

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**C.P. No. 352/2018
O.A. No. 912/2018
M.A. No. 3173/2018**

New Delhi, this the 22nd day of July, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Mange Ram, Inspector/P.O. ('B')
[Applicant No.31 in O.A. No.912/2018]
Aged about 40 years,
S/o Sh. Chhotu Singh,
R/o 08/162, Sec-7, CGS Colony, Antophill,
Mumbai-400 037.
2. Dayanand Prasad, Inspector (P.O. (Group 'B'),
[Applicant No.3 in O.A. No.912/2018]
Aged about 38 years,
S/o Late Ramji, R/o Flat No.601, B-Wing,
Bhoomi Sagar, Plot No.112 & 113,
Sector 22, Kamothe,
Raigad-410209, Maharashtra.
3. Rajendra Kumar Jaiswal, Inspector (P.O. (Group 'B')
[Applicant No.6 in O.A. No.912/2018]
Aged about 36 years,
S/o Balikaran Prasad Jaiswal,
R/o Flat No.301, Bldg. No.22,
Mahaveer Vatika, CHS Ltd.,
Survey No.483-484, Sainagar,
Panvel-410206.
4. Mukesh Kumar Misra, Inspector (P.O. (Group 'B')
[Applicant No.9 in O.A. No.912/2018]
Aged about 35 Years,
S/o Kameshwar Misra,
R/o B-1303, Lloyds Estate Customs Qtrs.,
Sangam Nagar, Wadala (E),
Mumbai-400037.

5. Tarachand Meena, Inspector/P.O. ('B')
[Applicant No.29 in O.A. No.912/2018]
Aged about 32 Years,
S/o Sh. Girsi Ram Meena
R/o 08/144, Sec-7, CGS Colony,
Antophill, Mumbai-400037.
6. Deependra Singh Tanwar, Inspector (P.O. (Group 'B'))
[Applicant No.4 in O.A. No.912/2018]
Aged about 35 years,
S/o Amar Singh Tanwar,
R/o 36/352, Type-3,
Ekta Vihar, CGS Colony, Sector 25,
CBD Belapur, Navi Mumbai-400614.
7. Ashok Kumar Meena, Inspector/P.O. ('B')
[Applicant No.21 in O.A. No.912/2018]
Aged about 30 years,
S/o Sh. Keshriya Lal Meena,
R/o 57/2442, Sec-7, CGS Colony,
Antophill, Mumbai-400037.
8. Abhinav Khanna, Inspector (P.O. (Group 'B'))
[Applicant No.5 in O.A. No.912/2018]
Aged about 36 years,
S/o Shanker Khanna,
R/o A-1101, Lloyds Estate
Customs Qtrs, Sangam Nagar, Wadala (E),
Mumbai-400037.
9. Ajay Singh, Inspector (P.O. (Group 'B'))
[Applicant No.12 in O.A. No.912/2018]
Aged about 33 years,
S/o Narender Pal Singh,
R/o VPO-Goria, Distt. Jhajjar,
Haryana-124142.

.. Applicants

(By Advocates : Shri Sachin Mittal)

Versus

1. Dr. B.S. Meena,
Addl. Commissioner of Customs,
P & E, NCH, Mumbai – 400 001.

2. Shri M.K. Gupta,
Under Secretary to the Govt. of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
North Block, New Delhi.
3. Shri S.K. Das,
Principal Commissioner of Customs (G),
New Custom House,
Ballard Estate, Mumbai – 400 001.

.. Respondents

(By Advocate : Shri Piyush Gaur for Shri Arun Bhardwaj)

O R D E R (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicants were appointed as Preventive Officers (for short, PO) in Customs Department by way of direct recruitment. The appointment to the post of PO is by way of direct recruitment as well as by promotion. The minimum residency period for promotion to the post of Superintendent is 8 years in the post of PO. The promotions to the post of Superintendent took place in June 2017. The applicants did not have the residency/standing period of eight years in the feeder category. However, their juniors in the feeder category, who were appointed by way of promotion, had that

residency period and were, accordingly, promoted. The question as to whether the benefit of promotion needs to be extended to direct recruits in the event of their juniors being promoted to the higher post and they being denied on account of not having residency period, was dealt with by this Tribunal in O.A. No.3278/2010 - Ms. Garima Singh & Others Vs. Union of India and Others. It is also stated that the said judgment was followed in O.A. No. 3405/2014 - Pankaj Nayan & Others vs. Union of India & Others.

2. The applicant and 34 others filed O.A. No. 912/2018 claiming the relief of promotion to the post of Superintendent. The O.A. was disposed of on 26.02.2018 at the admission stage, directing that the respondents shall examine the case of the applicants in the O.A. in the light of judgement in O.A. No.3405/2014 and direction issued by the Hon'ble High Court in Writ Petition No.11277/2016 filed against that O.A., and to pass orders within a period of two months.

3. This Contempt Petition is filed by the applicants alleging that the respondents did not implement the order passed in the O.A. They submit that once there was a

specific order in the concerned judgement in O.A. No. 3405/2014, there was no basis for the respondents in denying promotion.

4. The respondents filed as many as three counter affidavits at different stages. The gist of the same is that the case of the applicants was examined in the light of the judgment in O.A. No.912/2018 and a detailed order dated 26.04.2018 was passed. It is also stated that Recruitment Rules were required to be amended and, as of now, the Recruitment Rules are not amended and in view of the Office Memoranda issued by the DOPT, from time to time, the promotions cannot be made in violation of the conditions stipulated in the Recruitment Rules. The other contentions advanced by the applicants are denied.

5. Shri Sachin Mittal, learned counsel for the applicants submitted that the Tribunal found that the applicants are entitled to the benefit of judgement in O.A. No.3405/2014 and there is no basis for the respondents in denying the same to the applicants. He further argued that the order dated 26.02.2018 was dealt with by the Bench of this Tribunal on 03.12.2018 and 10.01.2019, and certain observations were also made as to the

purport of order dated 26.02.2018 and the respondents were also directed to pass a fresh order in compliance of the directions of this Tribunal, in true letter and spirit.

6. Shri Piyush Gaur for Shri Arun Bhardwaj, learned counsel for the respondents, on the other hand, submits that once the case of the applicants was examined in accordance with the directions issued in the O.A. and an order was passed on 26.04.2018, the applicants have to challenge the same, if they are not satisfied with that. He further submits that no definite finding was recorded in the O.A. as to the entitlement of the applicants for promotion or the applicability of the judgement to the facts of the case.

7. As observed earlier, the O.A. was filed by 35 Preventive Officers. The Contempt Petition is filed by 9 of them. It is not known whether the other applicants in the O.A. have been extended the relief or whether they are not interested in pursuing the case further. The O.A. was disposed of at admission stage, with the following direction :-

“6. In view of the above, this OA is disposed of at the admission stage without going into the merit of the controversy with a direction to the respondents to

examine the case of the applicants in the light of the judgment passed in OA No.3405/2014 and the directions of the Hon'ble High Court of Delhi referred to hereinabove, and pass appropriate order in accordance with law within a period of two months from the date of receipt of copy of this order."

From the above, it is evident that the Tribunal made it clear that :

- (a) there was adjudication on the merits of the controversy;
- (b) the direction issued to the respondents was only to examine the case in the light of the order passed in O.A. No.3405/2014 and the directions of the Hon'ble High Court of Delhi.

8. It is fairly well settled that the Contempt Proceedings are quasi criminal in nature. It is only when the respondents were issued with a specific direction by the Tribunal and the respondents have violated the same deliberately, that an occasion arise for punishing them.

9. In the instant case, there is no specific direction by the Tribunal and no specific finding was recorded in the O.A. No.912/2018 dated 26.02.2018 as to the entitlement of the applicants, to be promoted, or as to the applicability of order in the O.A. No.3405/2014.

Everything was left to be examined by the respondents. The respondents have passed a detailed order on 26.04.2018. Not only the gist of the order in the O.A. was taken into account, but also the various Office Memoranda issued by the DoPT and the directives issued by the CBIC were taken into account. According to the respondents, any executive order can be implemented only when it is related to the corresponding amendment of the Recruitment Rules and such development has not taken place in the instant case.

10. It is quite possible for the applicants to argue that the view taken by the respondents is not correct. However, that can be done only by proper proceedings before the concerned forum. The contempt is not the avenue to examine the correctness of the order passed by the respondents, on merits. The content of the orders passed by the respondents cannot be examined, unless there is a clear direction by the Tribunal and it is found that the same is violated.

11. It is no doubt true that at one stage of the proceedings, the Bench of this Tribunal dealt with the order dated 26.02.2018. However, in the context of

examining the question whether the respondents are liable to be punished, we cannot depart from the text of the order in the O.A.

12. We, therefore, close the Contempt Petition, leaving it open to the applicants to challenge the order dated 26.04.2018 passed by the respondents, if they are so advised. All the pending MAs also stand disposed of.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/