

**Central Administrative Tribunal
Principal Bench, New Delhi**

**CP No.524/2015 in
OA No.3834/2010 in
MA No.2892/2015**

Order reserved on 22.04.2016
Order pronounced on 24.05.2016

Hon'ble Mr. Sudhir Kumar, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Alok Awasthi (IAS)
Joint Secretary,
Govt. of Chhatisgarh
D 1/1 Govt. Officers Colony,
Devendra Nagar, Raipur. .. Petitioner

(By advocate: Mr. Naresh Kaushik)

Versus

Shri Sanjay Kothari,
Secretary
Ministry of Personnel, P.G & Pensions,
Department of Personnel Training. ...Respondent.
(By Advocate: Shri R.N.Singh)

ORDER

Per Sudhir Kumar, Member (A):

This Contempt Petition has been filed by the petitioner alleging wilful disobedience of the order dated 28.01.2014, pronounced by a Coordinate Bench [including one of us, Sudhir Kumar, Member (A) in OA No.3834/2010, wherein the Tribunal had directed the respondents as follows:

- (i) to verify whether the duty of the post of Assistant Director, Public Relations was comparable with that of Deputy Collector;

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- (ii) to verify whether the service rendered in junior grade, i.e., in the pay scale of Rs.8000-13500 is taken into account for the purpose of giving weightage in fixing the year of allotment of a promotee IAS;
- (iii) to ascertain whether any one appointed as IAS in terms of the Indian Administrative Service (Appointment by Selection) Regulation, 1997 is given the benefit of service rendered by him in the pay scale of Rs.8000-13500 for the purpose of Regulation 3 (3) (ii) (a) & (b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987, even when the duty of the post held by him in the said grade was not comparable with that of Deputy Collector; and
- (iv) in case it is found that the service rendered by promotee in junior grade of Rs.8000-13500 is considered equivalent to the rank of Deputy Collector irrespective of the fact that the duty of the post was not comparable with that of Deputy Collector, or it is found that the duty of the post of Assistant Director, Public Relations held by the applicant for the relevant period is comparable with that of Deputy Director, the official respondent would take into account the service rendered by the applicant from 5.2.1986 to 13.10.1993 for the purpose of fixing his year of allotment in terms of Regulation 3 (3) (ii) (a) & (b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987.

2. The petitioner has submitted that the respondents have failed to take any steps whatsoever towards compliance of the above directions, and that they have wilfully not complied with the specific directions, even though the petitioner had made a representation dated 26.08.2014, praying for compliance of the

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order passed in the OA through Annexure P-2. He again represented on 04.09.2014 through Annexure P-3. Thereafter, through his counsel, a legal notice dated 13.10.2014 (Annexure P-4) was also sent by him, which was followed by another legal notice dated 02.04.2015 (Annexure P-5).

3. The petitioner has alleged that the respondents have taken undue advantage of the fact that no time-bound directions had been given in the Tribunal's order, and there has been deliberate intention of non-action and disobedience of the orders, as is apparent from the fact that the respondents have selected many others as IAS Officers, who were similarly circumstanced officers like the petitioner, from Non-State Civil Services in the Madhya Pradesh Cadre, to the IAS Cadre of the State, and have considered their services as Assistant Director Public Relations, Assistant Director Industries and in Accounts Services, but the petitioner alone has been denied the benefit of his service period in the pay scale of Rs.8000-13500/- while determining his inter se seniority. He has also annexed at Annexure P-6 (colly) a table containing names of 8 officers, and had prayed that the respondents to be proceeded against for committing gross contempt, and for disobeying the directions of this Tribunal. Hence this Contempt Petition.

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4. The petitioner had not filed any draft charges, which he may have sought to be framed under Rule 5(h) of the Contempt of Courts (C.A.T.) Rules, 1992, along with his petition.

5. Notices were issued to the respondents on 17.08.2015. Soon thereafter, MA No.2891/2015 with MA No.2892/2015 were filed by the respondents, praying for extension of time to collect the requisite information from the State of Madhya Pradesh and the State of Chhattisgarh, from whom the information regarding equivalence of posts, as to whether the posts of Assistant Director Public Relations were declared by them to be equivalent to the posts of Deputy Collectors in their State Civil Services or not had been sought and the same was awaited.

6. It was submitted that a meeting had been convened in this regard on 02.02.2014, and reminders had been sent on 22.04.2015 and 10.07.2015, and the matter was actively pursued with the concerned State Governments. Through MA No.2891/2015 filed on 25.08.2015, the respondents had sought extension of time by six months to enable them to fully implement the directions of this Tribunal. MA No. 2892/2015 had been filed praying for condonation of delay in filing of the accompanying MA No.2891/2015, seeking extension of time.

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7. Since both these MAs had been filed together on 25.08.2015, and the time of six months sought for had also expired in the meanwhile, MA No.2892/2015 praying for condonation of delay is allowed, and the MA No.2891/2015 is disposed of as having become infructuous, as the time sought for through that M.A. has already elapsed.

8. However, within that time, the respondents had filed their reply affidavit on 17.11.2015. It was pointed out that since it is the prerogative of the State Government to declare as to whether a particular Non-Civil Service post is equivalent to the post of a Deputy Collector of the State's Civil Service, or its duties are comparable to that of such Deputy Collector, the Government of Chhattisgarh had vide their letter dated 24.04.2014, forwarded a copy of the State Government's order dated 27.12.2006, whereby various Non-State Civil Service posts, including the post of Deputy Director, Public Relations (in the pay scale of Rs.10000-325-15200/-), had been declared equivalent to the post of the Deputy Collector in the State Administrative Service, in terms of duties and importance. The Government of Chhattisgarh had further informed that no order to declare the post of Assistant Director (Public Relations) being equivalent to the post of Deputy Collector in State Civil Service had ever been issued. It was

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further confirmed the petitioner was holding only the post of Assistant Director, Public Relations, in the pay scale of Rs.8000-13500/- on regular basis w.e.f. 05.02.1986 with that State Government.

9. It was further pointed out by the respondents that the UPSC had also been consulted in this matter, and through letter dated 30.01.2015, the UPSC had informed that their role is confined only to the selection of officers, and during the process of selection of Non-State Civil Service Officers for appointment to IAS, the case of the petitioner had been considered for the Select List of 2006, counting the minimum period of eligibility of 8 years of service in the post declared equivalent to the post of Deputy Collector, which in his case started from 01.01.1998 onwards. It was submitted that the period of the petitioner's service from 05.02.1986 to 13.10.1993 was not relevant for the Commission in so far as determining of his eligibility for appointment to the IAS under Non-State Civil Services was concerned.

10. It was further pointed out that though the State Government of Chhattisgarh had declared the post held by the officer during 05.02.1986 to 13.10.1993 equivalent to the post of Deputy Collector retrospectively w.e.f. 05.02.1986, but that had been

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done after he was inducted into IAS, and not before that. It was pointed out that the matter was discussed in the meeting held on 02.02.2015, with the representatives of State Government of Chhattisgarh and the UPSC, wherein it was decided that the State Government of Chhattisgarh would find out from the Government of Madhya Pradesh, where the petitioner was posted, as to whether the post of Assistant Director, Public Relations had been declared equivalent to the post of Deputy Collector of State Civil Services in the State of Madhya Pradesh or not.

11. It was submitted that after issuance of reminders, including D.O. letter dated 30.09.2015 through Annexure R-1 (colly), the State Government of Madhya Pradesh has now provided a copy of their Notification dated 22.05.2010, issued by the Public Relations Department of the Government of Madhya Pradesh, wherein it was declared that the post of Assistant Director, Public Relation was now equivalent to the post of Deputy Collector of the State Civil Services. However, it has still not been clarified whether the post of Assistant Director, Public Relation is equivalent to the post of Deputy Collector of the State Civil Services in terms of duties and responsibilities, and as to whether the proposed revision of

seniority would not substantially affect the existing seniority list, and a large number of promotees and direct recruitees.

12. The State Government of Madhya Pradesh was again requested by the respondents through their letter dated 04.11.2015 to indicate as to whether officers holding the posts of Assistant Director, Public Relations inducted to the IAS, had been given similar benefits in the past by them, but no clarification/information had been provided as to whether the post of Assistant Director, Public Relations, is equivalent to that of Deputy Collector in terms of duties and responsibilities. Some more time was, therefore, sought through their counter reply.

13. When the C.P. was taken up for hearing, learned counsel for the respondents produced a copy of order dated 15.02.2016 which has since been passed by the respondents, which had stated as follows:

"And whereas, the Hon'ble Tribunal vide its order dated 28.1.2014 directed as under:

"... In the circumstances, the Original Application is disposed of with a direction to the official respondents to verify whether the duty of the Post of Assistant Director, Public Relations was comparable with that of Deputy Collector and whether the service rendered in junior grade i.e. in the pay scale of Rs 8000-13500/- is taken into account for the purpose of giving weightage in fixing the year of allotment of a promotee IAS. They

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would also ascertain whether any one appointed as IAS in terms of the Indian Administrative Service (Appointment by Selection) Regulation 1997 is given the benefit of service rendered by him in the pay scale of Rs 8000-13500/- for the purpose of Regulation of 3(3)(ii)(a)(b) of the Indian Administrative Service (Regulation of Seniority) Rules, 1987, even when the duty of the post held by him in the said grade was not comparable with that of Deputy Collector. In case it is found that the service rendered by Promotee in Junior grade of Rs 8000-13500/- is considered equivalent to the rank of Deputy Collector irrespective of the fact that the duty of the post was not comparable with that of Deputy Collector, or it is found that the duty of the post of Assistant Director, Public Relations held by the applicant for the relevant period is comparable with that of Deputy Collector, the official respondent would take into account the service rendered by the applicant from 5.2.1986 to 13.10.1993 for the purpose of fixing his year of allotment in terms of Regulation 3(3) (ii)(a) & (b) of the IAS (Regulation of Seniority) Rules, 1987. No Cost."

And whereas, the Government of Chhattisgarh and Madhya Pradesh (where Shri Awasthi had been posted as Assistant Director Public Relations, were requested to clarify as to whether the post of Assistant Director Public Relations was declared equivalent to the post of Deputy Collector of SCS.

And whereas, in the meanwhile Shri Alok Awasthi filed the Contempt Petition No. 524/2015 in OA No. 3834/2014.

And whereas, the Government of Chhattisgarh and Madhya Pradesh were repeatedly requested to clarify as to whether the notification dated 22.5.2010 could be applied in the .case of Shri Awasthi respectively and whether any officer holding the post of Assistant Director Public Relation or other equivalent post in the scale of pay of Rs 8000-13500/-, has been granted benefit of seniority prior to and after the issue of notification. They

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were also requested to clarify as to whether other officers holding the post of Assistant Director Public Relation or equivalent have been considered at the time of promotion of Shri Alok Awasthi to IAS.

And whereas, the Government of Madhya Pradesh has now intimated that the post of Assistant Director Public Relations has been declared equivalent to the post of Deputy Collector in their State only w.e.f. 22.5.2010 by way of a notification and therefore application of its notification dated 22.5.2010 retrospectively in the case of Shri Awasthi is to be considered at the end of this Department.

And whereas, the State Government of Chhattisgarh has informed that at the time of selection of Shri Alok Awasthi to IAS, the post of Deputy Director, Public Relation was declared to be equivalent to the post of Deputy Collector vide provision of IAS (Appointment by Selection) Regulation, 1997, Rule 3, hence the seniority was declared from the post Deputy Director. Further, the State has never declared the post of Assistant Director as being equivalent to the post of Deputy Collector. Even if, the Government of Madhya Pradesh notification dated 22.5.2010 is taken into consideration, the services rendered by Shri Awasthi as Assistant Director cannot be treated equivalent to the post of Deputy Collector retrospectively. The benefit can accrue only to such non SCS officers of the rank of Assistant Director Public Relation who considered due for promotion to IAS in the year 2010 and beyond. In response to the query whether there have been any cases where benefit of such seniority has been given to the other officers, the State Government has indicated that no cases of this nature have arisen in that state to date.

Now therefore, in compliance of the order dated 28.1.2014 of Hon'ble CAT Principal Bench in OA No. 3834 of 2014 in the matter of Alok Awasthi Vs Union of India and others, it has been ascertained and verified that service rendered by Shri Alok Awasthi in the post of Assistant Director, Public Relation wef 5.2.1986 to 13.10.1993 cannot be treated as equivalent to be the post of Deputy Collector.

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In view of the above facts, the claim of Shri Alok Awasthi to fix his seniority by taking into account the date 05.02.1986 i.e. the date from which he is holding the post of Assistant Director Public Relation is hereby rejected in accordance with the regulation IAS (Regulation of Seniority) Rules, 1987.

Ordered accordingly.”

14. It is, therefore, seen that the equivalence of the posts of Assistant Directors, Public Relations, to the posts of Deputy Collector in the State Civil Services of Madhya Pradesh has been declared only on 22.05.2010 by a Notification, and that Notification was not issued and available when the case of the petitioner was considered for his promotion by Selection to the IAS Cadre.

15. Learned counsel for the petitioner argued that the respondents have deliberately and wilfully disobeyed the order of this Tribunal. However, in view of Para-4 of the Hon’ble Apex Court’s judgment in the case of **J.S. Parihar v. Ganpat Duggar** (1999) 6 SCC 291, since the respondents have now passed a speaking order dated 15.02.2016, it cannot be said that they have not considered the case of the petitioner in terms of this Tribunal’s Order dated 28.01.2014. Therefore, the Contempt Petition does not survive, as the correctness or otherwise of the order now passed cannot be examined in a Contempt Petition.

16. Needless to add that as per the law laid down by the Hon'ble Apex Court in ***J.S. Parihar v. Ganpat Duggar*** (supra), the petitioner would be at liberty to challenge the order passed on 15.02.2016 in a fresh proceeding, as per law, if he so desires.

17. With these observations, this Contempt Petition is closed.
Notice issued earlier is discharged.

(Raj Vir Sharma)
Member (J)

(Sudhir Kumar)
Member (A)

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