

(2006) 05 DEL CK 0065
In the Delhi High Court
Case No : Writ Petition (C) 228 of 2004

Union of India (UOI)

APPELLANT

Vs

Karnail Chand

RESPONDENT

Date of Decision : 11-05-2006

Acts Referred:

Citation : (2006) 130 DLT 124

Hon'ble Judges : P.K. Bhasin, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Suresh Kait, for the Appellant; A.K. Bahera, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J

1. Rule DB. With the consent of the parties, the writ petition is taken up for final hearing.
2. The writ petition was filed raising one basic question that arose for judicial appraisal of this Hon'ble Court to whether a fresh direction to comply with an earlier direction can be issued if the direction already stands carried out, which in the facts of the present case was carried out even before the original direction was passed as per the averments in the writ petition.
3. The sole dispute which was thus required to be determined was whether the respondent was entitled to be given promotion to the Grade II of the Delhi And Andaman & Nicobar Islands Civil Service(DANICS) w.e.f. 1985 which issue already stood settled by a judgment delivered on 4th November, 2000 in OA No. 1476/1998 by the Central Administrative Tribunal. The directions of the Tribunal in the judgment of 4th November, 2000 are as follows:

In view of the above, the impugned order so far it concerns applicant is quashed and the respondents are directed to re-fix the seniority in the Grade-II of DANI Civil Service w.e.f.1985 and consequently he will also be entitled to next

promotion on the basis of re-fixation of his seniority for which he may have become eligible. These benefits have to be given notionally and his retiral benefits are to be re-fixed accordingly. These directions should be complied with within a period of 3 months from the date of receipt of a copy of this order. No costs.

4. The respondent was aggrieved by the non-compliance of the above order and adopted contempt proceedings in the Tribunal which led to another order being passed on 6.8.2001. In the meanwhile, a review petition preferred by the petitioner against the Tribunal's judgment dated 4th November, 2000 also stood dismissed. Since a fresh order had been passed in purported compliance of the order dated 4th November, 2000 the Tribunal directed the respondent to file a fresh OA rather than pursue the contempt petition. In the fresh OA the order dated 4th November, 2000 has been reiterated as it had become final. The only issue raised in the writ petition was whether a fresh direction to comply with an earlier direction can be issued if the direction already stood complied with. We ask the learned Counsel for the petitioner to demonstrate to us from any plea in writ petition or accompanying documents or his additional affidavit as to whether the respondent was granted promotion w.e.f. 1985 in grade II of DANI. None of the documents produced before us could demonstrate that the petitioner was granted promotion w.e.f. 1985 which promotion had already been granted by the judgment of the CAT dated 4th November, 2000 which had become final and binding. In fact the seniority list dated 27th April, 1994 annexed to the additional affidavit which lists the respondent Karnail Chand at S.No. 100 as a scheduled castes candidate clearly shows that the respondent was granted appointment to DANICS grade II w.e.f. 03.9.1990 which clearly belies the plea of the petitioner that the respondent was granted promotion to grade II only on with effect from 1985. The tenor of the entire affidavit only seeks to give reasons for not giving promotion to the petitioner from 1985. This stand is directly contrary to the basic question raised in the writ petition as extracted above, to the effect that the judgment of the CAT dated 4th November, 2000 stood complied with.

5. In this view of the matter, since the additional affidavit sought to be filed in this Court only seeks to justify the reasons for non-grant of the promotion to the petitioner from 1985 and justifies the promotion which was in fact granted from the year 2000. The very basis of this writ petition that the order of 4th November, 2000 by the CAT stood complied with disappears.

Accordingly, there is no merit in the writ petition. The writ petition is dismissed and stands disposed of.