was no wilful delay or inaction on the part of the respondents. In any case, according to the learned Standing Counsel for the respondents though belatedly the respondents had complied with the directions issued in OA No.59/95 on 9.12.1997 and that there was no merit in the petition.

5. The contentions raised by the respondent in the counter affidavit do stand substantiated by the documents annexed to the counter affidavit and the same have not been even challenged by the applicant by filing any rejoinder affidavit.

6. We are, therefore, of the opinion that the contempt petitioner does not succeed in making out a case for holding the respondents responsible for wilful disobedience in complying with the directions of the Tribunal in OA 59/95. Delay indeed has taken place but the same cannot be termed as inexcusable. The alleged inaction of the respondents also does not fall within the scope and meaning of the term 'wilful disobedience' : and therefore, we are not inclined to accept the submissions made by the contempt petitioner that the respondents are required to be punished

for any contempt. If the applicants do not feel satisfied with the decision of the respondents in re-aligning the seniority list and they believe that any injustice is still done to the applicants, the remedy lies elsewhere and not by way of initiating a contempt proceeding against the respondents. In this contempt proceeding we cannot embark upon verifying the tenability of the revised seniority list.


7. The views expressed above derive legitimacy from the case of *S. Parihar Vs. Ganpath Duggar* (1996) 6 SCC 291, in which it is observed in para-6 that the question was whether seniority list was open to review in a contempt proceedings to find out whether it was in conformity with the directions issued by the earlier Bench. Once there was an order passed by the Government on the basis of the directions issued by the Court, a fresh cause of action arose to seek for redressal in a proper forum. The Supreme Court further observed that the preparation of the seniority list may be wrong or right or may or may not be in conformity with the directions but party to avail of the opportunity of judicial review but that could ^{not} be considered to be a wilful disobedience of the order. It is further observed that :

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"After re-exercising the judicial review in a contempt proceedings, a fresh direction by a learned Single Judge could not be given to re-draw the seniority list. In other words the learned Single Judge was exercising the jurisdiction to consider the case on merits in the contempt proceedings but it was not permissible under section 12 of the Act. Therefore the Division Bench exercised the power under section 18 of the Rajasthan High Court Ordinance being judgement or order of the Single Judge, the Division Bench corrected the mistake committed by the learned Single Judge and therefore it was not necessary for the State to file an appeal in this Court against the judgement of the learned Single Judge when the matter had already been seized of the Division Bench.

8. In the above view of the matter, therefore, the contempt petition is ordered to be closed.


(H. RAJENDRA PRASAD)
Member (A)


(D.H. NASIR)
Vice-Chairman

Dated: 7th April, 1999.

DE/AVL

*For New
Fuel*

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1st AND 2ND COURT

TYPED BY
COMPARED BY

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APPROVED BY

THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE D.H. NASIR:
VICE - CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD:
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR

DATED: 7.4.99

ORDER/JUDGEMENT

MA./RA./CP.No. 139/98 M

IN

O.A. NO. 59/95

ADMITTED AND INTERIM DIRECTIONS
ISSUED.
ALLOWED

DISPOSED OF WITH DIRECTIONS
DISMISSED

DISMISSED AS WITHDRAWN

CP ORDERED/REJECTED to be closed

NO ORDER AS TO COSTS

SRR

Sent to Rms on 11/6/99
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