

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

% *Judgment Pronounced on :March 22, 2013*

+ **W.P.(C) 1802/2013**

UNION OF INDIA & ANR. Petitioners

Represented by: Mr.Ankur Chibber, Advocate.

versus

K.K.DAWAR & ANR. Respondents

Represented by: Mr.M.K. Bhardwaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE VEENA BIRBAL

PRADEEP NANDRAJOG, J.

1. We have repeatedly cautioned the Members of the Central Administrative Tribunal not to dispose of Original Applications without notice to the respondents. Such kind of decisions, without notice to the respondents, disposing of Original Applications on the very first day of listing, create problems for the department in the form of stale claims resuscitating. We are noticing that the so-called innocuous directions issued by the Tribunal that either the Original Application be treated as a representation and a reasoned decision taken, or a direction that the representations already made, be decided with reasons, gives birth to an ostensible fresh cause of action. At the second stage litigation, after claims are denied, the Tribunal is unable to decipher as to when would the cause of action accrue. Very conveniently, Benches of the Tribunal, do not even deal

with the issue of limitation, resulting in unnecessary further litigation being created in the High Courts. Instant case highlights one such problematic manner in which the Tribunal disposed of an Original Application and at the second stage, very conveniently ignored to deal with the issue of limitation.

2. O.A.No.3675/2011 was disposed of by the Central Administrative Tribunal on October 13, 2011, passing a seemingly innocuous direction as under:-

“In view of the above limited prayer of the applicants, we deem it appropriate to dispose of this O.A. at the admission stage itself, without expressing any opinion on the merits of the case, by directing Respondent No. 2 to consider the pending request of Respondent No.1 dated 28.07.2011, treating the present O.A. as a supplementary representation of the applicants and decide the same expeditiously in accordance with the rules. The decision taken may be communicated to Respondent No.1 and applicants through a reasoned and speaking order on the subject within a period of three months from the date of receipt of a copy of this order.”

3. But a time-bomb, with a timer, was embedded by the Tribunal.

4. The respondents, K.K.Dawar and Shyam Sunder Lal were the applicants of O.A.NO.3675/2011.

5. In the year 2011 they had raised a grievance pertaining to promotions which had been made to the post of Upper Division Clerk, from amongst Lower Division Clerks, in the year 1994. They were questioning the Select List prepared in the year 1993.

6. It is apparent even to a layman that a claim for promotion made in the year 2011 with respect to a Select List prepared in the year 1993 was barred by limitation.

7. A perusal of the pleadings in O.A.No.3675/2011 would reveal that the said two persons pleaded ignorance of what had happened till the year 2007. Even reckoning limitation to commence from said year, a claim before the Tribunal in the year 2011 was highly belated.
8. Yet in spite thereof, without putting the respondents to notice, O.A.No.3675/2011 was disposed of by passing the seemingly innocuous direction as aforementioned; but a direction which contains a time-bomb with a ticker.
9. Giving respect to the direction of the Tribunal DoPT relooked into the promotions made and passed detailed order on January 30, 2012.
10. The order running into 5 pages brought out that K.K.Dawar was appointed as an L.D.C. on April 01, 1987 through the Limited Departmental Competitive Examination for Group-D staff and Shyam Sunder Lal was appointed as an L.D.C. on compassionate grounds with effect from May 01, 1985. The order notes that K.K.Dawar was promoted as a U.D.C. on September 19, 1995 and Shyam Sunder Lal was promoted as a U.D.C. on January 23, 1996; both pertaining to the Select List of the year 1993, taking into account future vacancies as of 30.06.1994.
11. The order notes that the two were claiming that pertaining to the Select List of the year 1993, 27 vacancies to the post of U.D.C. were not taken into account. Both of them were claiming that if said 27 vacancies were taken into account when the Select List was prepared in the year 1993, both of them would have been promoted as U.D.Cs in the year 1993. They projected a stand that for acquiring eligibility to be promoted as a U.D.C. one had to serve on regular basis as an L.D.C. for 08 years. With reference to the fact that K.K.Dawar was appointed as an L.D.C. on April 01, 1987

and had not served for 8 years on June 30, 1994, the eligibility date pertaining to the Select List of the year 1993, he as well as Shyam Sunder Lal claimed that the vacancies against which they were appointed as an L.D.C. pertained to the year 1984 and 1985, the order dated January 30, 2012 brought out that there was a difference between the eligibility and entitlement to be considered in the form of persons coming within the zone of consideration for promotion.

12. The order brought out the fact that L.D.C's recruited in the year 1983 and 1984 had yet to be promoted on account of the fact that adequate vacancies were not available for them and thus the zone of consideration was restricted to the said year appointed L.D.Cs. The order also brought out that notwithstanding 27 vacancies later on found available when the Select List was made in the year 1993 pertaining to the promotions to be made treating June 30, 1994 as the date of approved service, since vacancy position was not notified within time by various departments, said vacancies became carry forwarded vacancies and were included for the next year when the two gentlemen earned a promotion.

13. Pithily stated, bringing home the point that neither claimant was wronged when the Select List was prepared, the order terminates rejecting the claim.

14. At the second round of litigation, vide impugned decision dated October 11, 2012, the Tribunal has directed the department to consider all persons including the respondents in accordance with the seniority for promotion to the 27 posts available in the year 1993 with all consequential benefits in terms of pay fixation and next level promotion.

15. With regret we note that the Tribunal has just not bothered to consider

the issue of limitation.

16. Ex-facie, the claim of the respondent was hopelessly barred by limitation. In the year 2011 they pick up an issue pertaining to the promotions made in the year 1994.

17. Further, the Tribunal has just not bothered to consider the effect of the fact that the 27 vacancies available as of the year 1993 were never notified by the various departments to be filled up. Now it is settled law that even if a vacancy exists, for good and justified reasons it is permissible for the department not to fill-up the vacancy in the year of the vacancy.

18. What better justification would the department have other than the justification that its different departments did not intimate the vacancy position in time and this was the reason why the 27 vacancies were included in the next year vacancy position?

19. Further, if at all any mandamus could be issued, the same had to be that left-over employee of the year 1983 and 1984 alone be considered for promotion against the said 27 posts for the reason it was categorically told to the Tribunal that there were left-over L.D.Cs as of the said two years when panel was prepared in the year 1993.

20. Regretfully, the Tribunal has looked at nothing.

21. The writ petition is allowed. Impugned decision dated October 11, 2012 is set aside. O.A.No.949/2012 is dismissed.

22. We direct that a copy of this decision be sent to the Registrar of the Central Administrative Tribunal who shall circulate the same to all Members of the Tribunal, and it is hoped and expected that in future, no Bench of the Central Administrative Tribunal disposes of Original Application without notice to the respondents.

23. Howsoever strong a case may appear to be, no adjudicatory system can countenance a matter to be disposed of without even putting a notice to opposite party. This is the minimum requirement of principle of natural justice, and who else other than Central Administrative Tribunal would be bound to observe the same for the reason, except in cases of idle formalities; violation of a principle of natural justice is treated as an injury by itself not requiring any further injury to be shown or to be proved.

24. No costs.

CM No.3438/2013 (interim relief)

Dismissed as infructuous.

(PRADEEP NANDRAJOG)
JUDGE

(VEENA BIRBAL)
JUDGE

MARCH 22, 2013

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