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

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DECIDED ON: 06.05.2016

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W.P. (C) 5884/2015, CM APPL.10610/2015

RAVINDER PAHUJA & ORS

..... Petitioners

versus

HIGH COURT OF DELHI & ORS

..... Respondents

W.P. (C) 9647/2015, CM APPL.22975, 22976/2015 & 1503/2016

K.K. SHARMA & ORS

..... Petitioners

versus

HIGH COURT OF DELHI & ORS

..... Respondents

Appearance: Mr. Kirti Uppal and Mr. C. Harishankar, Sr. Advocates with Mr. Amiet Andlay, Mr. Arun K. Sharma and Mr. S. Sunil, Advocates for petitioners in both cases.

Ms. Maninder Acharya, Sr. Advocate with Mr. Sanjay Ghose, Ms. Pratishtha Vij and Mr. Abhishek, Advocates for Delhi High Court in both matters.

Mr. Avadh Kaushik, Advocate for Resp-10 in W.P.(C) 9647/2015.

Ms. Joymoti and Ms. Megha Singh, proxy counsel for Mr. Naresh Kaushik, Advocate for respondent Nos.5-13.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJIV KHANNA

S.RAVINDRA BHAT, J. (ORAL)

1. The petitioners in these proceedings agitated a common grievance and contend that the previous judgment of this Court (dated 23.10.2009) hereafter called Atul Sharma-1 and the second clarificatory judgment (dated 01.06.2012), hereafter called as Atul Sharma-2 have resulted in arbitrary implementation. Their grievance, more specifically, is that the assignment of seniority to contesting

respondent nos.2-13 (in W.P.(C) 9647/2015) is incorrect. The first judgment was necessitated by a prior Division Bench ruling dated 16.10.1998, where the Court had set aside as arbitrary, the 1988 amendment to the rules which provided for filling up of SJA posts exclusively by promotion on the basis of seniority cum suitability from Treasurers/UDCs possessing five years service. The amendment permanently blocked the additional promotional avenues previously available to Jr. Translator to the equivalent grade of Judicial Assistant (now designated as SJA). Prior to 1998, the rules provided two promotional avenues to Jr. Translators - one to the cadre of Sr. Translators (of which only 9 number of posts existed) and the other to the cadre of Assistant (now called SJA). The Division Bench ruling meant that position which existed in 1988 had to be restored and the intervening vacancies which were filled without affording the opportunity to such Translators, was re-worked in an equitable if not completely suitable manner. Atul Sharma-1 - delivered on 23.10.2009 - sought to address this issue; after taking note of intervening promotion to 115 vacancies, effected by the Delhi High Court Establishment between the years 1988 and 2000. The Court was of the opinion that 20% of such vacancies or eight posts have to be earmarked for eligible Jr. Translators for consideration of their promotion. Some difficulty was experienced in the implementation of Atul Sharma-1. The clarificatory applications were moved by the individuals occupying posts in other cadres. Besides in the case of many Translators - permitted to attempt the tests, interview marks were not awarded.

2. The second judgment (Atul Sharma-2) dealt with the clarificatory applications and also addressed the question of interview marks to such translators who had attempted the tests but were not awarded such marks. The present petitioners felt aggrieved and agitated their grievances along with certain others before the Supreme Court in the appeals by special leave (Civil Appeal No.5838 & 5839 of 2012). The Supreme Court rejected those SLPs. The Supreme Court recorded as follows: -

9. The appellants assert that their seniority in promotion each of the cadres to which they have been promoted from time to time remains unassailed and cannot be adversely affected by the directions in favour of the Junior Translators who have come to the cadre of AOJ/CM from the cadre of SJA with which cadre the appellants are not in any way concerned or connected.

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13. In the present case, according to us, the order dated 23.10.2009 passed in W.P. (C) Nos.4077-84 of 2004 does not justify a recall even upon hearing the appellants and after a comprehensive consideration of the case urged on their behalf. The decision of the High Court in C.W.P. No.1218 of 1989 has attained finality in law. The said order has the effect of putting clock black to the year 1988 and therefore should have been implemented immediately. Such implementation, to say the least, was tardy. A modified scheme of implementation, taking note of the facts and events which have occurred during the interregnum, was attempted by the High Court by the order dated 23.10.2009 in W.P. (C) No.4077-84 of 2004. Not only was the implementation confined to a limited number of posts and benefit thereof restricted to the Junior Translators only, even the said directions were further diluted to the advantage of the incumbents coming from categories other than SJA by restricting the eligibility of the Junior Translators for

promotions. In both the orders i.e. 23.10.1989 and 16.01.2002, the High Court had also made it clear that adjustment of seniority was to be purely notional and if any reversion was to result, the High Court administration was free to take necessary administrative measure to minimise the impact thereof. Both the orders dated 23.10.2009 and 01.06.2012 are attempts made by the High Court to balance the situation by taking into account the legal rights that flow to the Junior Translators from the judgments of the High Court that require implementation and the equitable considerations by which the cases of the appellants, who are not at fault, are required to be judged.

14. The balancing of the two sets of claims was a formidable task which in our opinion the High Court has done commendably. The impugned orders do really strike a balance between the compulsion of law and equity. "The law, as an instrument of social justice, takes a longer look to neutralize the sins of history".¹ If constitutionality of a service Rules itself cannot be judged "on the touchstone of fortune of individuals" and the paramount consideration in framing the service rule is reconciliation of conflicting claims as observed in Kamal Kanti Dutta & Ors. Vs. Union of India & Ors.², we do not see how an adverse impact on equitable rights occasioned by a "milder version" of implementation of judicial orders that have attained finality in law can invite our jurisdiction under Article 136 of the Constitution. We, therefore, will not upset what has already been done by the High Court and interfere with the order dated 01.06.2012 passed by the High Court."

After the judgment of the Supreme Court, the High Court establishment issued Circular dated 27.03.2015 and several Corrigenda on 22.04.2015 by which the notional dates of seniority and appointment were assigned to various individuals in the cadre of Assistant Registrar and above, based upon the revision of dates of

entry of the original petitioners in Atul Sharma-1 and upon the judgment rendered by the Supreme Court.

3. The writ petitioners urged that assignment of notional date of appointment to the Translators without reference to the marks they obtained cannot be justified. It is highlighted that the seniority had to be worked out in accordance with the merit list drawn for the purpose. It is urged by learned senior counsel that some of the petitioners were promoted as far back as in 2001 and 2003; the settled seniority position could not have been disturbed in the manner proposed through the clarificatory Circulars and Corrigenda. It is furthermore urged that the assigning of notional dates for other cadres as well such as Private Secretary etc. is utterly unjustified as it is not based upon any reasons.

4. This Court notes that the question of assignment of notional dates of entry into the service and consequent seniority is something that engaged the attention of the Division Bench in both the previous judgments, i.e., Atul Sharma-1 and Atul Sharma-2, as is evident from a pointed reference to paragraph 39 and the detailed working out of the vacancies as reflected in paragraph 40 of the judgment. In paragraph 39 itself, the Court had noted that the two petitioners before it had qualified in the years 1987 and four petitioners had qualified in the year 1992 and one more had qualified in 1996 in the tests held in the cadre of Sr. Translators. Clearly, therefore, there was justification for the Court to hold that to balance the equities further claim had to be appropriately acceded to. Paragraph 22 in Atul Sharma-1 had even rejected the contention of some of the respondents that allowing the

claim of the Translators would result in ignoring the statutory precondition of qualifying service in order to earn a promotion to higher promotional cadres.

5. As is evident in the extract of its judgment, the Court's directions - in Atul Sharma-2 - were upheld by the Supreme Court, this naturally meant that seniority lists had to be drawn not only in the cadre of AOJ but also of other higher promotional posts. Now, in respect of each post there is no dispute that the rules mandate maintenance of the quota (at least at the cadre of Assistant Registrar). The prevailing rules require the ratio of 3:4 as between Private Secretary and AOJs respectively. The rota prescribed is that the 1st, 3rd and 5th post would fall to the share of PS' cadre and the 2nd, 4th, 6th and 7th post would fall to the cadre of incumbents in the post of AOJs. The result of implementation of the Court's judgment in Atul Sharma-I and Atul Sharma-2 meant two things, i.e., the declaration of results - wherever necessary by arriving at the interview marks, and adding them for the purposes of considering whether the Translators had qualified or not. In the hearing before this Court, it has transpired that all except one of the Translators, i.e., Mr. Arun Kumar Sharma did so qualify. The second part of the implementation would naturally mean that the slots that would have fallen to such Translators, i.e., for the 8 vacancies had to be filled by process of adjustment in the seniority list - inevitably leading to pushing down some existing incumbents. Likewise the corollary so far as the other cadre of PS is concerned meant that some shifting was necessitated. However, that shifting

cannot be a ground for the present petitioners who do not belong to that cadre and could not lay claim on any vacancies arising therefrom.

6. This Court is conscious of the fact that when balancing equity at the stage of delivery of judgment in Atul Sharma-1, the outcome would result in discomfiture in certain existing incumbents. This discomfiture had to be also viewed from the fact that these incumbents occupied posts that they could not lay claim as a matter of right. The result of the first declaration of this Court striking down the amendment of 1988 would have led to large scale reversion. Atul Sharma-I sought to minimize the drastic impact of such reversions. Like in all schemes, meant to address the interest of different cadres neither Atul Sharma-1 nor Atul Sharma-2 can claim to be preferred. Even the Supreme Court noticed this and at the same time upheld Atul Sharma-2. Given all these constraints and circumstances, the implementation cannot be held to be arbitrary at least not on the ground urged by the petitioners.

7. The petitioners had also urged that creation of supernumerary posts and that of a large number is not justified and that it would impair their chances of promotion. This Court considers this grievance too insubstantial. Firstly, the creation of supernumerary posts was insisted not only because of promotion of Translators but also the consequential effect it would have cause on those who are promoted to the immediate higher and further promotional cadres. Furthermore, those belonging to other cadres such as Private Secretary too would have been adversely impacted. The second significant issue is that if the Translators were to be adjusted against

supernumerary vacancies their legitimate chances for promotions would have adversely impacted - they would have yielded on the other hand to those who occupied posts that should have belonged to them. Consequently this ground is without basis.

8. Reliance placed for this purpose on *D.K. Reddy & Anr. v. UOI & Ors.* (1996) 10 SCC 177 in our opinion is not justified. Because in that case, the Supreme Court took note of the fact that in the previous litigation which led to the creation of the supernumerary posts, the concerned petitioners were not the party, unlike the present petitioners who themselves agitated their grievances in the Supreme Court.

9. The writ petitions are consequently dismissed. All applications are also disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJIV KHANNA
(JUDGE)**

MAY 06, 2016
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