

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

+ **W.P. (C.) No.12029/2009**

% **Date of Decision: 23.03.2010**

ANAND SINGH NEGI & OTHERS PETITIONERS
Through Mr.Sachin Chauhan, Advocate

Versus

UNION OF INDIA & OTHERS RESPONDENTS
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

- | | | |
|----|---|-----|
| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

*

CM No. 12236/2009 (delay)

For the reasons stated in the application, the delay in re-filing the petition is condoned.

Application stands disposed of.

WP(C) No.12029/2009

1. The short point involved in this matter is as to whether the petitioners were justified in filing a second OA before the Central Administrative Tribunal (for short "the Tribunal") for the reliefs which were declined to them in an earlier petition filed by them before the

Tribunal which was registered as OA No.1057/1999 and was decided as per the order dated 22.11.2000.

2. The petitioners had filed the aforesaid OA aggrieved of the action of the respondents in denying them promotion to the post of Draughtsman Grade II though they alleged that they fulfilled all the conditions of eligibility and have also passed the departmental examination for Draughtsman Grade II held on 12.1.1988.

3. The Tribunal vide judgment dated 22.11.2000 while accepting the case of the petitioners for such promotion passed the following orders:-

6. The learned counsel for the applicants on the other hand has placed reliance on various judgments of the Hon'ble Supreme Court, viz, Amrit Lal Vs. Collector of Central Excise, Delhi 1975(I) SLR 169 wherein it has been held as under:

“When a citizen aggrieved by the action of a Government department has approached the Court and obtained a declaration of law in his favours, others, in like circumstances, should be able to rely on the sense of responsibility of the department concerned and to expect that they will be given the benefit of this declaration without the need to take their grievance to Court.”

A similar view was taken by the Apex Court in Inder Pal Yadav & Ors. Vs. UOI 1985 (2) SLR 248 to the effect that “...those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court”. Even the Calcutta Bench of this Tribunal in the case of Y.G. Sharma Vs. UOI (1991) 17 ATC 82 has held a similar view that “respondents will behave rationally as a model employer instead of driving the desperate employees to take legal course. All

decisions of this type should be treated as judgments in rem and be applied to persons similarly circumstances”.

8. Admittedly, when the respondents have promoted persons juniors to the applicants in pursuance of the judgment in O.A. No.2834/1992 (supra) we do not find any valid reason for not promoting the applicants when they fulfil the requisite criteria for promotion and have also passed the departmental examination way back in 1988.

9. For the reasons discussed above, the present O.A. is allowed. We direct the respondents to extend the benefit of the judgment in O.A. No.2834/92 and grant them promotion to the post of DM Gr.II from the date their juniors were so promoted. Applicants shall have their pay fixed notionally but they are not entitled for any backwages as they have not actually shouldered the responsibility of the post.

10. The O.A. is disposed of as aforesaid. No costs.

4. A perusal of paragraph 9 of the aforesaid judgment shows that though the benefit of promotion was granted to the petitioners, yet they were held not entitled for any back wages.

5. It is the case of the petitioners that similarly situated persons after the judgment given by the Tribunal in OA No. 1057/1999 relying upon the judgment of the Supreme Court in *Union of India Vs. K. V. Jankiraman*, 1991 (2) Scale SC 423 and *P.S.Mahal and Ors. Vs. Union of India and Ors.* (1994) 4 SCC 545, sought similar reliefs of promotion as well as of back wages. As per order dated 23.5.2002 passed in OA No. 2536/2001 those persons were allowed to be promoted, similarly as the petitioners were allowed but in addition they were also granted

consequential benefits of their promotion to the post of Draughtsman Grade II w.e.f. 1.11.1991.

6. Relying upon the aforesaid order, the petitioners made representations to the respondents to grant similar benefits to them and also filed a second petition before the Tribunal being OA No.120/2007 on 16.1.2007 seeking the following reliefs :-

- (i) quash set aside A1, A2, A3 regarding backwages.
- (ii) Declare and order that denial of backwages in Final Order A4 dated 22.11.2000 in O.A. No.1057/1999 Anand Singh Negi & Ors. Vs. Union of India & Ors. be ignored as per incuriam.
- (iii) Declare are and order that the applicants shall be paid full backwages (retrospective pay fixation already granted by Respondents) ever since 01.11.1991 with interest since 01.11.1991 grant any other relief with costs.”

7. However, the Tribunal dismissed the aforesaid petition vide order dated 4.12.2007 primarily on the ground that the petition was not maintainable as the effort made by the petitioners was like filing an appeal against an order passed by the co-ordinate Bench. The relevant observations made by the Tribunal are reproduced hereunder:-

6. It is seen that all the four applicants herein had earlier filed OA No.1057/1999. They were aggrieved by the action of the respondents in denying them promotion to the post of Draught Man-II, though they fulfilled all the conditions and eligibility and had also passed the departmental examination for the post of Draught Man-II held on 12.1.1988 (page 24). It is relevant to note that in the judgment dated 22.11.2000, Tribunal was fully aware of the judgment dated 15.12.97 given in OA 2834/92 and in fact basing on that very judgment, relief was granted to the applicant but a conscious decision was taken by the Tribunal which is evident from the language used in the judgment dated 22.11.2000 not to grant consequential benefits of back wages to the applicants herein.

It would be relevant to quote the operative portion of the judgment given in the 1st OA filed by the applicants. It reads as under: -

“8. Admittedly, when the respondents have promoted persons juniors to be applicants in pursuance of the judgment in OA No. 2834/92 (supra) we do not find any valid reason for not promoting the applicants when they fulfill the requisite criteria for promotion and have also passed the departmental examination way back in 1988.

9. For the reasons discussed above, the present OA is allowed. We direct the respondents to extend the benefit of the judgment in OA No. 2834/92 and grant them promotion to the post of DM Gr. II from the date their juniors were so promoted. Applicants shall have their pay fixed notionally but they are not entitled for any back wages as they have not actually shouldered the responsibility of the post.

10. The OA is disposed of as aforesaid. No costs.”

Perusal of above makes it clear, that the Bench comprising of Hon’ble Shri Kuldeep Singh, Member (J) and Hon’ble Shri M.P. Singh, Member (A) were fully aware about the order passed in OA 2834/92, yet the respondents were directed to grant the applicants only promotion to the post of Draught Man-II from the date, their juniors were so promoted but it was categorically observed that their pay shall be fixed notionally and they will not be entitled to any back wages as they have not actually shouldered the responsibility of the post. It is thus clear that a conscious decision was taken by the Tribunal in OA 1057/99 not to grant the back wages and for fixing the pay notionally.

7. It is further relevant to note that the said judgment was given as back as on 22.11.2000. The same was not challenged by the applicants in the Hon’ble High Court though it was open to the applicants to have challenged the judgment passed in their OA 1057/99. In other words applicants accepted the judgment, passed in their case. The present OA has been filed on 16.1.2007 i.e. almost after 6 years by the same applicants claiming back wages with interest. It is more interesting to see the relief claimed in the present OA. Applicants have sought a declaration that judgment dated 22.11.2000 passed in OA 1057/99 be ordered to be ignored.

8. We have no doubt in our mind that such an OA cannot be entertained in the Tribunal, as neither we can sit in appeal over the judgment dated 22.11.2000 passed by a co-ordinate Bench nor can we comment or declare the same as non-est. The only remedy available to the applicants was to challenge the same, before the Hon'ble High Court in case they were aggrieved. That remedy was not availed by the applicants. Therefore, the present OA is not maintainable.

9. In view of above discussion, OA is dismissed. No order as to costs.

8. Besides, agreeing with the aforesaid reasoning, we are also of the opinion that the earlier decision given in OA No. 1057/1999 declining back wages will act as res judicata and would debar the petitioners to file another original application the same cause of action and seek same relief which was declined and which order was not challenged by the petitioners. Thus, we find no infirmity in the aforesaid reasoning of the Tribunal which calls for any interference by this Court while exercising jurisdiction under Article 226 of the Constitution of India for the simple reason that neither a review was filed by the petitioners within the time prescribed nor the order of the Tribunal dated 22.11.2000 was assailed before this Court. In view of the aforesaid, the petition is without any merit and it is dismissed.

MOOL CHAND GARG, J.

MARCH 23, 2010
'DC'

ANIL KUMAR, J.