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Central Administrative Tribunal, Principal Bench

C.P.No.263/2005 in
O.A.No.2435/2003

New Delhi, this the 21st day of March, 2006

Hon'ble Mr. V.K. Majotra, Vice Chairman(A)
Hon'ble Mr. Mukesh Kumar Gupta, Member(J)

1. Shri Ramdev,
S/o Shri Chunni Lal,
R/o Y-327, Sarojini Nagar,
New Delhi-23
2. Shri Anil Kumar Gupta,
S/o Shri J.P. Gupta,
R/o 11, Sector-1,
R.K. Puram, New Delhi-22
3. Shri B.M. Rastogi,
S/o Shri Ram Dev Sharan,
R/o 2, Shree Niketan Aptt.,
Plot No.24, Vasundhara Envl.,
Delhi-96
4. Shri S. Rangarajan,
S/o Late Shri T.G. Shankaragopalan,
R/o H-14, Akash Bharti Aptt.,
24, I.P. Extn., Patparganj,
Delhi-92

....Applicants

(By Advocate: Shri R.N. Singh)

Versus

1. Shri S.K. Arora,
Secretary,
Ministry of Information and Broadcasting,
Shastri Bhawan,
New Delhi-1
2. Shri Birjeshwar Singh,
Director General,
All India Radio,
Akashwani Bhawan, Parliament Street,
New Delhi-1

....Contemnors/Respondents

(By Advocate: Shri A.K. Bhardwaj)

Order

By Hon'ble Mr. Mukesh Kumar Gupta, Member(J)

The present contempt petition has been filed alleging willful and deliberate disobedience of directions contained vide order dated 16.7.2004 in

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O.A.2435/2003. The respondents filed their reply affidavit on 23.9.2005 and stated that entire exercise of implementing the order would be completed by 30.9.2005 and there has been some unintentional delay due to misplacement of file in the DoP&T for which they tendered unconditional apology.

2. Shri R.N. Singh, learned counsel appearing for the applicants vehemently contended that the respondents being guilty of wilful disobedience of the directions issued by this Tribunal, should be dealt with under the provisions of Contempt of Courts Act read with Section 17 of the Administrative Tribunals Act, 1985. The directions issued vide aforesaid order dated 16.7.2004 reads thus :

"2. Applicant has sought the following reliefs:-

- (i) Direct the respondents to treat the promotion of the applicants to the post of Transmission Executives retrospectively as per Recruitment Rules of 1976 with all consequential benefits, including arrears of pay and allowances etc.
- (ii) Award sufficient compensation and damages from the respondents for the violation of fundamental rights of the applicants.

3. Counsel for respondents, on instruction of the department, submit that relief claimed by the applicant is based on judgment given by Mumbai Bench of the Tribunal and respondents are in the process of implementing the said judgment. They are going to consider all the cases in accordance with the recruitment rules of 1976 for giving promotion to the post of Production Assistant. For this they need 3 months time.

4. OA is disposed of with the direction to the respondents to implement the judgment of Mumbai Bench and give consideration for promotion to the applicants within a period of 3 months from the date of receipt of a copy of this order." (emphasis supplied)

3. Mumbai Bench judgment, which had been the basis of the aforesaid directions is dated 26.7.2001 in O.A.1335/95 (Jayant V. Nabar and ors. vs. Union of India and ors.) wherein following directions were issued:

"13. In the result, for the reasons given above, the OA succeeds and is allowed with the following directions to the respondents:-

- (i) They are directed to consider the applicants for promotion against any vacancies arising during the relevant period till the time the Recruitment Rules of 1976 subsist;
- (ii) This shall be done by holding DPCs in accordance with the relevant Law, Rules and Instructions within six months from the date of receipt of a copy of this order;



(iii) In case the applicants are found eligible and are so promoted to the higher posts, they shall be entitled to all consequential benefits, including arrears of pay and allowances, from the due date in accordance with the law.

(emphasis supplied)

No order as to costs."

4. It is not in dispute that the aforesaid judgments and orders have attained finality. The time limit prescribed vide order dated 16.7.2004 had been extended vide respondents' M.A.396/2005 decided on 2.3.2005, particularly in view of the undertaking given that the said extension would be the last extension and no further extension, whatsoever reason, would be prayed. Shri R.N. Singh, learned counsel pointed out that though there had been five applicants in O.A. No.2435/2003 but the present Contempt Petition has been preferred by four of them. Since Shri Yamin, Applicant no.3 in the O.A. expired, therefore, he is not a party in the present Contempt Petition.

5. Respondents issued order dated 29.9.2005 promoting the applicants retrospectively but the said order, in respect of petitioners no.3 and 4 herein, was cancelled vide order dated 6.12.2005 and, therefore, the respondents have compounded the offence, contended learned counsel for applicants. The respondents have not promoted petitioners herein in the year 1982-83 though there were six vacancies in Delhi Zone during the period 31.3.81 to 1984. Though the respondents contended that there were only 18 vacancies during the period 1988-92 as detailed in the additional affidavit dated 9.11.2005, yet the promotion order dated 29.9.2005 contained the names of 20 officials, promoted during the said period. As such, it was contended that the respondents have not approached this Tribunal with clean hands and suppressed material facts and that the alleged compliance is nothing but an eye-wash and also an attempt to frustrate the ends of justice. This act is a deliberate and willful non-compliance of the directions issued by this Tribunal.

6. Respondents vide their reply filed on 23.9.2005 stated that after consultation with the DoP&T/ Ministry of Law, the Station Director, All India Radio was communicated as under:



"The points raised by AIR, Delhi have been examined in consultation with Min. of I&B/Min of Law/DOPT and it is clarified as under:

(i) The benefit of order dated 16.7.2004 in OA No.2435/03 of Hon'ble CAT, Principal Bench, New Delhi be extended to similarly placed all eligible officials as per R/R 1976 including applicants.

(ii) Officials who are not in service as on date (retired/expired/resigned etc) need not be called for interview because on the date of issue of promotion order they will not be in service." (emphasis supplied)

7. Vide their additional affidavit dated 9.11.2005, the respondents stated that there were no vacancies of the Production Assistants during the period 1982-83 and only 18 vacancies occurred during the period 1988-92. The only direction contained in the Tribunal's order dated 16.7.2004 was to fill up the vacancies in accordance with Recruitment Rules, 1976. The eligible candidates have been given promotion with effect from the date of availability of vacancies.

8. Shri A.K. Bhardwaj, learned counsel appearing for the respondents forcefully contended that the respondents have committed no contempt since no date and the year from which the applicants were to be promoted, was specified vide order dated 16.7.2004. As noticed hereinabove, the applicants were not entitled to promotion from a particular date and the year. In any case, they have now been promoted on the availability of vacancy. It was further contended that in terms of DoP&T O.M.No.22011/4/98-Estt.(D) dated 12.10.98, the retired officials were not entitled to "actual promotion" and, therefore, the promotion order dated 29.9.2005 in respect of Petitioners No.3 and 4 herein was rightly withdrawn and cancelled vide orders dated 6.12.2005. Reliance was also placed on Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur and another, 1998 (5) SCALE 50 as well as Division Bench judgment of the Hon'ble Delhi High Court in Writ Petition (c) No.4772/2003 dated 28.10.2005 in Union of India and others vs. All India Postal officers Association. It was contended that order of promotion would be effective from the date of its issuance or from the date of the DPC.

9. We have heard the learned counsel of the parties and bestowed our careful consideration to all aspects of the case.



10. On careful consideration made and on the analysis of facts, we find no justification in the contentions raised by the respondents that withdrawal of Petitioners No.3 and 4 promotion vide order dated 6.12.2005 was justified in terms of DoP&T O.M. dated 12.10.98. In our considered view, the said O.M. nowhere bars the notional promotion of retired officials. On the other hand, we find that the said O.M. was issued as a clarificatory O.M. as certain doubts had arisen as to the consideration of employees who have since retired but would also have been considered for promotion, if the DPC(s) for the relevant years had been held in time. On examination of the entire matter, particularly in consultation with the Ministry of Law, it was opined that:

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"there is no specific bar in the aforesaid Office Memorandum, dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing yearwise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also, it would not be in order, if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is being held, are not considered while preparing yearwise zone of consideration/ panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration, if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion."

(emphasis supplied)

11. We also find justification in the contention raised by Shri R.N. Singh, learned counsel that the order dated 29.9.2005 promoting the officials itself stated that they : "shall be entitled to all the consequential benefits including arrears of Pay & Allowances", as prescribed vide paragraph 3 of the said order. It was further contended that no such arrears of pay and allowances have been released till date though almost more than five months have passed thereafter. No explanation has been made on this aspect by the respondents even during the course of hearing.

12. In our considered view, the judgments relied upon are inapplicable in the facts and circumstances of the present case. On the other hand, para 6 in Baij Nath Sharma (supra) specifically averred that the applicant "could certainly have a grievance if any of his juniors had been given promotion from a date prior to his



superannuation", which were not the facts in that case. On the other hand, in the present case, the applicants were not considered for promotion in the vacancies of the years 1988-92 despite the availability of vacancies as well as their eligibility. We may also note at this stage that O.A. No.2435/2003 had been disposed of placing reliance as well as following the judgment of Mumbai Bench dated 26.7.2001 in O.A.No.1335/95, which in turn had followed earlier order dated 27.2.91 of that Bench, which had since been upheld by dismissal of SLP vide order dated 5.8.92.

13. We also do not find justification in the contention raised by respondents that the retired officials were not to be promoted for the simple reason that the respondents in their reply dated 23.9.2005, relevant extracts of which have been noted hereinabove, itself required that the officials who are not in service as on date (retired/expired/resigned etc.) need "not be called for interview", which decision was based on consultation with the DoP&T/ Ministry of Law. The said consultation and advice had been rendered after O.M. dated 12.10.98. In case, the respondents had any doubt about the grant of retrospective promotion to the retired officials, since contempt proceedings were pending, they ought to have sought clarification on this aspect before passing order dated 29.9.2005, which course of action has not been resorted to.

14. In the backdrop of the above discussion, we are of the view that prima facie it is a case of patent contempt and willful violation of the directions of this Tribunal. Therefore, giving another opportunity to the respondents to implement the said order dated 16.7.2004 in its letter and spirit, the respondents are given one more last and final opportunity to recall and review the orders dated 6.12.2005 withdrawing petitioners No.3 and 4 promotion as well as to adhere to their own order dated 29.9.2005, particularly to paragraphs 2 and 3 of the said order. This exercise shall be completed within a period of 30 days from the date of receipt of a copy of this order, failing which Shri Brijeshwar Singh, Director General, All India Radio shall appear in person to explain why the charge be not framed against him under the provisions of Contempt of Courts Act read with the



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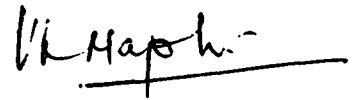
relevant provisions of the Administrative Tribunals Act and the rules made thereunder.

List it on 28.4.2006.



(Mukesh Kumar Gupta)
Member(J)

/dkm/



(V.K. Majotra)
Vice Chairman(A)

sd ditund. 18/6/2006 R. K. Singh