

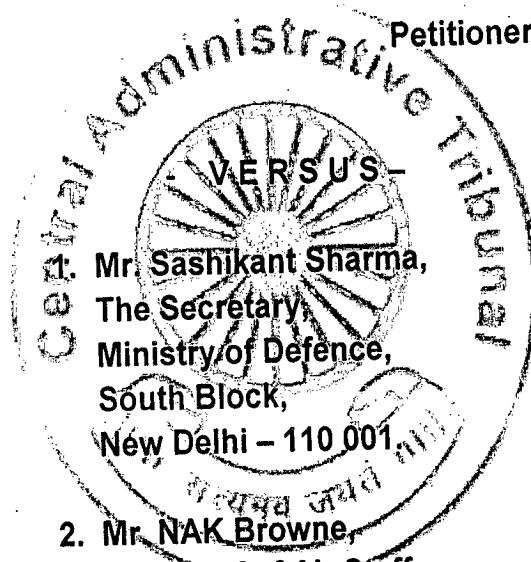
CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. CPC. 49 of 2013
(O.A. 1182 of 2010)

Date of order: 6th June 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Monojit Mondal,
Son of Shri Mukunda Mondal,
Aged about 40 years,
Residing at Village – Chota Kantalia,
Post Office – Sewti Telenipara,
District – North 24-Parganas.



1. Mr. Sashikant Sharma,
The Secretary
Ministry of Defence,
South Block,
New Delhi – 110 001

2. Mr. NAK Browne,
The Chief-of-Air-Staff,
Indian Air Force Headquarters,
Vayu Bhawan,
New Delhi – 110 001.

3. Mr. A.R. Shindye,
The Group Captain,
Station Commander,
6, Wing Air Force,
Air Force Station, Barrackpore,
District – North- 24 Parganas
Pin – 700 120.

4. Mr. S. Nayak,
The Squadron Leader,
Officer-in charge,
Civil Administration,
6, Wing Air Force,
C/o. 99, APO Air Force Station,

Attn:

Barrackpore,
District – North 24 Parganas
Pin – 700 120.

.. Contemnors/Respondents

For the Petitioner : **Mr. P.C. Das, Counsel**
Ms. T. Maity, Counsel

For the Contemnors : **Mr. S.K. Bhattacharyya, Counsel**

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This CPC has been filed on 21.6.2013 on the alleged non-compliance of the orders of this Tribunal passed in O.A. no. 1182 of 2010 dated 6.6.2012. The orders of this Tribunal dated 6.6.2012 were as follows:-

"13. In view of above, both in terms of merit and points of Law, we feel that justice will be done, if the case of the applicant is considered, at this stage, on the same footing of the applicants of O.A. no. 311 of 1999 in the light of the judgments passed by this Tribunal on 31st March, 2004 in the concerned Miscellaneous Application of M.A. 168 of 2004 and on 27th July, 2006 in O.A. 311 of 1999. Hence ordered, the Respondent No. 3 will consider the case of the applicant as per the scheme in vogue, and in the light of the judgments mentioned above following the same yardsticks as was done in the case of Sri Sumanta Halder the main applicant of O.A. 311 of 1999, within three months from the date of the receipt of this order."

2. As reference has been made in the said order of the Tribunal to earlier judgments dated 31.3.2004 in M.A. No. 168 of 2004 and that dated 25.7.2006 in O.A. No. 311 of 1999, the same is reproduced below for purpose of reference and analysis:-

"Extracts of order dated 25.7.2006 in O.A. 311 of 1999:

6. The sole point to be answered in this O.A. is whether the applicants have fulfilled the conditions laid down in the scheme of 1997 for conferment of temporary status and regularization. At the very outset it is to be made clear that the applicant are seasonal workers and the nature of work requires a particular standard of physical fitness and, therefore, continuance or repeated engagements of a candidate year after year does not depend merely on seniority but only on his physical fitness. Further, the job being of seasonal nature and no post having been sanctioned for such work, it is not the vested right of the applicants to claim regularization de hors the post or recruitment rules. In other words, the applicants' claim for regularization is not based on any vested right of theirs and, therefore, that prayer is liable to

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be rejected being without merit. We order accordingly. However, as the respondent department has framed a Scheme and so long as the applicants would come within the ambit of the Scheme, they will be entitled to the benefit of the Scheme. To that extent, the applicants are entitled to the relief. We, therefore, dispose of this O.A. giving a direction that as and when the applicants will fulfil the Scheme Conditions, we hope and trust that the respondents will consider their claim for grant of temporary status as well as for regularization in terms of the provisions of the Scheme."

Extracts of Order dated 31.3.2004 in M.A. 168 of 2004:

"17. Accordingly, we dispose of this M.A. with a direction to the respondents to strictly follow the scheme as framed by the Govt. in the matter of re-engagement of AML during the ensuring malaria season keeping in view the observations made above. In other words, the persons in the national seniority list, unless they were unwilling or are not available, should be re-engaged on the basis of their previous performance report and health condition without subjecting them to any other fresh selection process as provided in the scheme."

3. The Tribunal, while disposing of O.A. no. 1182 of 2010, had:-

- (a) Observed that, according to them, justice will be done if the case of the applicants is considered at this stage on the same footing as the applicants of O.A. No. 311 of 1999 in light of judgment passed by the Tribunal on 31.3.2004 in connected Miscellaneous Application being M.A. No. 168 of 2004 and on 25.7.2006 in O.A. No. 311 of 1999.
- (b) Ordered that respondent No. 3 will consider the case of the applicant as per the Scheme in vogue, and in the light of the judgment mentioned above following the same yardstick as was done in the case of Shri Sumanta Halder, the main applicant of O.A. No. 311 of 1999.
- (c) Allowed respondent No. 3 to comply with the orders within three months from the date of receipt of the order.

The observations of the Tribunal were based on the orders in O.A. No. 311 of 1999 in which the Tribunal directed that as and when the applicants will fulfil the Scheme conditions, it hopes and trusts that the respondents will consider the claim of the applicants for grant of temporary status as well as for regularization in terms of the provisions of the Scheme. The directions in M.A. No. 168 of 2004 were that

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respondents were to strictly follow the Scheme as framed by the Government in the matter of re-engagement of AML during the ensuing malaria session. The Tribunal, in M.A. No. 168/2004, further clarified that persons in the notional seniority list, unless unwilling or non-available, should be re-engaged on the basis of their previous performance and health conditions without subjecting them to any other fresh selection process. It is to be noted here that the Scheme was introduced on 16.12.1994, further extended for grant of temporary status and regularisation of Gr. "D" vacancies vide circular dated 21.8.1997 and was in vogue during the passing of the orders in O.A. No. 311 of 1999.

While disposing of O.A. No. 1128 of 2010, the Tribunal's categorical order was that the case of the applicant will be decided as per the Scheme in vogue in the light of judgment in M.A. No. 168 of 2004 and O.A. No. 311 of 1999 following the same yard-sticks as in the case of Shri Sumanta Halder, the first applicant in O.A. No. 311 of 1999.

The pleadings of the respondents, as noted in para 4 of the order of the Tribunal dated 6.6.2012, states that the respondents had argued as follows:-

- (i) The applicant was not sponsored by Employment Exchange in 1994;
- (ii) The applicant was not continuously working in the Office for two consecutive years and did not fulfil any criteria for grant of temporary status and regularisation;
- (iii) Shri Sumanta Halder, the applicant in O.A. No. 311 of 1999 was appointed during the malaria season in 1991 and was senior to the applicant.
- (iv) The applicant had not completed 10 years of appointment nor fulfilled other conditions of service.

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Nowhere, however, it has been recorded in the said order that the Scheme was not in vogue when the Tribunal had passed its order on 6.6.2012.

It is a matter of record that no Review was prayed for by the respondents to the order dated 6.6.2012.

4. The respondents, had thereafter, filed an M.A. No. 482 of 2012 arising out of O.A. No. 1182 of 2010 in which they had sought three months' time for implementation of the order. The Court disposed of the same on 21.11.2012 granting the respondents two months' time for compliance.

5. The behaviour of the respondents has been rather strange. While no review was filed against the Tribunal's order dated 6.6.2012 and time was sought for implementation of the order, the respondents approached the Hon'ble High Court in WPCT No. 448 of 2012 which was dismissed by the Hon'ble High Court on the grounds that when the petitioner's themselves, in the pleadings of the Miscellaneous Application being M.A. No. 448 of 2012 filed before the Tribunal, had assured the Court of their desire to implement the Tribunal's orders, the Hon'ble High Court had no reasons to entertain the petition.

6. The respondents kept playing hide and seek in the various judicial fora, committing to comply before the Tribunal and simultaneously challenging the order before the Hon'ble High Court at Calcutta. Accordingly, the Tribunal issued notice upon the respondents to show-cause as to why contempt proceedings should not be initiated against them. In a knee jerk reaction, the respondents thereafter passed a speaking order dated 2.8.2013 which was communicated to the applicant on 3.8.2013 by speed post.

Although the order was communicated on 3.8.2013 and the Id. Counsel for the alleged contemnors had submitted on 5.8.2013 that the order had been complied with, and it is recorded that such compliance report was actually filed on 16.8.2013 and received by the petitioner on 16.8.2013, on 23.1.2014, a notice was issued under Rule 8 of Contempt of Court (CAT) Rules, 1992. Once again

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directions were issued on 3.4.2014 and 7.5.2014 calling for the compliance report and the matter was listed subsequently thereafter.

7. The speaking order dated 2.8.2013 is perused. The main criteria on which the compliances were to be ensured were as follows:-

- (i) The applicants will fulfil the Scheme conditions;
- (ii) The respondents are to strictly follow the Scheme as framed by Government in re-engagement of AML and that the yard-sticks followed particularly in the case of Shri Sumanta Halder in O.A. No. 311 of 1999 are to be adhered to. The speaking order states that:
 - (i) The Scheme of engagement of SAML under the Scheme has been discontinued w.e.f. the year 2007. This fact, however, was not brought to the notice of the Tribunal in the pleadings in O.A. No. 1128 of 2010.
 - (ii) That, the applicants in O.A. No. 311 of 1999 were re-engaged when the Scheme was in vogue and that they were regularised after completion of requisite years of service as well as in terms of educational qualification and hence the yardstick followed in the case of Sumanta Halder in O.A. No. 311 of 1999 cannot be made applicable in the case of the petitioner who did not fulfil the requisite yardsticks.

8. A supplementary affidavit had been filed by the petitioner raising the matter of one Shri Jasomonjoy Paul, who was apparently has been regularised despite his seniority being lower than that of the applicant and that the applicant possessed the requisite educational qualifications thereby countering the contentions of the speaking order that he did not possess the requisite educational qualifications as required under the Scheme.

9. As our limited role is to examine compliance of the Tribunal's order dated 6.6.2012 in O.A. No. 1182 of 2010, fresh evidence and arguments as advanced in the supplementary affidavit cannot be accepted at the stage.

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10. In our considered view, the orders of the Tribunal have been complied with by the respondents inasmuch as the yardsticks extended to applicants in O.A. No. 311 of 1999 have been examined vis-à-vis the petitioner.
11. The CPC, hence, deserves to be dropped and notices discharged.
12. If, however, the petitioner is aggrieved with the speaking order dated 2.8.2013, the petitioner will be at liberty to challenge the same in a fresh Original Application bringing forth his counter arguments. As the CPC was pending for orders, however, delay, if any, will be waived in this context.
13. With this, the CPC is disposed of. No costs.

