

(2013) 05 DEL CK 0424
In the Delhi High Court
Case No : Writ Petition (C) 5663 of 2012

Rakesh Behari, IAS

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 6 AD 537 : (2013) 201 DLT 333 : (2013) 136 DRJ 80 : (2014) 1 SLJ 242

Hon'ble Judges : V. Kameswar Rao, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Geeta Luthra, Mr. Sanjeev Sahay and Ms. Ashly Cherian, for the Appellant; Sumeet Pushkarna, CGSC, Mr. Gaurav Sharma and Mr. Rajesh Nagpal, for the Respondent

Final Decision : Allowed

Judgement

V. Kameswar Rao, J.—Petitioner challenges the order dated November 14, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) dismissing CP No. 264/2012 seeking enforcement of the order passed in his favour in OA No. 178/2011, observing that the petitioner had the liberty to challenge the order passed by the respondents, which was alleged to be in violation of the order passed by the Tribunal allowing OA No. 178/2011. The petitioner, who is a 1997 batch IAS Officer, being aggrieved at his non empanelment for the post of Secretary, Government of India, had filed O.A. No. 178/2011, inter-alia, seeking a direction from the Tribunal to the respondents, to empanel him to the post of Secretary, Government of India along with his batch-mates of Indian Administrative Services, 1977. The Tribunal by way of a detailed order/judgment allowed the Original Application filed by the petitioner with the following directions:-

To conclude, having carefully considered the matter in all its relevant aspects, we have held that the case of the applicant needs to be re-looked by the competent

bodies considering the ACRs for the years 2008-09, 2005-06, and ignoring for the year 2003-04. Besides, even with regard to his non-empanelment as AS, we feel to meet the ends of justice, the respondents have to have a re-look in the matter, as had been done in some cases cited before us. This exercise is to culminate into passing a speaking and reasoned order and conveying the same to the applicant. In the event of a positive outcome, the respondents are also to consider assigning appropriated inter-se seniority to the applicant among the empanelled officers of 1977 batch IAS Officers for posting as Secretary in Government of India.

2. In terms of the directions of the Tribunal the respondent passed two orders, the first on May 30, 2012, whereby in terms of the recommendations of a special committee of Secretaries the respondents recommended the petitioner's empanelment for appointment to Secretary equivalent post in the Centre. The second being an order dated August 01, 2012 read with order dated August 03, 2012, whereunder the respondents informed the petitioner that his case has been considered in the year 2012 for empanelment and since on the first day of year 2012, he did not have two years remaining service, he was not being empanelled for appointment as Secretary. The aforesaid orders resulted in petitioner filing the contempt petition before the Tribunal alleging non compliance of the order disposing of the Original Application.

3. After hearing the parties the Tribunal dismissed the contempt petition by noting the order dated August 01, 2012 read with the order dated August 03, 2012 and relied upon the decision of the Supreme Court reported as V J. Parihar Vs. Ganpat Duggar and others, to the effect that correctness of an order passed in compliance with directions issued by courts cannot be made the subject matter of a contempt proceeding for the reason even if the order was erroneous, it would not be a contumacious act.

4. Ms. Geeta Luthra, learned Senior Counsel for the petitioner would submit that the Tribunal was not justified in dismissing the contempt petition. According to her, prima facie, the orders dated August 01, 2012 read with August 03, 2012 were in violation of the order of the Tribunal allowing the Original Application filed by the petitioner. Learned counsel urged that the directions of the Tribunal were to assign the seniority to the petitioner among the empanelled officers of 1977 batch of IAS Officers for posting as Secretary in Government of India. Instead the respondents invoked the clause in the empanelment guidelines, of two years residual service, to deny the empanelment, which was stated to be a defiant act. She further argued that the petitioner is retiring this month and he would not be able to enjoy the fruit of the directions of the Tribunal, if the orders dated August 01, 2012 read with August 03, 2012 are allowed to stand and not quashed.

5. Per contra, Mr. Sumeet Pushkarna, learned counsel appearing for the respondents would justify the order of the Tribunal dated August 16, 2012 in C.P. No. 264/2012. According to him, empanelment is not matter of right. He would

further state that the petitioner has already been empanelled for appointment to Secretary level post in Centre. He states that empanelment is not a promotion and relies upon the judgment of the Supreme Court reported as Satya Narain Shukla Vs. Union of India (UOI) and Others,

6. We are conscious of the law laid down by the Supreme Court in J.S. Parihar's case (supra). In normal circumstances, the order of the Tribunal could be justified. The facts of the case are such that we, in exercise of our extraordinary jurisdiction under Article 226, to do justice have taken upon ourselves to adjudicate whether order dated August 01, 2012 read with order dated August 03, 2012 are in compliance with the decision of the Tribunal allowing the Original Application.

7. The petitioner is retiring in this month i.e. after ten days. The Tribunal had given a very clear and unambiguous direction that in the event the exercise as directed to be undertaken results in a positive outcome, the respondents were to consider assigning appropriate inter-se seniority to the petitioner amongst the empanelled officers of 1977 batch IAS Officers for posting as Secretary in the Government of India. We have been informed by Ms. Geeta Luthra, learned Senior Counsel appearing for the petitioner that the 1977 batch IAS Officers were empanelled for posting as Secretary in the month of June, 2010. It is apparent that the empanelment of the petitioner for posting as Secretary must relate back to June, 2010 when his batch-mates were empanelled.

8. Regretfully, the benefit of empanelment for posting as Secretary has been denied to the petitioner only on the ground that he doesn't have two years remaining service as on first day of March 2012. We see that this decision is at variance with the direction given by the Tribunal in its order allowing the Original Application. Surely, empanelment as Secretary may enhance status in the administrative hierarchy and/or entail certain privileges after retirement. If the petitioner stands retired, the direction of the Tribunal would be of no consequence. In so far as the contention of learned counsel for the respondents that the petitioner already stood empanelled for appointment to Secretary equivalent post in the Centre is concerned, the same does not amount to compliance of the orders of the Tribunal. The very fact that the petitioner has been empanelled for appointment to the Secretary level post in the Centre would itself show there was no impediment, other than the reason given by the respondents in their order dated August 01, 2012 read with August 03, 2012. The reasoning given is not tenable and for all purposes the petitioner is deemed to have been empanelled along with officers of 1977 batch IAS Officers (June 2010), for posting as Secretary in the Government of India. Accordingly, we set aside the order of the Tribunal dated August 16, 2012 passed in C.P. No. 264/2012 in O.A. No. 178/2011 and hold that the orders dated August 01, 2012 read with August 03, 2012 are set aside and we direct the respondents to issue fresh orders empanelling the petitioner for appointment as Secretary with effect from June, 2010 i.e. when officers of the 1977 batch were empanelled for

posting as Secretary in the Government of India. We make it clear that this order has been passed in the peculiar facts of the case. No pecuniary benefits shall flow. The writ petition is allowed accordingly. No costs.