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C.A.No. 5653 OF 1997

ITEM No.107

Court No. 6

SECTION IV

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.5653 OF 1997

BALWANT SINGH & ORS. APPELLANT(S)

VERSUS

KEDAR NATH GUPTA RESPONDENT(S)  
(with office report)

Date : 09/04/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU  
HON'BLE MR. JUSTICE ASHOK BHAN

For Appellant(s) Mr. Sakesh Kumar, Adv. for  
Mr. SK Agnihotri, Adv.

For Respondent (s) Mr. SV Deshpande, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. Sakesh Kumar, learned counsel for the appellants started his arguments at 11.50 am and concluded at 12.05 pm. Thereafter Mr. SV Deshpande, learned counsel for the respondent replied upto 12.20 pm. The appeal is disposed of in terms of the signed order.

(D.L. Chugh)(S. Malkani)  
Court Master Asstt. Registrar  
Signed order is placed on the file

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5653 OF 1997

Balwant Singh & Ors. ?Appellants.

Versus

Kedar Nath Gupta ?Respondent.

O R D E R

The respondent herein while working as Assistant Director-cum-Project Officer in the Tribal Welfare Department filed a writ petition in the High Court of Madhya Pradesh at Jabalpur assailing his supercession and denial of promotion to the post of Deputy Director. He also assailed the promotion given to the persons junior to him (who are appellants before us in this appeal). After the constitution of the Tribunal under the Administrative Tribunals Act, 1985 the petition filed before the High Court was transferred to the Tribunal. It was renumbered as Original Application No. 641 of 1988. Tribunal accepted the application and disposed it off with

the following directions.

- "1. ACRs communicated after a great deal of delay should be deemed to be non-existing.
2. As the advance character roles are not in existence, the case of confirmation be considered within 3 months of the receipt of the orders.
3. Since the adverse remarks have been treated to be not existing a special DPC should meet to consider the case of promotion within six months of the date of order as in April 1973 for promotion from the rank of Assistant Director/PO to the post of Deputy Director.
4. A special DPC should meet to consider all the cases of the applicant for promotion on the basis of our order with regard to adverse remarks and this DPC should consider the position in the respective years."

The Department did not accept the order of the Tribunal and filed a special leave petition in this Court which was dismissed on 2nd April, 1990.

Thereafter, the Department Promotion Committee (DPC) met in June 1990 and made its recommendations as under:

- "1. The petitioner be confirmed on the post of District Organizer w.e.f. 1.4.1970. (Annexure R-IV).
2. The case of the petitioner was considered as on 28.4.1973, 13.6.1978 and 31.7.1984 and was found fit to be promoted to the post of Deputy Director as on 31.7.1984.
3. While recommending the petitioner's case as on 31.7.1984 the DPC also made the following observations:-
  - (i) The recommendation is subject to the condition that the department certifies the petitioner's integrity beyond doubt.
  - (ii) The Department has also to implement the recommendations following the procedure of opening the sealed cover as per rules on the date of final orders in the existing departmental enquiries."

Respondent filed a contempt petition before the Tribunal alleging therein that the authorities failed to implement the directions issued in its order by the Tribunal. Tribunal accepted the contempt petition, convicted the official respondents and sentenced them to pay a fine of Rs. 500/-. The officials convicted and sentenced by the High Court thereafter filed a Civil Appeal No. 3930 of 1992 @ SLP @ No. 4206 of 1992 in this Court which was allowed on 24th September, 1992. The orders of conviction and sentence of fine was set aside. Fine, if paid, was ordered to be refunded.

Thereafter, instead of filing original application challenging the subsequent order made in June 1990 in compliance to the directions issued by the Tribunal, the respondent filed another contempt petition before the Tribunal. Tribunal again accepted the petition but instead of convicting the respondents, proceeded to give fresh directions regarding the implementation of the orders made by it in Original Application No. 619 of 1988.

Aggrieved by the order of the Tribunal the appellants, who were the respondents in the original application, have filed this appeal.

Learned counsel appearing for the appellants contended that the second contempt petition was not maintainable. That the only remedy if at all available to the respondent was to file an original application to challenge the subsequent order as the relief prayed for could not be granted in the contempt proceedings. That the Tribunal erred in issuing fresh directions in the nature of mandamus in the contempt proceedings.

We find force in the submissions made by the learned counsel for the appellants. There is an inherent defect in the order of the Tribunal. But since the respondent has already retired and no longer affects the rights and future prospects of the appellants, and the fact that much time has lapsed during this period and it may not be feasible for the respondent to agitate his grievance now by filing a fresh petition, we leave the matter at this point and dispose of the appeal finally as having been rendered infructuous on account of supervening circumstances. We make it clear that the order of the Tribunal shall not be taken as a precedent in any future case. Parties shall bear their own costs.

????????????J.  
( Doraiswamy Raju )

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New Delhi ( Ashok Bhan )  
April 9, 2003