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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

C.P. No. 289/2011 in
O.A. No. 2770/2003

New Delhi, this the 23rd day of September, 2011

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)

All India Association of Investigations,
National Sample Survey Organisation,
Field Operations Division,
NSSO (FOD).

Its Secretary

1. Mr. Ajay Saxena,
General Secretary,
AIANSSO,
SI Grade-I, NSSO (FOD),
2nd Floor, 'B' Wingh, CGO Complex,
Sanjay Place,
Agra-282002.

2. Mr. Rakesh Singh,
Investigator, 1289, Type-11,
NH-4, Faridabad.

.. Applicants

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors.

Through

1. Prof. T.C.A. Anant,
Secretary,
Ministry of Statistics and Programme Implementation,
Government of India,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi-110001.
2. Shri V.K. Arora,
Chief Executive Officer,
National Sample Survey Organisation,
Ministry of Statistics and Programme Implementation,
Sardar Patel Bhawan,
Sansad Marg,
New Delhi-110001.
3. Shri B.S. Chhabra,
Director of M/s Statistics and Programme Implementation,
Sardar Patel Bhawan,



Sansad Marg,
New Delhi-110001.

...Respondents

(By Advocate : Shri R.N. Singh)

ORDER (ORAL)

Mrs. Meera Chhibber, Member (J)

It is submitted by the applicants that vide order dated 27.6.2005, this Tribunal had disposed of OAs bearing No.351/2003, 1845/2007 and 2770/2003 by observing as follows:-

“ The action of the respondents to treat four tier structure including two non-functional grades as existing hierarchy for AC and their decision to adopt such a hierarchy vide letter dated 25.6.2004 is set aside and the matter is remanded back to the respondents to reconsider the entire issue in the light of condition No.13 of the ACP Scheme as well as decision of the High Court of Delhi in F.C. Jain's case (Supra)”.

2. The matter was carried to the Hon'ble High Court of Delhi by the respondents by filing Writ Petitions bearing No. 13845-46/2007 and 13855-57/2006. However, the Writ Petitions were also disposed of on 20.1.2009 by observing as follows:-

“ In view of the aforesaid statement of Mr. H.K. Gangwani, the matter may be considered by the Anomaly Committee to which even the respondents have no objection. However, at the same time it should be pointed out that directions were given by the Tribunal in June, 2005 for completing the exercise within a period of 6 months. More than three and a half years have passed because of the pendency of these writ petitions. Therefore, it would be appropriate to refer the matter to the Anomaly Committee immediately and the Anomaly Committee shall also decide the issue within 6 months from today. This Anomaly Committee shall also take into consideration the observations made by the Tribunal in the judgment with certain anomalies. We expect the Anomaly Committee shall take into consideration the observations of the DOP&T as well.

Writ petitions are disposed of accordingly”.



3. Thereafter, the matter was referred to the Anomaly Committee and Anomaly Committee also gave their recommendation in favour of the applicants by observing as follows:-

(ii)	ACP cases for the period after formation of SSS and before implementation of MACPs Scheme i.e. 12 th February 2002 to 31 st August 2008, particularly considering the existence of functional and non-functional Grades.	<p>(i) In respect of cases for the period after formation of SSS and implementation of MACPs Scheme (12th February 2002 to August 2008), the Committee considered the orders passed by various Tribunals/Courts in the ACP matters of SSS and also provisions/guidelines issued by DOP&T and recommended that ACP in SSS may be considered only in functional grades of hierarchy i.e. inducted in Rs.5000-8000/- scale, first ACP in 6500-10500/- and second ACP in 8000-13500/- scale.</p> <p>(ii) Committee also observed that while implementing the above decision another anomaly may arise in respect of persons who have already received ACPs in their existing hierarchy prior to 12.02.2002 as their pay would be less than the persons who will get ACP in functional grades after 12.2.2002. To remove such anomaly, as a one time measure, it is suggested that pay of those persons who got ACP or deemed to have got ACP prior to 12.2.2002 may be re-fixed in the functional grade of SSS i.e. 1st ACP in the scale of pay of Rs. 6500-10500/- and 2nd ACP in the scale of Rs.8000-13500/- w.e.f. 12.2.2002 ignoring earlier ACPs. This may be accepted by the Competent Authority in the light of MACP guidelines, where MACP in next grade pay has been allowed irrespective of scales in which incumbents were granted ACP earlier.</p>
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Yet, no order is being passed by the respondents.



4. Respondents had initially filed their status report mentioning therein that the matter has been referred to the Anomaly Committee and the same is being examined by the Ministry of Statistics and Programme Implementation in consultation with DOP&T and Ministry of Finance and all efforts are being made to take a decision in the matter at the earliest. Since no final orders were yet passed, respondents were directed to pass the final orders, whereupon respondents passed order dated 13.5.2011 which dealt with grant of financial upgradation under ACP Scheme to the incumbents holding the posts included in the Subordinate Statistical Service. The applicants on the other hand annexed the subsequent minutes of the final meeting of Special Departmental Anomaly Committee held on 22.3.2011 for considering ACP matters in SSS whereupon it was again decided by the Anomaly Committee that the recommendations of the first meeting should be followed as it would remove all anomalies related to ACP in SSS. However, it was felt that the cadre may examine the decision of the first meeting of the committee in consultation with DOP&T and Ministry of Finance, therefore, respondents were directed to file additional affidavit along with their final decision taken in the matter. Respondents again filed another affidavit along with Office Memorandum dated 15.7.2011 which reads as under:-

“Sub.: Grant of financial upgradation under Assured Career Progression Scheme to the incumbents holding the posts included in the Subordinate Statistical Service-reg.

In continuation of O.M. of even number dated 13.05.2011 (copy enclosed) the issue related to financial upgradation under Assured Career Progression Scheme (ACPS) for the period after formation of Subordinate Statistical Service (SSS) has been reviewed in consultation with DOP&T and D/o Expenditure and the same may be settled as follows:

- (i) ACPS/Promotions between the period 12.02.2002 and 31.12.2005 will regulated in four tier structure of the service.



- (ii) On attaining ACP in non-functional grade the pay will be fixed under FR 22(1)(a)(i). This pay will not be reduced by re-fixing the same under FR 22(1)(a)(iii) when the employee is actually promoted to this grade. On such a promotion he would continue to get the normal increment due to him in the years that follow the one when ACP was granted and when their pay was fixed under FR 22(1)(a)(i).
- (iii) The financial upgradations/promotions between 01.01.2006 and 31.08.2008 (till the date the MACPS was introduced) will be regulated as per the revised two tier structure recommended by 6th CPC.

(S.K. Mishra)
Under Secretary to Govt. of India"

We were rather surprised because the recommendations made by the Anomaly Committee were not even discussed in the final order passed by the respondents, therefore, they were given yet another opportunity to pass a speaking order dealing with the recommendations made by the Anomaly Committee.

5. Now respondents have passed OM dated 15.7.2011 wherein all the recommendations made by the Anomaly Committee as well as the judgment of F.C. Jain and Rule 13 of the ACP Scheme had been dealt with in detail and it has finally been decided as follows:-

"(A) Prior to formation of service:-

- (i) Pay already granted under ACP Scheme before the formation of the service is to be retained. The persons who got the scale under ACP, which is not available in SSS cadre is to be adjusted in nearest lower scale of SSS w.e.f. 12.02.2002 and difference of pay, due to revised entitlement, is to be safeguarded as personal pay to be absorbed in future increments.
- (ii) Quantum of drop, if any, in pay drawn while holding the scale under ACP and re-fixation of pay in same scale for it being non-functional scale in service would be allowed to continue as personal pay and would be taken into account for fixation of pay in new pay structure on the implementation of 6th CPC recommendation.



(iii) All those who were entitled for ACP benefits before the formation of service w.e.f.12.02.2002, but could not be granted ACP for any reasons are also to be considered for ACP benefit, if, otherwise eligible, subject to the fixation and adjustment of their pay as mentioned in para (i) & (ii) above.

(B) After formation of service:-

(i) ACPS/Promotions between the period 12.02.2002 and 31.12.2005 will be regulated in four tier structure of the service.

(ii) On attaining ACP in non-functional grade the pay will be fixed under FR 22(1)(a)(i). This pay will be reduced by re-fixing the same under FR 22(1)(a)(ii) when the employee is actually promoted to this grade. On such a promotion he would continue to get the normal increment due to him in the years that follow the one when ACP was granted and when the pay was fixed under FR 22(1)(a)(i).

14. By making the above provisions M/o Finance has relaxed rules for fixation of pay so that there may not be any reduction in pay and allowance of SSS incumbents on implementing the ACP Scheme and will also bring uniformity in MACP Scheme. As such the order dated 13.05.2011 and 15.07.2011 have been issued the regularization of Assured Career Progression Scheme in Subordinate Statistical Service are in compliance of direction passed by the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.

This issues with the approval of Respondent No.1 i.e. Secretary, Ministry of Statistics & Programme Implementation".

7. In view of above, counsel for the respondents submitted that since they were only directed to consider the matter by referring it to the Anomaly Committee and respondents have already passed a detailed speaking order after discussing everything, it cannot be said that they have committed any willful contempt, therefore, the CP may be dismissed and the notices may be discharged.

8. Counsel for the applicants on the other hand submitted that after their OA was disposed of another OA bearing No.1864/2006 was filed by Shri Madan Mohan and Others Vs. Secretary, DOP&T and Others which was allowed on 23.3.2007 by directing the respondents to accord the



applicants the pay scale of Rs.8000-13500/- with all consequential benefits as second financial up-gradation. The matter was carried to the Hon'ble High Court of Delhi by the Union of India but even the Hon'ble High Court had directed the petitioner to accord to the respondents the pay scale of Rs.8000-13500/- with all consequential benefits as second financial up-gradation subject to the outcome of the present Writ Petition, pursuant to which the directions given by this Tribunal have been implemented with regard to Madan Mohan and Others, therefore, applicants herein cannot be discriminated against.

9. We have heard both the counsel and perused the pleadings also.

10. It is relevant to note that in the case of Madan Mohan and Others definite direction was given by this Tribunal to accord to the applicants therein the pay scale of Rs.8000-13500/- with all consequential benefits as second financial upgradation. When the matter was carried to the Hon'ble High Court of Delhi, High Court also gave had given a definite direction to the petitioners, i.e., Union of India to implement the orders of the Tribunal subject to the outcome of the Writ Petition. It was in those circumstances that the judgment of the Tribunal dated 23.3.2007 was implemented vide order dated 6.6.2011 by making it clear that it would be subject to the outcome of Writ Petition No.5689/2006 pending in the Hon'ble High Court of Delhi, whereas in the present case before us no specific direction was given by the Tribunal or the Hon'ble High Court of Delhi to the respondents. On the contrary, this Tribunal had remanded back the matter to the respondents with a direction to reconsider the entire issue in the light of condition No.13 of the ACP Scheme as well as decision of the Hon'ble High Court of Delhi in F.C. Jain's case (supra). When the matter was carried to the Hon' ble High Court of Delhi, the order was modified and it was felt that the matter should be referred to



the Anomaly Committee who shall decide the issue within 6 months taking into consideration the observation made by the Tribunal in the judgment. It was further observed that Anomaly Committee shall take into consideration the observations of the DOP&T as well.

11. From above, it is clear that in the instant case no positive directions were given to the respondents to accord any pay scale to the applicants but they were directed to reconsider the matter. It is correct that after the matter was referred to the Anomaly Committee, they had given report in favour of the applicants initially but ultimately after 4 rounds of meetings of the Anomaly Committee, a Special Departmental Anomaly Committee meeting was held on 22.3.2011 and it was decided by the Anomaly Committee that the recommendations of the first meeting should be followed as it would remove all anomalies related to ACP in SSS. However, the Committee also felt that cadre may examine the decision of the first meeting of the committee in consultation with DOP&T and Ministry of Finance. In the impugned order respondents have stated that the matter was consulted with DOP&T and Ministry of Finance and thereafter final order has been issued by way of OM dated 15.9.2011.

12. In these circumstances the question that arises before us is whether in contempt proceedings can we go into the correctness or otherwise of the reasons assigned by the respondents. Hon'ble Supreme Court in **J.S. Parihar Vs. Ganpat Duggar** reported in JT 1996 (9) SC 608 has observed as follows:-

“admittedly, the respondents had prepared the seniority list on 2-7- 1991. Subsequently promotions came to be made. The question is : whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the



Court, there arises a fresh cause of action to seek redressal in an appropriate forum”.

13. The law is thus well settled now that in contempt proceedings court cannot look into the correctness of the orders passed by the respondents. However, if there are any other valid grounds to challenge the correctness of that order, it is open to the party to challenge the same on the original side.

14. In view of above, CP is dropped. Notices are discharged with liberty to the applicants to challenge the same on the original side, if they are aggrieved by it.


(DR. A.K. MISHRA)
MEMBER (A)


23/9/11
(MRS. MEERA CHHIBBER)
MEMBER (J)

Rakesh