

(5)

Central Administrative Tribunal
Principal Bench, New Delhi.

CP-265/2004 in
OA-1379/2003

New Delhi this the 26th day of October, 2004.

Hon'ble Shri Shanker Raju, Member(J)
Hon'ble Shri S.K. Malhotra, Member(A)

Ms. Sunita Anand,
Superintendent (Legal),
Legislative Department,
Ministry of Law and Justice,
Shastri Bhawan,
New Delhi.

..... Petitioner

(through Sh. Ajay Veer Singh, Advocate)

Versus

Jainder Singh,
Secretary,
UPSC, Dholpur House,
New Delhi.

..... Respondent

(through Sh. D.K. Singh, Advocate)

Order (Oral)

Hon'ble Shri Shanker Raju, Member(J)

Heard the learned counsel.

2. It is trite law in the light of ratio laid down by the Apex Court in Jhareswar Prasad Paul and Another Vs. Tarak nath Ganguly and Others (2002(5)SCC 352) that in contempt proceedings Tribunal cannot give any new direction to create substantive right in favour of the petitioner and is precluded from granting substantive relief.

3. In this backdrop, applicant who has not been allowed to be interviewed for the post of Assistant Legislative Counsel approached this Tribunal in OA-1379/2003 where an interim order was passed on 27.5.2003. On the changed criteria, petitioner was provisionally allowed to be interviewed.

4. Vide order dated 11.8.2003, eligibility of the petitioner for the post of Assistant Legislative Counsel as per the criteria stated by the Commissioner for short listing has been upheld. Moreover, a direction was issued to the respondents to declare the result of the petitioner in respect of interview and in case she has successful, ^{to be} appointed to the post of Assistant Legislative Counsel (Grade-IV) with all consequential benefits. Though there was no time limit for compliance of the directions but on a practice followed by the Tribunal six months is determined to comply with the directions. However, on a contempt being filed before us, the respondents have gone in CWP No.6829/2003 before the High Court of Delhi where our orders are yet to be stayed.


4. However, respondents passed an order on 27.9.2004 declaring the result of the petitioner and where ^{she} has not been found in order of merit to be appointed to the post of Assistant Legislative Counsel.

5. Learned counsel of the petitioner states that on cumulative reading and harmonious construction of the directions, the petitioner's eligibility has been determined for further selection. As such ⁱⁿ selection held subsequently, not calling the petitioner for interview is contumacious and wilful disobedience of the directions. Accordingly, it is prayed that respondents be directed to file a detailed reply which they have not filed to avoid rebutting the contentions raised by the petitioner.

6. On the other hand, respondents' counsel has relied upon the decision of the Apex court in Suresh Chand Poddar Vs. Dhani Ram and Others (2002(1)SCC 766) to contend that in the light of pendency of CWP, contempt proceedings should not be proceeded with.

7. On careful consideration of the rival contentions, we are of the considered view that the issue is contentious which gives rise to a fresh cause to the petitioner and cannot be gone into in the contempt proceedings. Any direction issued would amount to creating a substantive right, which in the light of decision in Tarak Nath Ganguly and Others case (supra) is not permissible under law.

8. In the light of above *We deprecate* the fact that the respondents have not adhered to the time limit and passed the orders almost after one year, we dismiss the CP. Notices are discharged. However, liberty is given to the petitioner to assail her grievance in accordance with law and the issue of limitation would not come in her way.


(S.K. Malhotra)
Member(A)


(Shanker Raju)
Member(J)