

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P.NO.649 OF 2014

(In OA No.1334/13)

New Delhi, this the 13th day of January, 2016

CORAM:

HON'BLE SHRI SUDHIR KUMAR, ADMINISTRATIVE MEMBER

AND

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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A.K.Singh,
PS to MOS (RD),
Ministry of Rural Development,
Government of India,
Krishi Bhawan,
New Delhi

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Petitioner

(By advocate: Ms.Priyadarshi Manish)

Vs.

1. Ajit Seth,
Cabinet Secretary,
Government of India,
Rashtrapati Bhawan,
New Delhi 110014
2. Sanjay Kothari,
Secretary,
Ministry of Personnel, PG & Pension,
Department of Personnel & Training,
Government of India,
North Block,
New Delhi.
3. Archana Varma,
Joint Secretary,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,

Room No. 193,
North Block,
New Delhi 110004

4. Utkaarsh Tewari,
Director (CS-II,
Department of Personnel & Training,
Ministry of Personnel, Public Grievances & Pensions,
Room No. 209,
Lok Nayak Bhawan, Khan Market,
New Delhi 110003 í í í .. Opposite Parties

(By Advocate: Mr.D.S.Mahendru)

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ORDER

RAJ VIR SHARMA, MEMBER(J):

Alleging non-compliance with the order dated 12.5.2014 passed by the Tribunal in OA No.1334 of 2013, the applicant-petitioner filed the present Contempt Petition against the respondent-opposite parties on 26.11.2014.

2. We have perused the records, and have heard Ms.Priyadarshi Manish, the learned counsel appearing for the applicant-petitioner, and Mr.D.S.Mahendru, the learned counsel appearing for the respondent-opposite parties.

3. The order dated 12.5.2014 passed by the Tribunal in OA No. 1334 of 2013 is reproduced below:

õThe OA has been filed by the applicant for non-implementation of the order dated 28.10.2011 of this Tribunal in CCP number 726/2009 wherein the name of the applicant was placed in the select list of 1990 of grade-I of Under Secretary at serial number 82. The Draft CCS Civil list 2012 circulated on

28.12.2012 by the respondents still shows the name of the applicant in the select list of 1994 of Grade-I of Under Secretary.

2. Applicant is aggrieved by this in as much as, according to him, in OA No.991/2003 order was passed on 30.11.2004 allowing application of the applicant with the direction to the respondents to prepare the revised select list. Yet the respondents did not comply. We are further informed today that respondents filed W.P. (C) No.13352/2005 challenging the order of the Tribunal, in which the Honøble High Court has since affirmed the order of the Tribunal.

3. Heard learned counsel for applicant through Ms. Anjali Jha Manish and Mr. D.S. Mahendru, learned counsel, appearing for all respondents.

4. Learned counsel appearing on behalf of contesting respondents states that he is in receipt of a letter dated 27.03.2014 from the Under Secretary to the Government of India, DOP&T, which is on the subject: OA No.1334/2013-CAT, New Delhi-A.K. Singh Vs. Union of India & Others.ö According to the above letter, the placement of the applicant in the appropriate select list for the Director grade is under consideration. Respondentsø counsel informs that necessary action to give consequential promotion and benefits arising out of such promotion as admissible to him would be given expeditiously.

5. We have perused the relief sought in this OA, which is under:-

ã(a) Revised CCS civil list 2012 circulated by OM number 20/01/2012-CS-I(U) dated 28.12.2012 and show the Applicantø name as per the Select List of 1990 of grade-I of Under Secretary at serial number 82-A (below Shri A.L. Chawla at serial number 82 and above Shri P.S. Nair at serial number 83.

(b) Implement the order dated 28.10.2011 bearing applicantø name has been shown as per the Select List of 1990 of grade-I of Under Secretary at serial number 82-A (below Shri A.L. Chawla at serial number 82 and above Shri P.S. Nair at serial number 83.

(c) Revise the select list of Deputy Secretary and Director of selection grade of CSS on regular basis.

(d) The claim of the applicant be considered at par with other similarly placed officers whose names are being shown in the select list of 1990 of grade-I (Under Secretary) who have been considered and empanelled for the post of Joint Secretary to the Government of India on or in-situ/regular basis.

(e) Pass such other order or further order or orders as this Honøble Court may deem fit and proper under the circumstances of the case.ö

6. From the arguments placed today, it appears that the respondents have decided to take action as per the seniority due to the applicant in terms of the aforementioned judgment of the Tribunal duly affirmed by the Honøble High Court. It is expected that respondents shall take such correction on their official records so that there is no ambiguity in future with respect to the revised seniority of the applicant.

7. Apart from the promotion that is due to the applicant which has been listed in Para-8 of the OA, it would also be necessary that the respondents accord promotion to the applicant according to the revised select list inter alia implying that he shall be governed by the principle of being promoted at least on the date on which his immediate junior was promoted, subject to his being eligible for consideration on those dates. A letter of the respondents dated 27.03.2014 shows that the applicant has been placed in the revised select list for Deputy Secretary and action is being taken to include him in the select list for Director as well. Counsel for applicant informs that his junior having been promoted as Joint Secretary, it would require that the respondents also give promotion to the applicant against the post of Joint Secretary keeping in view his revised seniority.

8. We, therefore, expect that the respondents shall now take time bound action to accord necessary promotion to the applicant in terms of revised select list till such level and grade to which his immediate juniors have been promoted. This action shall be taken within a period of three months within which the respondents would communicate to the applicant the action taken along with the basis of such action. All consequential reliefs arising out of above shall be regulated by the respondents within the aforementioned period in terms of the applicable rules and instructions. Applicant's counsel states that given the past history of litigation wherein the applicant had to move three contempt petitions for enforcing the directions of the Tribunal, the applicant apprehends that respondents may further delay the implementation of the aforementioned directions in this OA. We expect that the respondents would ensure that the aforesaid directions are implemented within the time granted and would act promptly. OA is disposed of with the aforementioned directions. No costs.

4. On a perusal of the records, we have found that in compliance with the Tribunal's order dated 30.11.2004 passed in OA No.991 of 2003, and the order dated 12.5.2014 passed in OA No.1334 of 2013, the respondent-opposite parties have issued (i) order dated 28.10.2011 (ii) order dated 26.11.2013, (iii) order dated 4.12.2014, revising the Select Lists of CSS Grade I (Under Secretary), Selection Grade (Deputy Secretary), and Senior Selection Grade (Director) and assigning appropriate positions to the applicant-petitioner therein.

4.1 We have also found that the respondent-opposite parties, vide order dated 28.1.2015, appointed the applicant as Joint Secretary (in-situ) in SAG with effect from the date of his assumption of charge in the Ministry/Department to which he was posted. The respondent-opposite parties again issued order dated 27.2.2015 notionally promoting the applicant to the CSS Grade I (Under Secretary), Selection Grade (Deputy Secretary), and Senior Selection Grade (Director) with effect from the date when his junior was appointed/promoted to the said grades. The Ministry of Commerce & Industry, Department of Commerce (Supply Division) issued

order dated 3.3.2015 reckoning the dates of notional promotion of the applicant-petitioner to CSS Grade I (Under Secretary), Selection Grade (Deputy Secretary), and Senior Selection Grade (Director) in accordance with the DoP&T's O.M. dated 27.2.2015, *ibid*, and for re-fixation of the applicant-petitioner's pay in those grades.

5. The applicant-petitioner complains that his immediate junior was promoted to the post of Joint Secretary on 29.10.2012, whereas the respondent-opposite parties issued office order dated 28.1.2015, *ibid*, promoting him to the post of Joint Secretary with effect from the date of his assumption of charge. According to the applicant-petitioner, in compliance with the Tribunal's order dated 12.5.2014 passed in OA No.1334 of 2013, the respondent-opposite parties, by applying the Next Below Rule, ought to have issued the order promoting him to the post of Joint Secretary with effect from 29.10.2012, i.e., the date of promotion of his immediate junior. Hence, the applicant-petitioner alleges that the respondent-opposite parties, having failed to appoint him to the post of Joint Secretary with effect from the date of promotion of his immediate junior to the said post, have not fully complied with the Tribunal's order dated 12.5.2014 and have thereby committed contempt of this Tribunal.

6. Cotroverting the above plea of the applicant-petitioner, it has been asserted by the respondent-opposite parties that the Central Secretariat Service consists of the following posts:

- (i) Assistant (Group B, Non-Gazetted)

- (ii) Section Officer (Group B, Gazetted)
- (iii) Grade I, i.e., Under Secretary (Group A)
- (iv) Selection Grade, i.e., Deputy Secretary (Group A)
- (v) Senior Selection Grade, i.e., Director (Group A)

The posts of Joint Secretary and above are not cadre posts of Central Secretariat Service and, as such, there is no normal line of promotion available from the grade of Director to the grade of Joint Secretary within the Central Secretariat Service. Since the posts under Central Staffing Scheme are selection posts, the Next Below Rule is not applicable to the case of promotion of Central Secretariat Service officers to any of those posts.

7. The applicant has not refuted the above assertion of the respondent-opposite parties, nor has he placed any material before this Tribunal to substantiate his plea that the post of Joint Secretary is a cadre post of CSS, and the Next Below Rule is applicable for promotion of a CSS officer from the grade of Director to the post of Joint Secretary. The DoP&T's O.M. dated 20.7.2010 (Annexure P-6) and O.M. dated 30.6.2015 (Annexure P-7), the DoP&T's order dated 5.8.2015 (Annexure P-9), and the Central Staffing Scheme (Annexure P-10), which have been referred to by the applicant in support of his contention that the Next Below Rule is applicable to the case of promotion of CSS officers from the grade of Director to the grade of Joint Secretary, do not go to show that the post of Joint Secretary is a cadre post of CSS, and the Next Below Rule is

applicable to the case of the applicant-petitioner for promotion from the grade of Director to the post of Joint Secretary. Furthermore, the question as to whether, or not, the Next Below Rule is applicable to the case of the applicant-petitioner for promotion from the grade of Director to the grade of Joint Secretary cannot be gone into by the Tribunal in the present proceedings.

8. It has also been complained by the applicant-petitioner that the respondent-opposite parties, having not complied with the Tribunal's order dated 12.5.2014 passed in OA No.1334/13 within the period stipulated in the order, are liable to be proceeded against under the Contempt of Courts Act. Though there is some delay on the part of the respondent-opposite parties in complying with the Tribunal's order and in issuing the consequential orders in favour of the applicant-petitioner, yet, considering the entire factual matrix, we do not find a *prima facie* case of contempt to have been made out by the applicant-petitioner against the respondent-opposite parties. It is trite law that contempt jurisdiction is to be exercised sparingly and in very deserving cases only and not casually. Such a power is not intended to be exercised as a matter of course.

9. Accordingly, the Contempt Petition is dismissed, and the notices issued against the respondent-opposite parties are discharged. Consequently, all pending MAs are disposed of. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER