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

+ **W.P.(C) 10772/2020 & CM APPL. 33809/2020**

P B SINGH

..... Petitioner

Through Petitioner in person.

versus

UNION OF INDIA THROUGH & ORS.

..... Respondents

Through None

%

Date of Decision: 25th January, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE ASHA MENON

J U D G M E N T

MANMOHAN, J (Oral):

1. Present writ petition has been filed with the following prayers:-

“(a) to issue a writ of certiorari, order or direction calling for records of the decision and order dated 23rd September 2014 and proceedings of the Contempt Petition CP No 707/2014 in OA No 1245/2014 from the Central Administrative Tribunal, Principal Bench, New Delhi;

(b) to issue a writ of certiorari, order or direction to quash the impugned order [contained in para 14 of affidavit 16.2.2015(ANNEXURE P-8)], since Respondents have illegally and arbitrarily denied petitioner of his right to be considered for upgradation to grade of Additional Secretary, in as much as Respondents had returned the

proposal for upgradation and appointment of petitioner to grade of Additional Secretary, without the said proposal having been considered by the Appointment Committee of Cabinet , for an irrelevant and malafied departmental proceedings initiated on 19.11.2014 subsequent to 8.8.2018 the date upgradation simpliciter of petitioner to grade of Additional Secretary, became due against the vacancy arisen on 8.8.2013 under the scheme of upgradation simpliciter in the Govt of India DOPT Order dt 21.6.2004(ANNEXURE P-1) ;

(c) to issue a writ of mandamus, order or direction to Respondents for considering petitioner entitled to be considered by Respondents in the Appointment Committee of Cabinet (ACC) for approval of his appointment to grade of Additional Secretary against the vacancy arisen on 8.8.2013 under the scheme of upgradation simpliciter in the Govt of India DOPT Order dt 21.6.2004 (ANNEXURE P-1) ,with all consequential benefits with effect from 8.8.2013,that is, from the date upgradation simpliciter of petitioner became due under the said scheme;

(d) to issue such order or direction as Hon'ble Court deems fit and proper in the circumstances.”

2. Petitioner, who appears in person, states that the Respondents have illegally and arbitrarily denied petitioner his right to be considered for upgradation to the post of Additional Secretary, in as much as respondents had returned the said proposal for upgradation without the same being considered by the Appointment Committee of Cabinet. Petitioner states that he became entitled for upgradation simpliciter to the grade of Additional Secretary, against the vacancy on 8th August 2013 under the scheme of upgradation simpliciter of the Govt of India vide DOPT Order dated 21st June, 2004.

3. The petitioner states that the petitioner was the senior most Joint Secretary and Legislative Counsel (JS&LC) and was eligible for grade of Additional Secretary in the scheme of upgradation simpliciter and the petitioner also states that the Respondents No. 2 & 3 had with malafide intent promoted a candidate junior to the petitioner to the grade of Additional Secretary against the vacancy. The petitioner further states that this Court vide order dated 28th November 2018 in W.P.(C) No.8910/2014 had neither considered nor rejected the said issue.

4. Having heard the petitioner, this Court is of the view that the challenge to the order dated 23rd September, 2014 and proceedings of the Contempt Petition being CP No.707/2014 in O.A.1245/2014 as well as to the averments in the affidavit dated 16th February, 2015 filed before the Central Administrative Tribunal is barred by delay and laches.

5. In the affidavit dated 16th February, 2015, the contention of the petitioner regarding the alleged personal grudge of the respondents Nos. 2 & 3 were denied as baseless as well as frivolous and the petitioner was described as a habitual litigant who had filed large number of frivolous cases. The relevant averments in the said affidavit are reproduced hereinbelow:-

11. That in pursuance of the order of the Hon'ble Tribunal the proposal was sent to Cabinet Secretariat on 31st October 2014 requesting to consider the candidate of Shri Prakash Singh for the post of additional Secretary. It has been informed by the Cabinet Secretariat that on receipt of the proposal the claim of Shri Prabhakar Singh for promotion to the post of Additional Secretary in the Legislative Department has been considered by the Search-Cum- Selection Committee (SCSC) in its meeting held on 11.11.2014, in due compliance of the directions dated 23rd September 2014 and 31st October 2014 of Hon'ble Central

Administrative Tribunal, Principal Bench, New Delhi. Accordingly, the recommendation of the SCSC was submitted for seeking the approval of the appointments committee of the Cabinet. However, in the meanwhile departmental proceedings under Rule 16 of CCS (CCA) Rules, 1965 were initiated against Shri Prabhakar Singh.

12. That much prior to these processes, Shri Prabhakar Singh approached Members of Parliament to sponsor his case in respect of service matters. At the first instance on 24.1.2014 (Annexure R-I) he was advised to desist from approaching members of parliament in this regard in terms of Rule 20 of the CCS (CCA) Rules, 1964 with the approval of the competent authority. Further on 14.7.2014 again Shri Prabhakar Singh got a letter written by another member of parliament for exerting political influence in processing his case and on being found guilty of violating the conduct rules second time, a written warning was issued to him on 20.8.2014 (Annexure R-II) with the approval of competent authority and a copy thereof was placed in his ACR dossier as per the Rules. Instead of desisting from bringing political pressure, Shri Prabhakar Singh again submitted a representation directly to the Hon'ble Prime Minister. On this issue, advice of the department of Personnel & Training was sought as to whether the officer may be proceeded against for violation of CCS Conduct) Rules, 1964 time and again.

13. That the department of Personnel & Training vide their note dated 31.10.2014 informed that matter may be dealt as per provisions of the office Memorandum dated 6th June 2013. The said O.M. inter-alia provides that submissions of representations directly to higher authorities by-passing the prescribed channel of communication, has to be viewed seriously and appropriate disciplinary action should be taken against those who violate these instruction as it can rightly be treated as an unbecoming conduct attracting the provisions of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964.- In view of these instructions and with the approval of the Hon'ble

Minister of Law & Justice, departmental proceedings under Rule 16 of the CCS (CCA) Rules, 1964 had been initiated against Shri Prabhakar Singh vide Memorandum dated 19th November 2014.

14. That in the light of the departmental proceedings initiated under Rule 16 of the CCS (CCA) Rules, 1965 against the office and his retirement on 30.11.2014, the proposal seeking ACC's approval was returned. This position has been communicated to the Legislative Department by Cabinet Secretariat vide communication dated 16.12.2014. The applicant has directly not brought on record the fact that departmental proceedings under rule 16 of CCS (CCA)(Rules, 1965 had been initiated against him by the Legislative Department. As such, the claim of applicant that the respondents have not complied with Tribunals directions in the matter is without any basis.

15. That the submissions of the applicant that respondents No.2 & 3 are having personal grudge against the applicant is denied. Claim of seniority of the applicant over respondent -No.3 was rejected by Hon'ble CAT, PB New Delhi vide order dated 20.8.2009 in OA No. 1071/2002. Further writ petition (C) No. 11995/2009 filed by the applicant before Hon'ble High Court of Delhi, challenging Hon'ble Tribunal order dated 20.8.2009 in OA No. 1071/2009 has been dismissed vide decision dated 7th August 2014. On submission of the applicant that issue is still pending before Hon'ble Supreme Court, it is submitted that no notice has been received by the respondents and respondents are not aware whether applicant has challenged the decision dated 7th August 2014 of Hon'ble High Court of Delhi in WP (C) No. 11995/2009.

The contentions of the applicant regarding the alleged personal grudge of the respondents No.2 & 3 are baseless, frivolous and merit rejection. It is pertinent to mention here that the applicant is a habitual litigant who has filed large number of frivolous cases in his entire career. Regarding his averment of seniority dispute with the respondent No.3, it is submitted that

the same has already been rejected by the Hon'ble Tribunal vide order dated 20.8.2009 in OA No. 1071/2002 and further the said order of the Tribunal has been upheld by the Hon'ble High Court of Delhi in Writ Petition No.11995/2009 vide order dated 7.8.2014. It is further submitted that in the above mentioned writ petition, the above applicant was also issued Contempt Petition for filing false affidavit before the Hon'ble High Court of Delhi. However, the said contempt notice was discharged on the unconditional apology by the applicant. The applicant was also burdened with cost in OA No.3237/1992 titled Nanak Chand Thekwani Vs. UOI where the Hon'ble Tribunal rejected the MA filed by the applicant for intervention. The above facts show that the applicant is a habitual litigant and has been indulging in frivolous litigation and even mislead the Hon'ble High Court of Delhi by filing false affidavit in order to get relief; of which the Hon'ble High Court took a serious view and contempt notice was issued as stated above. This shows the conduct of the applicant in pursuing his interest by wrong methods.

In view of the above facts, it is respectfully submitted that respondents have fully complied with the orders of the Hon'ble Tribunal dated 23rd September 2014 and 31st October 2014 in letter and spirit. It is, therefore, prayed that the contempt proceedings may not be initiated against the respondents. It is further respectfully submitted to this Hon'ble Tribunal that contempt petition against respondents may kindly be dismissed in view of detailed submissions made herein above.”

6. Further the alleged seniority dispute with the respondent no.3 and the alleged right to upgradation are no longer *res integra* as they had been decided in O.A.No.1245/2015 and thereafter in W.P.(C) No.1890/2014 by the High Court of Delhi. The relevant portion of the Division Bench judgment in WP(C) 1890/2014 is reproduced herein below:-

“10. This court is of the opinion- for reasons to be outlined hereafter, that the impugned order is in clear error. The sequence of facts would show that a post of JS & LC was upgraded pursuant to a decision of the Union Cabinet; the order of 29 June, 2004, inter alia, states that

“The post of Joint Secretary and Legislative Counsel (Grade I of Indian Legal Service) in the Legislative Department shall stand upgraded to the post of Additional Secretary with effect from the date of appointment senior most Joint Secretary and Legislative Counsel in the Legislative Department to the said upgraded post of Additional Secretary.”

11. It is a matter of record (undeniably, since the applicant did not also dispute it) that on 2 September, 1999, the Prime Minister had approved and sanctioned the method of filling the post of Secretary and Additional Secretary in the Indian Legal Service; this included the Cabinet Secretary, as chair and other ranking officers as well as an outside expert. Separate committees were to appraise for the two posts. If seen in the context of this order, the upgradation order of 2004 was an exception. The order of 2007, reviving the post, is as follows:

“In this regard it may be relevant to point out that since seniormost Joint, secretary & Legislative Counsel in, the Legislative Department has already reached the basic pay equivalent to the scale of pay of Additional Secretary. i.e. Rs. 22,400'wai effect from 1st September, 2006- and therefore will not- be any financial implication on the revival of the post of Additional Secretary in view of the reasons stated above, the approval of the Cabinet is solicited to operationalize/revive the post of Additional Secretary in the Legislative Department for its being held by the senior- most Joint Secretary & Legislative Counsel of the legislative Department as approved by the Cabinet on 15th June, 2004”

12. In the opinion of this court, the order of June, 2004 merely upgraded a post to that of Additional Secretary that upgradation carried with it the incumbent, who later retired. The post thereafter was abolished, in a sense. The order of 2007, which approved the above note, merely revived the post. However, no separate

procedure to fill the post was carved out; the order of 2007 does not reflect a decision to override the search cum selection mode approved by the PM 02-09-1999. If we see, these facts it is apparent that the procedure carved out through the orders of 2004 and 2007 were one time measures or exceptions. They could not have been invested with the invulnerability of a vested right of a candidate facing public selection on merits, who is confronted with a changed criteria. The Rangaiah and Deepak Agarwal decisions are clear authorities on the proposition that the rules of selection (akin to the rules of a game) cannot be changed after the selection procedure has commenced. However, in this case, the temporary upgradation of a post (its revival signifies its temporary nature) did not carry with it any permanence as to the mode or procedure of filling. On the other hand, the order of 2 September, 1999 clearly envisioned the adoption of a selection method to fill the concerned post. Furthermore, the Transaction Rules clearly posit that all posts of Joint Secretary and above are to be filled by approval of the ACC. The ILS Rules, especially Rule 13, refer to “orders of government” with respect to filling of posts of a particular pay grade and above. Clearly, therefore, the applicant could not have claimed a vested right to the post merely because he was the seniormost JS & LC.

13. This court is also of the opinion that the UOI’s view, or considered decision, not to fill the post of Additional Secretary till a final decision, clarifying the situation is also ipso facto not reviewable. *Sunkersan Dash (supra)* is a Constitution Bench judgment and authority on the point that the government or a public agency is not obliged to appoint someone or many even after the completion of the recruitment process, if there a rationale for such decision. In this case, there is no compelling rule or binding legal norm which obliged the UOI to fill the vacancy of Additional Secretary (revived after the incumbent had retired). Having regard to the facts available, it decided not to presently fill the post. The subsequent order issued by it is that the post would be filled according to the procedure prescribed by the 02-09-1999 decision and in accordance with the Transaction Rules. There is no infirmity in such a view; it is reasonable and valid.

14. For the above reasons, it is held that the impugned order of the CAT cannot be sustained; it is hereby set aside. The writ petition is, accordingly allowed without order on costs.”

7. Consequently, petitioner by way of the present writ petition seeks to relitigate and convert this Court into an Appellate Court of the earlier Division Bench judgment in WP(C) No. 1890/2014 – which is not permissible in law. Accordingly, the present writ petition along with pending application stand dismissed.

MANMOHAN, J

ASHA MENON, J

JANUARY 25, 2021
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