

(RESERVED ON 28.11.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD
(CIRCUIT BENCH SITTING AT NAINITAL)

This is the 13TH day of **FEBRUARY, 2019**.

CONTEMPT PETITION NO. 331/85/2017
IN
ORIGINAL APPLICATION NO. 331/1180/2007

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR MOHD. JAMSHED, MEMBER (A).

1. Deo Pal aged about 63 years son of Late Ram Gopal, R/o H. No. 165 Tapovan Enclave, P.O. Tapovan Ashram, Raipur Road, Dehradun.
2. Sanjay Garg Son of Sri Mahesh Chandra Garg, R/o H. No. 99 Govindgarh, Dehradun, presently working as Works Manager, Director Northern Printing Group Survey of India, Dehradun.
3. Yogesh Kumar Sharma, Son of Sri Vishnu Dutt Sharma, R/o H. No 611 Bhagwanganj Mandi, Modinagar, Ghaziabad, presently posted as Works Manager under Director Western, Printing Group, Survey of India, Palam Village Road, New Railway Crossing, Delhi Cantt.-110010.

.....Applicants.

VERSUS

1. Sri Ashutosh Sharma, Secretary Ministry of Science and Technology, Technology Bhawan, New Mehrauli Road, New Delhi.
2. Dr. S. Subba Rao, The Surveyor General of India, Office of the Surveyor General, Hathi Barkala, Dehradun, Uttarakhand.

.....Respondents

Advocate for the Applicants : Shri Ashish Srivastava

Advocate for the Respondents : Shri P K Rai

ORDER
(Delivered by Hon'ble Mr. Mohd. Jamshed, Member-A)

This Contempt Petition has been filed against the respondents for disobeying the order dated 13.06.2016 passed in OA No. 1180 of 2007 – Dev Pal and others Vs Union of India and others). The operative portion of the order dated 13.06.2016 passed in OA No. 1180 of 2007 is reproduced is as under:-

"6. It is not disputed that the case of the applicant was dealt with by the 5th CPC and for the isolated post recommendation has also made by the 5th CPC and on the basis of that the respondents also acted upon but without bearing any fruit. The counsel for the applicant showed that the issue involved in this case about promotional

avenues of isolated posts has already been taken care by the respondents and the respondents themselves have acted upon the isolated post of Mathematical Advisor and approved the conversion of one post of Mathematical Advisor into Deputy Superintendent Surveyor. Hence, we feel in the interest of justice the respondents shall decide the cases of the applicants herein in the light of the decision taken by them by letter dated 10/15.10.1990 in the case of Mathematical Advisor."

7. Accordingly, the Original Application is disposed of with a direction to decide the cases of the applicant within a period of six months from the date of receipt of a certified copy of this order. No costs."

2. Thereafter, the compliance affidavit dated 22.10.2017 was filed on behalf of respondent no. 2 in which it was submitted that in compliance of the order dated 13.06.2016 passed in OA No. 1180 of 2007, a detailed and reasoned speaking order dated 01.06.2017 was passed. The relevant portion of the order dated 01.06.2017 is reproduced below:-

"Shri Deo Pal, Works Manager (since retired), Shri Sanjay Garg and Shri Yogesh Kumar Sharma filed an OA No. 1180/2007 in Hon'ble Central Administrative Tribunal, Allahabad Bench, Allahabad in the subject matter. The Hon'ble Central Administrative Tribunal, Allahabad, Circuit Sitting at Nainital disposed of the OA vide order dated 13-6-2016 with directions as under:-

"It is not disputed that the case of the applicant was dealt with by the 5th CPC and for the isolated post, recommendation has also made by the 5th CPC and on the basis of that the respondents also acted upon but without bearing any fruit. The counsel for the applicant showed that the issue involved in this case about promotional avenues of isolated posts has already been taken care by the respondents and the respondents themselves have acted upon on the isolated post of Mathematical Advisor and approved the conversion of one post of Mathematical Advisor into Deputy Superintending Surveyor. Hence, we feel in the interest of justice the respondents shall decide the cases of the applicants herein in the light of the decision taken by them by letter dated 10/15.10.1990 in the case of Mathematical Advisor."

2. The undersigned carefully considered the issue of inclusion of isolated posts of Works Manager to the existing cadre of Deputy Superintendent Surveyor in Organized Survey of India Group 'A' Service in light of the decision taken in case of Mathematical Adviser and on the basis of relevant facts and record. The observations of the undersigned on the issue are as under:-

(i) Earlier, the post of Mathematical Adviser was included in the Survey of India Group 'A' Service for the purpose of promotion to the grade of Superintending Surveyor, Mathematical Advisers after initial appointment as per its Recruitment Rules were subsequently promoted to Organized Survey of India Group 'A' Service. In this regard sub-para (1) of para 2 of Appendix 1 to the Survey of India Group 'A' Recruitment Rules, 1960 may

be please referred to. In this way the post of Mathematical Advisor was treated at par with Deputy Superintending Surveyor for the purpose of promotion to the post of Superintending Surveyor. However, the post of Works Manager is not included in Survey of India Group 'A' Service for this purpose. Thus on this account, the post of Works Manager is not at par with Deputy Superintending Surveyor.

3. Both Mathematical Adviser and Deputy Superintending Surveyor were Group 'A' posts in the same pre-revised pay scale of Rs. 2200-4000. In the instant case Works Manager is a Group 'B' post in Level 7 of Pay Matrix of Rs. 44900 to 142400 and Deputy Superintending Surveyor is a Group 'A' post in Level 10 of Pay Matrix of Rs. 56100 to 177500.

In view of the facts stated above, the case of inclusion of Works Manager to the post of Deputy Superintending Surveyor is not similar to the case of inclusion of Mathematical Adviser to the post of Deputy Superintending Surveyor.

4. Besides above, the following facts which are relevant with the case are also considered by the undersigned:-

- (i) The post of Works Manager comes under the category of Group 'B' Service whereas the post Deputy Superintending Surveyor comes under the category of Group 'A' Service and is governed by separate Recruitment Rules.
- (ii) The duties and responsibilities of Deputy Superintending Surveyor pertain to Surveying and Mapping activities and digital data generation whereas the duties and responsibilities of Works Manager in Survey of India are confined only to printing. Thus, the nature of duties and responsibilities of Works Manager are not similar to the post of Deputy Superintending Surveyor.
- (iii) The post of Works Manager is in Level 7 of Pay Matrix of Rs. 44900 to 142400 whereas the post Deputy Superintending Surveyor is in Level 10 of the Pay Matrix of Rs. 56100 to 177500.

In view of the facts stated above, the post of Works Manager has no parity with the post of Deputy Superintending Surveyor.

5. In light of the facts stated in para 3 and 4 above, there is no functional justification in inclusion of isolated posts of Works Manager to the existing cadre of Deputy Superintending Surveyor in Organized Survey of India Group 'A' Service. Thus, the request of the applicants of OA No. 1180/2007 to include the post of Works Manager to the post of Deputy Superintending Surveyor can not be acceded to.

With the issuance of these orders, the directions referred to at para 1 above passed by the Hon'ble Central Administrative Tribunal, Allahabad Bench, Circuit sitting at Nainital stands complied with. The Director, Northern Printing Group, Survey of India, Dehradun, may, make suitable reference to the Hon'ble Central Administrative Tribunal, Allahabad Bench, Circuit sitting at Nainital to this effect through Govt. Counsel and a copy of the order may be handed over

to the applicants by the Director, Northern Printing Group/Western Printing Group.”

3. It was clarified in the aforesaid order that the issue of inclusion of isolated posts of Works Manager to the existing cadre of Deputy Superintending Surveyor in Organized Survey of India Group 'A' Services has been considered in the light of the decision taken in case of Mathematical Advisor. It is submitted by the respondents that the post of Mathematical Adviser was included in the Survey of India Group 'A' Service for the purpose of promotion to the grade of Superintending Surveyor. The post of Mathematical Adviser was treated at par with Deputy Superintending Surveyor for the purpose of promotion to the post of Superintending Surveyor. However, the post of Works Manager is not included in the Survey of India Group 'A' Service. The pay grades of both the posts are different and the post of Works Manager is a Group-B post which is lower than that of the Deputy Superintending Surveyor which is a Group 'A' post and therefore, the case of inclusion of Works Manager to the post of Deputy Superintending Surveyor is not similar to the case of inclusion of Mathematical Adviser to the post of Deputy Superintending Surveyor. Hence, the request of the applicant for inclusion of the post of Works Manager to the post of Deputy Superintending Surveyor cannot be acceded to.

4. In the counter affidavit submitted by the learned counsel for the applicant to the compliance affidavit filed by the respondents, the points mentioned in the contempt petition has been reiterated. It has been submitted that there is willful disobedience on the part of the respondents in not obeying the orders of this Tribunal.

5. In the compliance affidavit filed on behalf of Respondent No. 1 dated 28.08.2018, the respondent no. 1 submitted that in compliance of the order dated 13.06.2016 of this Tribunal, a detailed and speaking order dated 01.06.2017 has been passed which has been enclosed with the compliance affidavit dated 23.10.2017. It is further submitted that the aforesaid order dated 01.06.2017 has been issued by respondent no. 2 with the concurrence of respondent no. 1. Thereafter, vide orders dated 20.02.2018 and 22.05.2018 this Tribunal directed that the compliance affidavit should also be filed by respondent no. 1. In compliance of the order dated 20.02.2018 and 22.05.2018, the respondent no. 1 has passed a reasoned and speaking order dated 18.07.2018 in compliance of the order dated 13.06.2016 passed in OA No. 1180 of 2007. The relevant portion of the order dated 18.07.2018 is as under:-

"The matter relates to the Civil Contempt Petition No.331/85/2017 arising out of Order dated 13.06.2016 of the Central Administrative (Allahabad Bench) in OA No. 1180 of 2007 in the matter of Deo Pal and others vs Union of India and others. This Order is being issued in compliance of the Tribunal's directions as contained in its Order dated 22.05.2018 in the aforesaid contempt petition for filing of a compliance affidavit before the Tribunal before the next date of hearing i.e., 28.08.2018.

2. Whereas, I have gone through the records relating to case, which are summarized in the following paras.

3. Shri Deo Pal, Works Manager (since retired), Shri Sanjay Garg and Shri Yogesh Kumar Sharma had filed an OA No. 1180/2007 in the Central Administrative Tribunal, Allahabad Bench, Allahabad praying for the following reliefs:-

(a) To promote the applicants in their capacity as Works Manager in the Survey of India to the higher pay scale of Rs. 10000-15200 with effect from the date on which they have completed eight years of service in Group-B, at par with other works Managers/Assistant Works Managers in other organizations of the Government of India, along with all consequential benefits.

(b) To merge/absorb/encadre the applicants in Group-A main stream, as already decided by the department as per their policy decision, within such reasonable period of time as might be specified by this Tribunal.

4. After hearing the matter, the Tribunal had disposed of the OA vide its order dated 13.06.2016 with directions as under:-

"...Hence, we feel in the interest of justice the respondents shall decide the cases of the applicants herein in the light of the decision taken by them by letter dated 10/15.10.1990 in the case of Mathematical Advisor.

Accordingly, the Original Application is disposed of with a direction to decide the cases of the applicant within a period of six months from the date of receipt of a certificate copy of this order. No costs."

5. Whereas, I have gone through the facts of the case, which are as under:-

(1) One of the two posts of Mathematical Advisor (Group A) had been encadred with/converted into the post of Deputy Superintending Surveyor (Group A) vide DST's letter dated 10/15.10.1990 to cater to the immediate functional need of the Survey of India at that time.

(2) The posts of Mathematical Advisor and Deputy Superintending Surveyor both were Group A post in the same 4th CPC pay scale of Rs. 2200-4000 at the time of encadrement in 1990. The pay scale was replaced with Rs. 8000-13500 post 5th CPC.

(3) The posts of Works Manager is classified as Group B (Gazetted) post in Survey of India having been in the pay sale of Rs. 2000-3500 post 4th CPC replaced with pay scale of Rs. 6500-10500 post 5th CPC (later upgraded/replaced with pay scale of 7450-11500).

(4) The duties and responsibilities of Deputy Superintending Surveyor relate to surveying and mapping activities and digital data generation whereas the duties and responsibilities of the post of Works Manager are confined to printing only.

6. Whereas, the matter was examined by the Government taking into account the directions of the Tribunal in its Order dated 13.06.2016 in OA No. 1180/2007 and the facts of the case. However, due to the reasons stated above, the proposal of encadrement of post of Works Manager with that of Deputy Superintending Surveyor was not found justified i.e., on the grounds of difference in pay scale and nature of duties.

7. Now, therefore, having gone through the facts of the case, I am of the considered opinion that the case of applicants carries no similarity with the encadrement of the post of Mathematical Advisor with Deputy Superintending Surveyor done in 1990.

8. Now, with the issue of this Order, the directions of CAT, Allahabad Bench (Circuit Bench at Nainital, Uttarakhand) as contained in its order dated 22.05.2017 in Civil Contempt Petition No. 331/85/2017 in OA No. 1180/2007 in the matter of Deo Pal and others vs UOI and others stand complied with."

6. In the detailed speaking order passed by respondent no. 1, it is once again reiterated that post of Mathematical Advisor and Deputy Superintending Surveyor are Group 'A' posts with pay scale of Rs. 8000-13500 after CPC, whereas, the post of Works Manager is classified as Group 'B' (Gazetted) post having pay scale of Rs. 6500-10500 after 5th CPC. Later, the pay scale of post of Works Manager was upgraded to 7450-11500. It is also submitted that duties and responsibilities of both the posts are different from each other and after detailed consideration it has been found that in view of difference in pay scales and levels i.e., Group 'A'

and Group 'B', there is no similarity in the case of the applicant and with the encadrement of the post of Works Manager with that of Deputy Superintending Surveyor was not found justified.

7. Heard the counsels for both the parties and perused the pleadings available on record.

8. It is quite evident that this Tribunal while passing order dated 13.06.2016 in OA No. 1180 of 2007 observed that in view of the recommendations of 5th CPC isolated posts should be encadred during restructuring exercise. It was also directed that as the respondents acted upon the isolated post of Mathematical Advisor and approved the conversion of one post of Mathematical Advisor into Deputy Superintending Surveyor, it is in the interest of justice that respondents shall decide the case of applicants in the light of decision taken by them by letter dated 10/15.10.90 in case of Mathematical Advisor. The Order also indicated that the OA is disposed of with the direction to decide the case of the applicant within a period of 6 months from the date of receipt of certified copy of this order.

9. It is clear from the order that Tribunal also made observation regarding recommendations of the 5th CPC for encadrement of isolated posts. This exercise is to be undertaken by respective departments. In this case, the respondents have considered recommendations of 5th CPC.

10. It was also observed that post of Mathematical Advisor has been encadred with that of Deputy Superintending Supervisor and case of the applicant should also be considered in the light of the same.

11. From the above, it is evident that the decision of this Tribunal has been considered by respondent no. 2 vide reasoned and speaking order dated 01.06.2017. On the direction of this Tribunal, respondent no. 1 was also directed to consider the matter being the competent authority. The respondent no. 1 also considered the matter in the light of the order of this Tribunal and passed the detailed and speaking order dated 18.07.2018 giving reasons for not finding any justification in considering the post of Works Manager with that of Deputy Superintending Surveyor in view of difference in grade levels and pay scales. At the same time, it has also been observed that the same cannot be treated at par with the post of Mathematical Advisor which is Group 'A' post.

12. For the reasons mentioned above, we are of the opinion that the respondents have complied with the order of this Tribunal and no case of wilful disobedience is made out.

13. Accordingly, the contempt petition is dismissed and notices issued stand discharged,

(MOHD JAMSHED)
MEMBER-A

(RAKESH SAGAR JAIN)
MEMBER-J