

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

C.P. No.362 of 2016
in
O.A. No.1808 of 2013

Orders reserved on : 07.09.2018

Orders pronounced on : 12.09.2018

**Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Dr. Rajesh Kumar
S/o Shri Kali Ram,
R/o House No.11, Sector 15,
Sonipat, Haryana.

....Applicant

(By Advocate : Shri Naresh Kaushik)

VERSUS

1. Smt. M. Sathiyavathy, Secretary (L&E)
M/o Labour & Employment,
Shram Shakti Bhawan,
New Delhi-110001.
2. Shri Pravin Srivastava, D.D.G. (Emp.)
Director General of Employment & Training,
Shram Shakti Bhawan,
New Delhi-110001.

.....Respondents

(By Advocate : Shri Gyanendra Singh)

O R D E R

Ms. Nita Chowdhury, Member (A):

The petitioner (ex-Senior Programmer) has filed this Contempt Petition alleging that the respondents did not implement the direction issued by this Tribunal in its Order dated 24.3.2015 in OA No. 1808/2013. The operative part of the said Order reads as under:-

“7. OA-2246/2011 was disposed of by this Tribunal with a direction to the respondents to frame the unified seniority list of the cadre of Deputy Directors within a period of three months. Accordingly, we also disposed of this O.A. with a direction to the respondents to prepare a unified seniority list of the cadre of Asstt. Director/including Programmers or otherwise within a period of three months from the date of receipt of a certified copy of this order. Thereafter, they are directed to convene the DPC and consider the applicant for promotion in accordance with law. No costs.

2. The petitioner contends that after receipt of aforesaid Order of this Tribunal, he sent the same along with his letter dated 7.4.2015 to the respondent to comply with the said Order of this Tribunal. Thereafter, the petitioner also sent reminders but when nothing has been done by the respondents in furtherance of the directions of this Tribunal, the petitioner left with no option except to prefer the present Contempt Petition on 25.7.2016.

3. Notice was issued to the respondent on 2.8.2016 and thereafter some opportunities were granted to the respondent to file compliance affidavit and on 10.11.2016, this Tribunal on the basis of submissions made by learned counsel for the respondent that the respondents are in the process of implementing the directions of this Tribunal, granted some more time to the respondent to report full compliance and the applicant was also permitted to initiate steps for impleading personnel, who may be responsible for the compliance. On the next date of hearing, i.e., 16.1.2017, counsel for the applicant submitted that he has filed amended memo of parties and the registry was directed to place the same on

record. On the next date of hearing, i.e., on 15.2.2017, this Tribunal observed that last reply filed by the respondents on 9.9.2016 was not found to be satisfactory and this Tribunal granted time upto 15.2.2017 to report full compliance and on that day, when learned counsel for respondents sought final opportunity to report compliance, this Tribunal granted two weeks' further time to the respondents for filing compliance/status report. This case was listed on some dates and finally the respondents have filed their compliance affidavit on 15.2.2018.

4. In the said compliance affidavit, it is stated that after obtaining the approval of DOP&T dated 17.8.2016, an Office Order dated 11.11.2016 (Annexure-I) was issued with the approval of competent authority regarding merger of the single post of Programmer with the cadre of Assistant Directorate of Employment (ADE) in the pay scale of Rs.56,100/- (Level-10) as per the 7th CPC (pre-revised Rs.15,600-39,100/- (PB-3) + Rs.5,400/-) under the Directorate General of Employment, Ministry of Labour and Employment and it is further stated that the merger of the post of Programmer with ADE will be effective from the date of notification of the amendment of Recruitment Rules, 2015 for the post of ADE and no claim to seniority/promotion in said cadre of ADE prior to the date of notifying of the amendment in Recruitment Rules. Thereafter the amended Recruitment Rules for the post of ADE (Group 'A' posts) after taking the

approval of DOP&T, UPSC and duly vetted by Ministry of Law & Justice were notified on 13.7.2017 and published in Gazetted of India (Annexure -II).

4.1 They further stated that a fresh provisional seniority list of ADE as on 13.7.2017, that is the date on which new RRs of ADE were notified, after excluding the names of the officers who were already promoted in their respective cadres and have retired before notification of new RRs of ADE, 2017, was prepared and circulated vide circular dated 7.11.2017(Annexure-III) amongst all the concerned ADEs for checking and verifying the records and if any errors and omissions are found, may be reported to the respondents within 15 days and final Seniority List of ADE as on 13.7.2017 was issued on 16.1.2017 (Annexure-IV). However, the name of the petitioner is not to be included in the draft Seniority List of ADE as the petitioner, the then Programmer has taken VRS from service on 11.8.2014 (Annexure-V).

4.2 The respondents further contended that in the case of **Om Pal Singh**, on the basis of which this Tribunal disposed of the OA vide Order dated 24.3.2015, non-compliance of which is alleged in the present contempt petition, the Hon'ble High Court observed that :-

“Not only that after the framing of the recruitment rule, it is required that a proper seniority list is prepared on the basis of a settle principle of law. The delay in framing recruitment rule would not be justifiable reason to go ahead in filling up the 2 posts of Joint Director.

Thereafter an SLP No.3451/2014 was filed before the Hon'ble Supreme Court against the said Order of the Hon'ble Delhi High Court in WP(C) No.4055/2012 by the respondents and the same was dismissed by the Hon'ble Supreme Court vide Order dated 8.5.2014.

4.3 According to the said directions of the Hon'ble High Court in the case of **Om Pal Singh**, after framing/notification of the new RRs on 4.3.2015, combined Unified seniority list was to be prepared. The new RRs were notified on 4.3.2015 and a combined Unified Seniority List was prepared. A fresh DPC was conducted as per new RRs and the said Shri Om Pal Singh was promoted to the post of JDE w.e.f. 24.7.2015, i.e., after notification of new RRs.

4.4 They further submitted that as per the DOP&T guidelines, the Recruitment Rules are statutory in nature and they cannot be made applicable from a retrospective date. Hence, the RRs notified on 13.7.2017 cannot be made applicable from retrospective date and further the petitioner has taken voluntary retirement from service on 11.8.2014 (F/N) and therefore, the DPC of the applicant could not be made as per law.

5. During the course of arguments, Shri Naresh Kaushik, learned counsel for the petitioner, very vehemently contended that the applicant has filed the OA in 2013 seeking the same relief as has been granted to one **Shri Om Pal Singh** by this Tribunal and this Tribunal vide Order dated 24.3.2015

granted the said benefits to the applicant but the respondents have deliberately and willfully not complied with the same which act of the respondents compelled the applicant to file the present Contempt Petition and the contemnors are liable to be prosecuted in terms of the provisions of Contempt of Court's Act.

5.1 Counsel for the petitioner further submitted that due to malafide and lackadaisical approach of the alleged contemnors in the matter of promotion of the petitioner, the petitioner had submitted his request for voluntary retirement from service and the same was accepted by them.

6. Counsel for the respondents submitted that after receipt of the order of this Tribunal dated 24.3.2015, non-compliance of which is alleged in the present contempt petition, the respondents have immediately sent the proposal to the DOP&T on 23.4.2015 and DOP&T returned the proposal on 4.8.2015 with certain remarks and in view of the advice of DOP&T the issue of merger of post of Programmer with the post of ADE was further examined in the Directorate General of Employment and it was considered and decided that the post of Programmer could be merged with the post of ADE as per the revised RRs. The proposal to merge and to amend the RRs notified on 4.3.2013 along with requisite functional justification was again submitted to DOP&T for their consideration on 15.9.2015. The DOP&T has concurred with the proposal on 3.11.2015 and advised to place the

amendment in RRs on the website before notifying the RRs, which were accordingly circulated on 29.4.2016 and finally after consideration of the representations submitted against the said amendment in the RRs, a proposal was sent to DOP&T on 30.6.2016 and the DOP&T concurred the draft notification on 17.8.2016 to amend the RRs to give effect to the merger of the single post of Programmer with the cadre of ADE and the DOP&T also advised to consult UPSC and Ministry of Law in this regard while implementing the orders.

6.1 The proposal has been sent to Department of Legal Affairs on 22.8.2016 and the Legal Advisor (Labour & Employment) advised on 24.8.2016 to first obtain advice of UPSC and then submit the same to Legal Advisor (Labour & Employment).

6.2 Accordingly, the proposal was being sent to the UPSC for obtaining their advice to amend the RRs to give effect to the merger of single post of Programmer with the cadre of ADE. After taking approval of the DOP&T, UPSC and duly vetted by Ministry of Law & Justice, the RRs were notified on 13.7.2017 and published in Gazette of India. Accordingly, a fresh provisional seniority list of ADE as on 13.7.2017, that is the date on which new RRs of ADE were notified, after excluding the names of the officers who were already promoted in their respective cadres and have retired before notification of new RRs of ADE, 2017, was prepared and circulated vide circular dated 7.11.2017 (Annexure-III)

amongst all the concerned ADEs for checking and verifying the records and if any errors and omissions are found, may be reported to the respondents within 15 days and final Seniority List of ADE as on 13.7.2017 was issued on 16.1.2017 (Annexure-IV). However, the name of the petitioner is not to be included in the draft Seniority List of ADE as the petitioner, the then Programmer has taken VRS from service on 11.8.2014 (Annexure-V).

6.3 Lastly, counsel for the respondents submitted that due to procedural requirements as stated above, there is some delay to comply with the directions of this Tribunal but the same is neither intentional nor deliberate but due to the facts and circumstances explained as above.

7. Counsel for the petitioner in rebuttal contended that the import of the judgment rendered by this Tribunal in the case of **Om Pal Singh**, which was upheld by the Hon'ble High Court and the Hon'ble Supreme Court, and the OA preferred by the petitioner was also disposed of in terms of directions in the said case, is wrongly interpreted by the respondents by placing reliance on the amendment of the rules, which was not at all the subject matter of directions in the case of Om Pal Singh or in the case of Petitioner. The said Om Pal Singh had been allowed the benefit of promotion to the next higher post of Deputy Director in terms of the Office Order dated 16.1.2008 vide Order dated 2.12.2010. Counsel further submitted that petitioner should have been included in the

feeder cadre of post of ADE for further promotion to the post of Deputy Director Employment (numbering 28) in due course and this exercise did not require any amendment to the rules and hence, with malafide intention, the respondents have taken a plea of amendment of rules which amounts to further contempt of Court.

8. We have heard learned counsel for the parties and have perused the material placed on record.

9. It is admitted position that the OA preferred by the petitioner was disposed of in terms of directions given by this Tribunal in the case of **Om Pal Singh** and the Order passed in the said **Om Pal Singh's** case was challenged by the respondents before the Hon'ble Delhi High Court and the High Court vide its Order dated 3.10.2013 observed as under:-

“11. It is an accepted position that a decision has been taken by the petitioners to amalgamate 7 posts to form a feeder cadre for the post of Joint Director in the year 2008/2010. Once a decision has been taken the petitioners are required to honour the same by framing recruitment rule in consultation with the different authorities. Instead of doing the same the filling up of 2 vacancies from the erstwhile feeder posts of Deputy Director of Employment Exchange and Senior Scientific Officer Grade-I is not tenable.

12. Not only that after the framing of the recruitment rule, it is required that a proper seniority list is prepared on the basis of a settle principle of law. The delay in framing recruitment rule would not be justifiable reason to go ahead in filling up the 2 posts of Joint Director.”

10. From the aforesaid observations of the Hon'ble Delhi High Court, it is quite clear that the respondents were required to honour their decision to amalgamate 7 posts to form a feeder cadre for the post of Joint Director, as taken by them in the year 2008/2010, by framing recruitment rule in consultation with the different authorities and this Tribunal vide Order dated 24.3.2015 in the OA No. 1808/2013 preferred by the petitioner directed the respondents to frame a unified seniority list of the cadre of Asstt. Director/including Programmers or otherwise, within a period of three months from the date of receipt of certified copy of said Order. Therefore, the direction given in the said Order is to frame a unified seniority list of cadre of Asstt. Director/including Programmers and the Hon'ble Delhi High Court in the case of **Om Pal Singh** observed that '*Once a decision has been taken the petitioners (respondents herein) are required to honour the same by framing recruitment rule in consultation with the different authorities.*' and there is an inordinate delay in finalizing the same in the case of the petitioner due to procedural requirements as stated by the respondents in their compliance affidavit and when they finalized the same by that time, the petitioner had already taken voluntary retirement on 11.8.2014 and his name could not be included in the list so prepared by the respondents. As such the contentions of the learned counsel for the petitioner that there was no requirement of any amendment to the

Recruitment rules is not sustainable in view of the categorical findings recorded by the Hon'ble Delhi High Court while dismissing the Writ Petition preferred by the respondents in the case of **Om Pal Singh**.

11. It is relevant to mention here that service jurisprudence does not recognize the jurisprudential concept of deemed retrospective promotion and unless there exists a rule or there exists a residual power and in exercise of the implementation of the rule or in exercise of power conferred by the residual rule a decision is taken or can be taken to grant retrospective promotion, no person can claim a right to be promoted from the date when the vacancy accrued and he must take the promotion with its benefits from the date of actual promotion.

12. In view of the above, for the foregoing reasons, the present Contempt Petition is dismissed. The notices issued to the respondents are discharged.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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