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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 03.12.2011

CP No. 36/2010 (OA No. 149/2009) with MA Nos. 72/2011, 76/2011 & 104/2011

Dr. Saugath Roy, counsel for petitioners.
Mr. Mukesh Agarwal, counsel for respondents.

At the request of learned counsel for the parties, put up the matter on 19.12.2011.


(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

19-12-2011

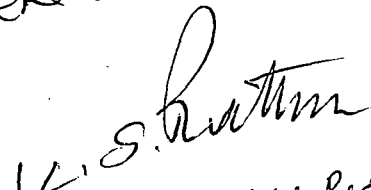
CP No. 36/2010 (in OA No. 149/2009) with MA No. 72/2011, MA No. 76/2011 and MA No. 104/11

Mr. Aruneshwar Gupta, with Dr. Saugath Roy, counsel for petitioners.
Mr. Mukesh Agarwal, counsel for respondent

Heard.

The C.P. and MAs are disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)


[Justice K.S. Rathore]
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 19th day of December, 2011

Contempt Petition No. 36/2010
(OA No.149/2009)

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

1. G.K.Panchtoli
s/o Shri K.L.Pancholi,
retired as Director (Geology), SG.
2. J.V.Natani
s/o Shri Radha Ballabh
working as Senior Geologist GSI,
Jhalana Doongari,
Jaipur
3. Subir Dasgupta
s/o late Shri N.B.Dasgupta,
presently working as Senior Geologist,
Jhalana Doongari,
Jaipur
4. R.S.Rao
s/o late Shri Ventakeshwarh,
presently working as Senior Geologist,
Jhalana Doongari,
Jaipur
5. S.Chowdhury
s/o late Shri H.K.Choudhury,
presently working as Senior Geologist,
GSI, Jhalana Doongari,
Jaipur.
6. Chaitanya Kumar Gautam,
s/o Shri Jamanalal Gautam,
presently working as Senior Geologist,
GSI, Jhalana Doongari,
Jaipur.

.. Petitioners

(By Advocate: Shri Aruneshwar Gupta with Dr. Saugath Roy)

Versus

1. Mr. S.Vijay Kumar,
Secretary, Ministry of Mines,
Government of India,
Sastri Bhawan,
New Delhi.
2. Mr. Santanu Consul,
Secretary,
Department of Personnel,
Public Grievance and Pension,
Government of India,
North Block,
New Delhi.
3. Mr. Ashok Chawla,
Secretary, Ministry of Finance,
Department of Economic Affairs,
Government of India,
North Block,
New Delhi.
4. Mr. Jaswant Singh,
Director General (Acting),
Geological Survey of India,
27, Jawahar Lal Nehru Road,
Kolkata.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER (ORAL)

Original Application No.149/2009 alongwith Misc. Application No.294/2009 was disposed of by this Tribunal vide order dated 29th January, 2010 which was filed by the applicants praying for the following reliefs:-



- (i) It is, therefore, prayed that the Hon'ble Tribunal may kindly call for the entire record and after examining the same, be please to declare the impugned action of the official respondents in denying of implementation of 6th Central Pay Commission recommendation of granting pay parity on non functional basis with two years junior I.A.S. Officers posted in the center, i.e. inspite of the Geology Stream being an Organized Group-A Central Service.
- (ii) By further appropriate order or direction the respondents be directed to implement the 6th Pay Commission recommendation of granting pay parity to the applicants forthwith.
- (iii) Any other order or direction which may be considered just and proper in the fact and circumstances of the case be passed in favour of the applicants.
- (iv) Cost of the OA may kindly be awarded to applicants"

2. The case of the applicants in the OA was that DOPT has issued guidelines for introduction of non-functional selection grade of Rs. 14300-18300 in Group-A organized Central Service vide OM dated 31.7.1982 and name of Geological Survey of India is mentioned as an organized Gorup-A Central Service in the said OM. The Tribunal has considered the reply filed on behalf of the respondents



wherein the respondents have made the following averments in para 4 of the reply to the MA files on 27.11.2009:-

"4. That the contents of Paras-4 of the Misc. Application are not admitted as stated being misconceived and misleading. It is however submitted that the GSI consists of a group of services, such as Geology Stream, Geophysical (Expl.) Stream, Geophy (Instt.) Stream, Geo Chemical Stream, Mechanical Stream, Drilling Stream, Mineral Physics Stream etc. For all such services recruitment rules of respective streams are different.

It is further submitted that the comparison with IAS in terms of time scale etc. and its parity in respect of other service of Central Civil Group 'A' needs following conditions:-

- A. Single Recruitment Rules of appointment to all the stream of GSI.
- B. Uniform functional responsibility for all Government servants per Recruitment Rules which is applicable to all IAS candidates.
- C. Formalities of Recruitment under the category of Organized Service which is yet to be prepared by GSI.
- D. Notification of 'Organized Service' which is till date not done.
- E. As per Para 5.4.4 of Promotion Chapter in the Swamy's Establishment and Administration Manual promotion is always prospective.

It is further submitted that the concept is a new concept and as per DOPT OM No. AB 14017/64/2008-



Estt (RR) dated 24.4.2009, the procedure of screening committee is followed as in the case NSFG grade needs to be followed after amendment of RRs. The amendment of RRS are in process and RRs on Organized Service Pattern in respect of Geology, Chemical, Geo Physics and Engineering (Merged Stream of Mechanical Engineering and Drilling) have been sent to the DOPT for approval, further action will be taken at earliest as possible."

3. The Tribunal after hearing the learned counsel for the parties at length and after going through the material placed on record and in view of the stand taken by the respondents observed as under:-

"..... we are of the view that it will not be useful to keep this matter pending and the same can be disposed of any giving time bound directions to the respondents to take aforesaid steps immediately so that the applicants and the persons similarly situated can get benefit of recommendations as made by the 6th Pay Commission. Accordingly, the respondents are directed to ensure completion of aforesaid steps including steps for amending the rules expeditiously and in any case within a period of six months from the date of passing of this order."

4. Since the order passed by this Tribunal on 29th January, 2010 has not been complied with by the respondents, therefore, the petitioners have filed this Contempt Petition.



5. After receipt of notice, the respondents moved Misc. Application Nos.209/2010 and 289/2010 and vide order dated 27.10.2010 this Tribunal given two months time to submit compliance report.

On 27.4.2011, this Tribunal after hearing the learned counsel for the parties and upon careful perusal of the compliance report submitted by the respondents thought it proper to direct the respondents to undertake fresh exercise pursuant to the circular/office memorandum dated 24.4.2009 (Ann.A/2) and dated 21.5.2009 (Ann.A/3) issued by the DOPT to grant the benefit of 6th Central Pay Commission and further direction to the respondents to examine the matter afresh and submit compliance report in accordance with the aforesaid circular/office memorandum by the next date.

On 18.7.2011, the respondents have submitted additional affidavit and furnished compliance report.

6. The Contempt Petition came up for hearing today and after hearing the rival submissions of the respective parties, the learned counsel appearing for the petitioners referred to Ann.A/1, the Gazette of India dated 29th August, 2008, and submitted that as per recommendations of 6th Pay Commission, whenever any IAS officer of a particular batch is posted in the Centre to a particular grade carrying a specific grade pay in pay bands PB-3 or PB-4, grant of higher pay scale on non-functional basis to the officers belonging to

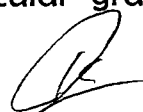


batches of organized Group-A services that are senior by two years or more should be given by the Government. The said recommendation has been accepted by the Government and it will also be applicable to Indian Police Service and the Indian Forest Service in their respective State cadres for which the relevant cadre controlling authorities will issue the orders.

7. The learned counsel appearing for the petitioners further referred to Clause (i) of Office Memorandum dated 24th April, 2009, which thus reads:-

“(i) Whenever an Indian Administrative Services Officer of the State of Joint Cadre is posted at the Centre to a particular grade carrying a specific grade pay in Pay band 3 or Pay Band 4, the officers belong to batches of Organised Group-A Services that are senior by two years or more and have not so far been promoted to that particular grade would be granted the same grade on non-functional basis from the date of posting of the Indian Administrative Service Officers in that particular grade at the Centre.”

8. The learned counsel appearing for the petitioners also referred to clause (3) of Ann.I of the aforesaid Office Memorandum dated 24.4.2009, which is regarding terms and conditions for grant of higher pay scale on non-functional basis to officers of organized Group-A Services. As per clause (3) of these terms and conditions, all the prescribed eligibility criteria and promotional norms including 'benchmark' for up-gradation to a particular grade pay would



have to be met at the time of screening for grant of higher pay scale under these orders. As per clause (10) of these terms and conditions, non-functional up-gradation to the next higher grade pay granted under the scheme is a fall back option only, to be applied in cases where officers of a particular Service have not been granted promotion to a particular grade in normal course according to the due procedure.

9. Having referred to Gazette dated 29th August, 2008 and OM 24.4.2009 the learned counsel appearing for the petitioners as well as the respondents placed reliance on Para-2 of DOPT OM dated 1st July, 2010, which is in the following terms:-

“2. The matter has further been considered in this Department. As there is a slight change in the date of posting of first officer of IAS cadre in the Center after 01.01.2006 in the grade of Additional/Joint Secretary, a revised list in supersession of the list issued in OM dated 21.5.2009, giving the batch of the IAS officers who have been posted in the Centre in the various grades as well as the date of posting of the first officer belonging to the batch is annexed. Necessary action may be taken for grant of higher scale to the offices belonging to batches of Organized Group A Services that are senior by two year or more and have not so far been promoted to that particular grade in accordance with the provisions of this Department OM of even number dated 24.4.2009.”

10. The learned counsel appearing for the petitioners further placed reliance on the judgment of the CAT-Principal Bench, New



Delhi in OA No0655/2010 and other related matters decided on 1st November, 2011 and also the judgment in OA No.1169/2010 dated 11th November, 2010 passed by the CAT-Principal Bench. The learned counsel further referred to Chapter 3.3, Central Services Group 'A', of the recommendations of the 6th CPC, more particularly para 3.3.12 - on analysis of the demand raised and recommendations thereon - parity with IAS and para 3.3.15 - analysis of the demands raised and recommendations therein - uniform career progression, which is reproduced as under:-

"3.3.12 Most Group A Organized Services Associations have demanded abolition of the edge presently granted to the IAS in terms of pay scale at the level of Senior Time Scale, Junior Administrative Grade and Selection Grade. This issue has been examined in detail in this Report's Chapter 3.2 on the All India Service. Insofar as the issue of equal career progression is concerned, the promotion of IAS officers in various State cadres varies depending on the vacancy position, etc. In any case, promotion in a State cadre has to be taken as distinct from their posting at different grades in Centre. A case, however, exists for ensuring that Group A services are given their due. In this context, it is observed that there is a conventional edge of two years between IAS and other AIS/Central Group A services. The Fifth CPC had considered this issue and taken the view that the edge need not be disturbed. In practice, however, the gap of two years posting to various grades in the Centre in form of empanelment of IAS officers and promotion for other Group A officers, has increased in respect of many organized Group A services. This is not



justified as organized Group A services have to be given their due which justifiably should mean that the disparity, as far as appointment to various grades in Centre are concerned, should not exceed two years between IAS and organized Central Group A services. The Government should, accordingly consider batch-wise parity while empanelling and/or posting at Centre between respective batches of IAS and other organized Group A services with the gap being restricted to two years. Whenever any IAS officer of a particular batch is posted in the Centre to a particular grade carrying a specific grade pay in pay bands PB-3 or PB-4, grant of higher pay scale on non-functional basis to the officers belonging to batches of organized Group A services that are senior by two years or more should be given by the Government. The higher non-functional grade so given to the officers of organized Group A services will be personal to them and will not depend on the number of vacancies in that grade. These officers will continue in their existing posts and will get substantial posting in the higher grade that they are holding on non-functional basis only after vacancies arise in that grade. This will not only ensure some sort of modified parity between IAS and other Central Group A services but will also alleviate the present level of disparity existing between promotional avenues available to different organized Group A services. It is also observed that eligibility criteria prescribed for promotion to SAG in different technical and non-technical organized Group A services are different. In order to bring uniformity, these eligibility criteria should be uniform across various organized Group A services. The Commission recommends accordingly."



"3.3.15 A perusal of the memoranda submitted by various Group A Organized Services' Associations reveals that even amongst these Services, there is wide variation in terms of career progression. While officers of some Services get promoted to the Senior Administrative Grade in 16 years, officers in some other Services take more than 26 years for the same promotion. Absolute parity amongst various Organized Group A Services for the purpose of promotion to SAG and HAG levels is not possible, as each cadre is designed and managed in a manner which is unique to itself. In any case, the recommendation made in para 3.3.12 will address this issue and bring about a degree of uniformity in the promotional avenues, pay and allowances of officers belonging to these Services having same seniority."

11. After referring above recommendations of Chapter 3.3 of Central Services Group 'A', the learned counsel also drawn our attention towards 6th CPC report for All India Service and referred to Para 3.2.7 which thus reads:-

"3.2.7 The edge of IAS in pay scales is limited to Senior Time Scale, Junior Administrative Grade and Non-Functional Selection Grade. Other All India Services and Central Services have been demanding parity with IAS. This demand was projected before the various Central Pay Commissions constituted earlier but the edge has continued. The Fifth CPC recorded that no perussive reason existed to do away with this edge. The position has not changed since then. The role of IAS is still very important in the overall scheme of governance. They



have an important coordinating, multi functional and integrating role in the administrative framework with wide experience of working across various levels in diverse areas in Government. They hold important field level posts at the district level and at the cutting edge at the start of their careers with critical decision making and crisis management responsibilities. The leadership function, the strategic, coordinating and integrative role at this level requires the best talent available. The existing position would, therefore, need to be maintained. It will ensure that IAS officers near the beginning of their career are given slightly higher remuneration vis-à-vis other services and act as an incentive for the brightest candidates to enter this service. This is essential as the initial postings of IAS officers are generally to small places, they face frequent transfers and the pulls and pressures they have to stand upto early in their career are much more intense. The slight edge in the initial stages of their career would, to an extent, neutralize there problems. The Commission, accordingly, is of view that the existing edge for IAS in the three grades viz. Senior Time Scale, Junior Administrative Grade and Non-Functional Selection grade need to be retained.”

12. The learned counsel appearing for the respondents referred to compliance report which has been submitted by the respondents by way of Misc. Application, which is registered as MA No.386/2011, appending Schedule-D to show batch wise statement for grant of NFU so far as petitioners are concerned. The benefit of 6th CPC has not been extended in favour of the applicants, as the applicant Shri



G.K.Pancholi does not fulfill the requisite eligibility for NFU as he has not completed six years combined regular service in the basic grade pay of Rs. 10000/- (DDG) and G.P. of Rs. 8700/- (Director). So far as petitioner J.V.Natani is concerned, he does not hold the post of Director in the basic grade pay of Rs. 8700/- as such he is not eligible for NFU in the grade pay of Rs. 10000/-. Similarly, details have been furnished in respect of other petitioners in the compliance report in Schedule-D and eligibility of the petitioners have been detailed out and it is submitted that the petitioners are not eligible to get the benefit of 6th CPC.

13. The learned counsel appearing for the petitioners in support of their submissions placed reliance on the judgment rendered by the Apex Court in Anil Ratan Sarkar and others vs. Hirak Ghosh and others, reported in (2002) 4 SCC 21 wherein the Hon'ble Apex Court held that disobedience of a clear and unambiguous order of a court, not capable of more than one interpretation, would amount to contempt of court- There can be no laxity in such a situation, because otherwise court orders would become the subject of mockery and the courts themselves rendered useless. Misunderstanding or own understanding of the court's order, would not be a permissible defence – More so, where the interpretation placed on the order by the contemnor would result in discrimination against a particular group of persons.



14. The learned counsel appearing for the respondents placed reliance in support of their submissions on the judgment rendered by the Hon'ble Supreme Court in the case of Dilip Mitra and another vs. Swadesh Chandra Bhdra and others reported in (2009) 17 SCC 644, wherein the Hon'ble Supreme Court in Para-8 observed as under:-

"8. ... Whether the statute and rules have been complied with or not, whether the complainants concerned fulfilled the necessary qualifications as prescribed in the statute or rules or not are all matters in respect of which there could be a serious dispute. In such matter, it would not be clearly stated that the parties concerned had acted willfully in contempt of the court. In that view of the matter, we think that the High Court is not justified in holding that the appellants were guilty of contempt."

Further referred to the case of Anil Kumar Shahi (2) and others vs. Prof. Ram Sevak Yadav and others, reported in (2008) 14 SCC 115 and more particularly referred to para-50, which reads as under:-

"50. It is by now well settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed "civil contempt" and if need be, can pass



consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the Court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to legal position cannot constitute contempt of Court. There is no willful disobedience if best efforts are made to comply with the order."

15. Having heard the rival submissions of the respective parties and upon careful perusal of the order passed by this Tribunal dated 29th January, 2010 and the circulars/OMs placed on record and also carefully examined the judgments which have been relied upon by the respective parties, as per the applicants, the respondents have committed contempt as they have not rightly interpreted the order which has been passed by this Tribunal and the compliance made is also contrary to the OMs and the Scheme of NFU. On the contrary, the respondents have categorically stated that they have fully complied with the direction issued by this Tribunal and filed compliance report and since the petitioners are not eligible for grant of NFU, therefore, the same has been denied in accordance with Gazette of India Ann.A/1 and OM dated 24.4.2009 and in terms of



Clause (2) of terms and conditions for grant of higher pay scale on non functional basis of officers of organized Group-A service and clause (10) of the same document.

16. We have perused the directions which are required to be complied with by the respondents. As per the averments made by the respondents in para-4 of reply to MA filed on 27.11.2009, wherein it is submitted that GSI consists of a group of services, such as Geology Stream, Geophysical (Expl.) Stream, Geophy (Instt.) Stream, Geo Chemical Stream, Mechanical Stream, Drilling Stream, Mineral Physics Stream etc. and for all such services recruitment rules of respective stream are different. It is further submitted that the comparison with IAS in terms of time scale etc. and its parity in respect of other services of Central Civil Group 'A' needs following conditions:-

- a. Single Recruitment Rules of appointment to all the stream of GSI.
- b. Uniform function responsibility for all Government servants Per Recruitment Rules which is applicable to all IAS candidates.
- c. Formalities of Recruitment Rules under the category of Organized services which is yet to be prepared by GSI.
- d. Notification of 'Organized service' which is till date not done.
- e. As per para 6.4.4. of Promotion Chapter in the Swamy's Establishment and Administration Manual promotion is always prospective.



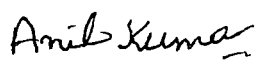
Since this Tribunal has issued direction to the respondents to take steps immediately so that the petitioners and persons similarly situated can get the benefit of recommendations as made by the 6th Pay Commission and the respondents have to frame single recruitment rules for appointment to all the streams of GSI and uniform functional responsibility for all Government servants as per Recruitment Rules which is applicable to all IAS candidates and to complete formalities of recruitment under the category of organized Service and to issue notification of organized service and as per para 6.4.4 of Promotion Chapter in the Sway's Establishment and Administration manual promotion is always prospective. In this regard, the respondents have framed Recruitment Rules for appointment and also completed formalities and notified the organized Group-A service category to comply with the directions and after completion of aforesaid formalities, the compliance order has been passed which has been filed as Schedule-D and on careful perusal of Schedule-D it reveals that direction issued by this Tribunal have been substantially complied with. As per settled proposition of law, new direction in the Contempt proceedings cannot be issued and if the petitioners are not satisfied with the compliance made by the respondents, they are always at liberty to file a substantive OA but in any case, no further direction in the Contempt Petition can be issued.

17. Thus, in our considered view, since the respondents have substantially complied with the direction issued by this Tribunal vide



order dated 29th January, 2010, as such, no contempt is made out. Consequently, the Contempt Petition fails and the same is hereby dismissed. Notices issued to the respondents are discharged.

18. In view of the order passed in the Contempt Petition, no order is required to be passed in MA No.72/2011, 76/201 and 104/2011, which shall stand disposed of accordingly.


(ANIL KUMAR)
Admv. Member


(JUSTICE K.S.RATHORE)
Judl. Member

R/