

CASE NO.:
Appeal (crl.) 693 of 2006

PETITIONER:
Union of India & Anr

RESPONDENT:
P.M. Rangasami

DATE OF JUDGMENT: 15/05/2007

BENCH:
Dr. ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by the Madras Bench of the Central Administrative Tribunal (in short the 'Tribunal'). The Tribunal was of the view that the appellant no.1 and its named functionary were guilty of contempt. However, another officer was exonerated. It was held that the order dated 30.4.2004 passed by the Tribunal in OA No.1002/2003 had not been complied with deliberately and, therefore, the said act amounted to contempt. It was observed that the functionaries and various officers acted in a canalized manner in flouting the directions of the Tribunal.

Background facts as projected by the appellants need to be noted in some detail as there is great deal of factual controversies and much would depend upon the effects of various acts on different dates.

On 20.6.1968 Mr. M.M. Nampoothiry and Mr. D.K. Trehan joined the Indian Economic Services in Grade IV. The respondent Mr. P.M. Rangaswami also joined the Indian Economic Services in Grade IV on 8.7.1970

On 11.6.86, in view of the judgment of this Court in Narender Chadha and Ors. v. Union of India and Ors. (1986 (2) SCC 157) the reservation in promotion was applied by which the seniority position in Grade III (Deputy Director) was fixed as follows:

Respondent	Serial no 65 (7.3.1997)
Shri Trehan	Serial No. 137 (2.4.1980)
Shri Nampoothiry	Serial No. 138 (2.4.1980)

On 26.2.1987 based on the said seniority position of Grade III, promotions to Grade II Junior Administrative Grade (in short 'JAG') (subsequently denoted as Grade I) was effected. The promotion was by selection. The position as fixed as follows:

Respondent	Serial no 41 (26.2.1987 being DPC date)
Shri Trehan	Serial No. 16 (26.2.1987 being DPC date)
Shri Nampoothiry	Serial No. 17 (26.2.1987 being DPC date)

The notification issued on 9.3.1987 in respect of promotion to grade II shows the respondent at serial number

41 and Shri Trehan and Shri Nampoothiri at serial numbers 16 and 17 respectively. The same order was fixed by DPC.

The respondent who was on deputation wrote to the cadre authority on 17.6.1987 to let him know the date of his promotion with reference to his immediate junior that is one Balraman as per notification dated 9.3.1987 referred above.

Respondent who was on deputation was informed on 28.7.1987 that his proforma promotion is with effect from 9.3.1987 i.e. the date on which his immediate junior i.e. Mr. Balraman assumed charge in the Labour Bureau, Shimla. This position becomes important as according to appellant, respondent in the present case was aware of his seniority position on deputation to grade II at serial number 41, where he had slipped in position vis-a-vis Shri Trehan and Shri Nampoothiri at serial numbers 16 and 17 respectively. The position remained despite the reservation in promotion which gave him an edge in promotion from grade IV to grade III. He suffered slippage in position during promotion from Grade III to Grade II. The Officer had never represented on this matter to the authorities.

The Union of India had submitted about his slippage to the Tribunal, which unfortunately was not taken note of.

As reservation in promotion was not provided in the statutory Indian Economic Services Rules, 1961 (in short 'IES Rules') the Government issued notification on 22.9.1989 amending the rule providing for introducing reservation in promotion and making the same retrospectively applicable.

While taking decision on the question of promotions to next grade (Non functional Selection Grade in short 'NFGS')

Government operated on the seniority list based on position in Grade I, arising from reservation in promotions in Grade III which according to the respondents is the original seniority. This led to the promotions to NFSG Grade in the following manner:

	Effective Date
Respondent	19.2.1991
Shri Trehan	1.6.1990
Shri Nampoothiry	1.7.1990

In the promotions to next grade i.e. Senior Administrative Grade (in short 'SAG'), following was the position:

	Effective Date
Respondent	7.3.1997
Shri Trehan	1994-95
Shri Nampoothiry	1994-95

CAT Principal Bench in OA No. 1206 and 1288/93 by order dated 7.1.1999 struck down the notification of the Government providing for reservation in promotion to the extent the same made it retrospective.

In a writ petition filed in the Delhi High Court challenging the order of the Tribunal, the High Court virtually granted a status quo order restraining the Government from reverting any person already promoted by its order dated 29.1.1999. The CAT judgment striking down retrospective reservation in promotion was implemented by the appellant

no.1 on 17.12.1999. Fresh seniority list was issued in respect of every grade starting from Grade III (at which stage the reservation in promotion was attempted earlier). As per this revised seniority of these persons became as under:

Shri D.K. Trehan

Shri Nampoothiri

Shri P.M.
Rangaswamy (Respondent)

nt)

Original
Revised
Original
Revised
Original
Revised
Year of joining
1968

1968

1970

Promotion to
Grade III

2.4.1980

30.11.1978

2.4.1980

30.11.1978

7.3.1977

18.3.1983

Promotion to
Grade II

26.2.1987

*

26.2.1987

26.2.1987**

26.2.1987

26.2.1987

12.5.1988

Promotion to
NFSG

1.6.1990

1.2.1990

1.7.1990

1.3.1990

19.2.1991

1.7.1992

Promotion to
SAG

1994-95

4.8.1995

1994-95

4.8.1995

7.3.1997

21.6.2001

Promotion to
HAG

7.5.2002

7.5.2002

(In the above chart, "Original" refers to the situation with reservation in promotion to Grade III which was used for promotion to higher grade subsequently. "Revised" refers to the situation after implementing the judgment of CAT dated 7.1.1999 which struck down retrospective amendment of Rule 13 of IES Rules for reservation in promotion.)

As per above details,

- * Seniority position of Trehan at serial number 16
- ** Seniority position of Nampoothiry at serial number 17
- *** Seniority position of Respondent at serial number 41

In OA No.1124/2000 filed by respondent, the Tribunal by order dated 23.10.2001 directed that pending issuance of final seniority list the applicant shall be considered for promotion from SAG in accordance with his original seniority. The benefit to be granted to the respondent was stated to be interim in nature as the department was permitted to issue the final seniority list.

The DPC for Higher Administrative Grade (in short 'HAG') held on 19.12.2001 and 27.12.2001 took into account the order of Tribunal in OA 1124/2000 dated 23.10.2001. As per the directions of the Tribunal that until final seniority lists are issued, the applicant's case for further promotion from SAG of IES was to be considered in accordance with his original seniority which led to his promotion to SAG w.e.f. 7.3.1997, the DPC included him in the eligibility list as per his original seniority in SAG.

As against 6 number of vacancies, his position, despite the above dispensation was at serial number 11 and hence his name did not figure in the final recommended list.

A review DPC was held on 15.2.2000 owing to emergence of the fact that there were only five vacancies instead of six considered earlier because of abolition of one post on the recommendations of the Expenditure Reforms Commission. Respondent was still considered as per the directions of the Tribunal dated 23.10.2001 in OA 1124/2000. Here also being at serial number 11, he could not be recommended for promotion. In a subsequent DPC for the vacancy year 2002-03, for one vacancy the senior to the respondent who fulfilled the benchmark was recommended.

The Delhi High Court by order dated 14.8.2002 in Civil Writ Petition no.888/89 set aside the order of the Tribunal dated 7.1.1999 which struck down retrospective amendment of Rule 13 of IES Rules and remanded the matter to the Tribunal.

The CWP 1375/2002 filed earlier by appellant no.1 against Tribunal's Order dated 23.10.2001 was dismissed by the High Court by order dated 30.9.2002. All the DPCs to consider promotions to HAG held prior to this order had considered respondent's case in accordance with the orders of

Tribunal dated 23.10.2001. The DPC proceedings were, therefore, consistent with the Tribunal and High Court's orders.

Review Petition (CP No. 217/02) filed by the respondent was dismissed by the Principal Bench of the Tribunal by order dated 23.10.2002 holding that the respondent has been considered by the department and not found fit for promotion and that no junior to the respondent had been promoted. The Tribunal noted that since the case of respondent was considered by the Government for promotion in HAG, there was no wilful disobedience on their part.

Review petition was filed by the respondent in OA No.1124 of 2000 before the Principal Bench of Tribunal on 15.11.2002.

On 15.1.2003, respondent resigned from service. Review petition filed by the respondent was dismissed by the Tribunal by order dated 12.5.2003 holding that review was not maintainable.

On 2.9.2003, the respondent filed OA No.1002/03 before the Tribunal, Chennai Bench. By this Court's order dated 26.9.2003, order of the High Court dated 14.8.2002 was stayed thus resorting to the judgment of the Tribunal dated 7.1.99 striking down the retrospective reservation in promotion. On 30.4.2004, Tribunal Chennai Bench directed the appellant to consider respondent for HAG with reference to his original seniority in Grade-III i.e. w.e.f. 7.5.2002, the date on which his alleged juniors in Grade-III of the service were promoted to HAG. On 7.8.2004 Government filed review application RA 30/2004 in OA 1002/2003 before the Tribunal, Chennai Bench.

On 30.9.2004, draft seniority list was issued in implementation of decision of Tribunal, Chennai Bench. Review petition filed by the appellant is disposed of on 21.12.2004. However, the Tribunal recorded the fact that the order of the Tribunal in OA No. 1124/00 and 1002/03 had been implemented by issuance of a seniority list.

On 26.4.2005, CP 21/05 was filed by the respondent. By order dated 21.9.2005, Tribunal directed that review DPC is to be held and its decision is to be implemented.

Final seniority list was issued by the Department on 25.10.2005 purportedly on the basis of this Court's order in case relating to the validity or otherwise of retrospective application of Rule 13 of IES Rules.

On 14.12.2005, Review DPC through special request to UPSC was held as per the directions of Tribunal, Chennai Bench's order dated 21.9.2005. The Government issued a detailed speaking order on 30.12.2005 dealing with the representation of the respondent and informing him that his case has been considered in terms of the order of the Tribunal and that upon such consideration he has not been recommended for promotion to HAG. On 3.5.2006, the impugned order was passed by Tribunal holding the petitioner in contempt.

There is no dispute that there was no challenge to the seniority list prior to 1997. Challenge to the change of date was not vis-à-vis Trehan and Nampoorthy. So far as the

entry to Grade IV is concerned, the applicant was junior to Trehan and Nampoorthy. The challenge in the OA was not in respect of Trehan and Nampoorthy. As noted, there was no grievance prior to 7.3.1997. It is to be noted that there was no direction for promotion and only for consideration. Therefore, the question of any automatic promotion does not arise. The Tribunal never held that the respondent was entitled to promotion notwithstanding losing seniority. It appears from the record that despite losing seniority respondent was considered for promotion to HAG on the basis of Tribunal's order.

The parameters to be considered while deciding as to whether contempt has been committed has been considered by this Court in several cases. For example Prithawi Nath Ram v. State of Jharkhand and Ors. (JT 2004 (8) SC 165), Director of Education, Uttaranchal and Ors. v. Ved Prakash Joshi and Ors. (JT 2005 (6) SC 276), Dilip Mitra v. Swadesh Chandra Bhadga (2002 (6) Supreme 249), Chhoty Ram v. Urvashi Gulati and Anr. (2001 (7) SCC 530) and Suresh Chandra Poddar v. Dhani Ram and Ors. (2002 (1) SCC 766). Above being the position, the Tribunal was not justified in holding that contempt had been committed. If the respondent has any grievance, it is open to him to assail the same in an appropriate proceeding.

The order passed by the Tribunal is clearly unsustainable and is set aside. Appeal is allowed.