

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: 7th January, 2010
Date of Order: 22nd February, 2010

CONT. CAS. (C) No. 1477/2006

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22.2.2010

Mahesh Vaswani & Ors.

... Petitioners

Through: Mr. Ajay Kumar Tandon, Advocate

Versus

K.M.Chandrasekhar & Ors.

... Respondents

Through: Mr. Mukesh Anand & Mr. Sumit Batra,
Advocates for R-1 to 3

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition, the original petitioner (Shri R.H.Vaswani) (deceased) had alleged contempt of the Court on the basis of non-compliance of the order of this Court passed on 4th September, 2002 in a Writ Petition. The operative part of the order of this Court reads as under:

17. In view of the aforementioned authoritative pronouncements, we are of the opinion that it was not a fit case where the learned Single Judge would have denied the said benefit of the appellant herein. This appeal is therefore allowed and the impugned judgment is set aside. In this view of the matter, the respondents are hereby directed to give similar benefit, which have been given to the petitioners of the other writ petitions, as noticed hereinbefore.

2. The other writ petitions according to which the respondent was to give the similar benefit was discussed by this Court in its judgment dated 4.9.2002 and the relief granted to other petitioners was as under:

“5. The writ petition succeeds with costs. The respondents are directed to re-deploy the petitioner in the first Class II post which fell vacant immediately after the absorption of the petitioner that is 20.8.70. On such re-deployment in Class II post and from such date, the impugned order shall stand cancelled. Naturally, he will be entitled to all consequential service benefits.”

3. It is submitted by the petitioner in this contempt petition that though the petitioner was absorbed in terms of the order of this Court but the petitioner was not given all benefits including his due promotion to the post of Assistant Commissioner (Junior Time Scale) w.e.f. 15.11.1980, Assistant Commissioner (Senior Time Scale) w.e.f. 15.11.1983 and the increments etc. He made representations to the respondent and also served notice but it had no effect. As per the information of the petitioner a junior of the petitioner viz. Shri T.D.Mendiratta who was at sl. No.513 of the Seniority List of All India Central Excise and Mr. N.V.Jotwani another junior were given those promotions but the petitioner was not given these promotions in terms of the judgment. He further wanted that the contempt proceedings should be initiated against the respondents.

4. In response, the respondent has stated that the order of this Court passed on 4.9.2002 in LPA No. 55/1985 was complied with and the petitioner was absorbed as Inspector of Central Excise in Delhi Commissionerate from Surplus Cell and was deemed to have been appointed to the grade of Superintendent w.e.f. 1.11.1972 by Commissioner of Central Excise Delhi' order dated 1.8.2003. The seniority of the petitioner in the grade of Superintendent of Central Excise was also fixed in the All India Seniority list prepared on 23.10.2003. Regarding Shri Mendiratta it was stated that he was given Senior Time Scale w.e.f. 15.11.1984 vide department Office Order No.185/1990 dated 25.10.1990 in compliance of the order passed by Supreme Court on 13.8.1990 in case titled as A.K.Chatterjee and Ors. Since the petitioner had not completed required length of four years of service for promotion in Senior Time Scale i.e. Assistant Commissioner (JTS) as per provision

of Rule 19 of the Indian Revenue Service (Customs and Central Excise) Rules, he could not be equated with others who had completed four years' service in that scale. The petitioner was given promotion to the grade of Assistant Commissioner w.e.f. 1.1.1983 and he retired on 31.3.1986 that shows that he had not completed four years of service in the grade of Assistant Commissioner and thus was not eligible for Senior Time Scale. It is not denied that petitioner had made representation for promoting him w.e.f. 1.1.1982 since Mr. Jotwani had been shown in a seniority list of 24.9.2002 as a member of 1982 batch. Since the promotion of petitioner on regular basis from Group B to Group A had become effective from 1.1.1983 and his promotion of his junior would be effective from that date only and therefore there was no ambiguity. No review DPC had taken place to make corrections in the Notification No. 30/02 and this correction in the date of promotion of junior would be effective after review DPC takes place and does the correction.

5. A perusal of documents and affidavits filed by the respondent show that the respondent had substantially complied with the directions of the Court. The petitioner was absorbed in the regular cadre of Delhi Central Excise and Custom in terms of the relief granted to the petitioner in LPA No. 55/1985. The petitioner was given the same treatment as his juniors however, since the order in respect of the petitioner came to be passed in September 2002 and the order in respect of his junior were passed long before i.e. 1981, the petitioner's placement in the seniority list could have taken place only in 2003 after passing of the order by this Court. The petitioner reached age of superannuation in 1986, even for granting promotions in retrospect, holding of DPC is necessary and other corrections could have been made by the respondent only after holding of DPC.

6. I find that the respondent by absorbing the petitioner giving him requisite seniority in the seniority list and giving him other benefits had complied with order. No contempt is made out. The petition is hereby dismissed.

February 22, 2010
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SHIV NARAYAN DHINGRA, J.