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

+ W.P.(C) 562/2011 & CM Nos. 1197/2011 & 16940/2011

UNION OF INDIA & ANR.

..... Petitioner

Through:

Mr. A.S. Chandhiok, ASG with Mr P.S. Parmar & Mr M.K. Bhardwaj, Adv.

versus

TUSHAR RANJAN MOHANTY

..... Respondent

Through:

Mr Tushar Ranjan Mohanty, Respondent in person.

AND

+ W.P.(C) 1095/2011

UNION OF INDIA

.... Petitioner

Through:

Mr. A.S. Chandhiok, ASG with Mr P.S. Parmar & Mr M.K. Bhardwaj, Adv.

versus

TUSHAR RANJAN MOHANTY

..... Respondent

Through:

Mr Tushar Ranjan Mohanty, Respondent in person.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

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09.11.2011

The respondent as a government officer appears to have been at the receiving end from the department resulting in multifarious proceedings. It is with the assistance of learned ASG that a quietus was sought to be put to all these disputes and the following order came to be passed on 21.11.2008:

“W.Ps.(C) 8748/2007, 1898/2007, 3478/2007, 4346/2007, 7672/2007,

The clash between an officer and the department has resulted in multifarious proceedings. Fortunately, it has been possible to find an amicable settlement of the disputes in view of the good offices of the

Additional Solicitor General and Mr. Tushar Ranjan Mohanty who appears in person. It is, thus, agreed that all these writ petitions be disposed of with the following directions:-

(i) The observations regarding the power of the DOPT/UPSC for grant of relaxation in the eligibility criteria prescribed in the Recruitment Rules for promotion made in the impugned order are set aside leaving the question open to be decided in an appropriate case.

(ii) Ministry of Statistics and Programme Implementation (MOSPI) shall remove the recordable warning issued to Shri Tushar Ranjan Mohanty on 27.06.2006 from his ACR dossier and the same be placed only in his personal file.

(iii) Shri Tushar Ranjan Mohanty hereby withdraws all cases/writs/petitions filed by him in this Court/CAT, against the Union of India and any officer of the Union of India including the following:-

(a) WP(C) 3487/2007 and Miscellaneous/Criminal applications/Petitions, including contempt petitions, pending if any, before any Court of Law/Tribunal.

(b) WP(C) 7622/2007 and Miscellaneous/Criminal Applications/Petitions, pending if any, before any Court of Law/ Tribunal.

(c) Criminal MA No. 7219/07 in WP(C) 1898/07 against Sh K.B.Arora formerly Under Secretary, in MOSPI.

(d) Any Miscellaneous/Criminal Applications/Petitions, including contempt petitions, pending if any, before any Court of Law/Tribunal filed by Shri T.R.Mohanty against UOI or any officer of UOI in WP(C)1898/07, 4346/07 and 8748/07.

(e) OA No.12/2008 (Shri E.Nagachandran and Shri T.R.Mohanty vs. UOI) and Miscellaneous Applications, pending if any, before the CAT, PB, ND.

(f) OA No. 1831/2007 (Shri E.Nagachandran and Shri T.R.Mohanty Vs. UOI) and Miscellaneous Applications, pending if any, before the CAT,

PB, ND.

(g) Contempt Petitions (CP NO. 461/07 in OA No. 1712/06, CP No. 424/07 in OA No. 1712/06, CP No. 147/07 in OA no. 1831/06 etc) and other contempt petitions, if any, filed by Sh T.R.Mohanty against the

UOI or any officer of UOI before CAT, PB, New Delhi

(h) All Miscellaneous Applications including MA No. 2242/07 in OA No. 1381/07, MA NO. 1142/07 in OA No. 1712/06, MA No. 2366/07 to MA 2371/07 in OA 1712/06 and other MAs, filed if any, by Sh T.R.Mohanty, in OA No. 1831/06.

(iv) Union of India hereby withdraws the writs filed by them against Shri T.R.Mohanty viz., WP(C) 1898/2007, WP(C) 4346/2007 and WP(C) 8748/2007.

(v) The MOSPI will hold a review meeting of the Internal Selection Committee (ISC) for assessment of suitability of Shri Tushar Ranjan Mohanty for promotion to the SAG on adhoc basis as per the extant rules as early as possible (but not later than two months from receipt of this order) by not treating the recordable warning issued to him as a part of his ACR dossier. The petitions are accordingly disposed of.

Dasti.”

The matter did not end even at this since the respondent was posted from one department to the other, who refused to accept him and has taken another three years and further the effort of the learned ASG to resolve the matter. Despite this the tail still wags. It is only now that an office order has been issued on 04.11.2011 in pursuance thereto the respondent has joined the concerned ministry. The office order reads as under:

“The President is pleased to order that Sh. T.R. Mohanty, Director (NFSG) level officer of the Indian Statistical Service (ISS) and DDG ad - hoc), on Compulsory Wait be promoted to the Senior

Administrative Grade (SAG) on regular basis in the pay scale of Rs 37400-67000 + 10000 (GP) of the Service notionally w.e.f. 29.5.2009 (i.e. the date of his junior was promoted) and actually from the date of assumption of charge of the post and until further orders.

2. The inter-se seniority of Sh. T.R. Mohanty in SAG of ISS is fixed between Sh. Ramesh Kumar Khurana and Rajeev Lochan in modification of office order No. 12016/4/SAG(Reg)/07-08/2007 dated 29.5.2009 of this Ministry.

3. On his regular promotion to the Senior Administrative Grade (SAG) of the Service, Sh. T.R. Mohanty, DDG (Ad-hoc), on Compulsory Wait, is posted as DDG, CAP (RPU), MOSPI, New Delhi vice Sh. S. Maitra.

4. It is requested that immediate action may be taken under intimation to ISS Division for the release of Sh. S. Maitra to enable Sh. T.R. Mohanty to assume charge of the new assignment at the earliest, after availing of joining time/TTA, etc. as admissible under rules. Arrangements may also be made to furnish a copy of this order to Sh. T.R. Mohanty for his information/record. A copy of the joining report may be sent to this Division.

5. This order shall be subject to decisions in the litigations on the subject pending, if any, in various courts of law.”

The only apprehension expressed by the respondent is that though the respondent has been promoted notionally w.e.f. 29.05.2009 (promotion aspect has also taken a considerable period of time), the same is effective from the date of assumption of charge of the post. The respondent thus states that it should not happen that when his promotion becomes due, any period of lack of service should come in his way of further promotion.

Learned ASG states that there should not be any reason for such an apprehension.

We make it clear that in view of more than three years having elapsed since the whole issue ought to have been resolved, the delay in promotion of the respondent, the repeated posting orders given to respondent where department did not permit him to join, would imply that the benefit for all purposes including for promotion would be available to the respondent from the notional date of service, i.e., 29.05.2009.

We may note that the respondent has withdrawn all petitions before the Tribunal and in this court and it is stated that no other petition is pending except two writ petitions bearing no. 2423/2003 and 3609/2003 which relate to an issue of inter se seniority/promotion and thus not concerned with the dispute. This ought to have put an end to the dispute and the present petitions ought to have been withdrawn.

Learned ASG states that despite his best persuasion he has received no instructions to withdraw the present petitions. We find the aforesaid stand unacceptable for the reason that all the disputes inter se the parties qua the said matter in issue were settled vide order dated 21.11.2008. Not only that the respondent rightly points out that in collateral proceedings being Crl. M.C. No. 3021/2010 an application was filed by the respondent being Crl. M.A. No. 4345/2011 in which the pendency of the present writ petitions were specifically mentioned. In the order passed on 08.04.2011 on that application the counsel for UOI had specifically stated that even the present petitions would be withdrawn.

Even otherwise we feel that once the whole dispute is put to an end the petitioner/ UOI should not try to side line the issue by seeking to keep alive these proceedings where the respondent has succeeded before the Tribunal. We may note that the WP(C) No. 562/2011 arises from the order passed in OA No. 2345/2009 on 21.01.2010 regarding

non-promotion of the respondent, despite proceedings against him being set aside. The issue centered around the appointment of an inquiry officer in FISHCOPFED, registered under the Multi-State Co-operative Societies Act. The allegation against the respondent is that he did not submit accounts for the monies received by him for air tickets etc. The Tribunal has found that there is no sufficient justification for initiation of proceedings and continuation thereof for years together and that the respondent was being put to prejudice for no valid reasons. The reasoning of the CAT is unexceptionable.

The WP(C) No. 1095/2011 arises out of OA No. 2262/2009 decided by the Tribunal on 13.01.2010. The respondent has made a grievance that he was being unnecessary prosecuted by Director (General) of the Central Statistical Organization resulting in issuance of memorandum. The CAT has found that there was no allegation of malafide or personal blame nor any misrepresentation by the respondent to call for such an office memorandum. The settlement recorded by this court was also taken note of. Orders passed against the respondent were quashed. Once again the reasoning of the court is unexceptionable.

In view of the aforesaid facts we find no reason to entertain these petitions which are dismissed leaving parties to bear their own cost.

We appreciate the assistance put in by learned ASG to resolve the dispute, but we wonder why the spirit has not been maintained and that the settlement, which had already been recorded has not been implemented by the UOI even in these two matters.

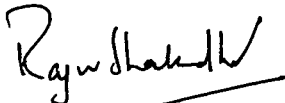
Needless to say that in view of the dismissal of the writ petitions, para 5 of the officer order dated 04.11.2011, making the promotion of the respondent subject to

various court cases, would not operate as these were the only two petitions which were pending, which now stand dismissed.

At this stage the respondent states that though all disputes have been settled the issue of reimbursement of some amounts, totaling to an amount of Rs 60,000/- in respect of reimbursement of his telephone bills and LTC during the period of suspension (when he was treated to be on duty for all purposes in terms of office order dated 24.02.2010) is still pending, and that he would not like to be compelled to approach the court for the said purpose in view of the settlement.

Learned ASG states that this request was rejected earlier on 06.09.2011 and again on 11.10.2011.

We consider it appropriate to direct the UOI to re-examine the matter especially taking into consideration the office order dated 24.02.2010 by which the respondent is treated as on duty for all purposes and consequently the telephone bills and LTC would become reimbursable to the respondent. A decision containing reasons in that regard be communicated to the respondent within one month from today.


SANJAY KISHAN KAUL, J

RAJIV SHAKDHER, J

NOVEMBER 09, 2011
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