

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

+ **W.P. (C.) No. 762/2010**

% **Date of Decision: 05.02.2010**

BHARAT SANCHAR NIGAM LTD. & ANR. Petitioners
Through Mr. Rajendra Singh Rana, Advcate

Versus

M. M. SHARMA & ORS. Respondents
Through None

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

MOOL CHAND GARG, J.

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C.M.Nos. 1595-1596/2010 (exemption)

Exemption allowed subject to all just exceptions.

Applications stand disposed of.

CM Nos.1597-1598/2010 (delay)

For the reasons stated in the applications, delay is condoned.

Applications stand disposed of.

W.P.(C) No.762/2010

1. The petitioners have filed the present writ petition assailing the order dated 30.03.2009 passed by the Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) in TA No. 420/2009, whereby the Tribunal has directed the petitioners to grant similar benefits to the respondents as have been granted to their juniors in terms of the order of the Hon’ble Supreme Court dated 9.10.2002 in Civil Appeal No. 10692/1995.

2. During the course of arguments, learned counsel for the petitioners fairly conceded that the petitioners are similarly situated as the applicants who were allowed to intervene vide orders passed in Civil Appeal No. 10692/1995 with C.A. No. 5031-5041/1996 by the Hon’ble Supreme Court. In the said order, the Hon’ble Supreme Court upheld the decision of the Central Administrative Tribunal (Bangalore Bench) as well as the decision of the Central Administrative Tribunal (Chennai). While granting the relief in the said petition the Hon’ble Supreme Court has also considered another judgment given by the Hon’ble Supreme Court in *Santosh Kapoor Vs. Union of India & Ors.* on the basis of which the petitioners submitted that the judgment of the Central Administrative Tribunal impugned before us is per incuriam. It may however be observed that no particulars of the said case has been given by the petitioners either in their petition or in the counter affidavit filed before the Central Administrative Tribunal. However, there is a mention of this judgment by the Hon’ble Supreme Court in the order dated

9.10.2002 passed in Civil Appeal No. 10692/1995. The relevant observations made by the Hon'ble Supreme Court in the aforesaid case are reproduced hereunder:-

Having heard the submissions of the parties, we are of the view that the appeals must be dismissed and the decision of the Tribunal be upheld. The reasoning of the Tribunal particularly its finding that the BCR scheme in fact amounted to an amendment of the existing Rules by an administrative order is unexceptionable. Logically speaking this should lead us to strike down the scheme altogether. However, given the fact that the scheme has been in operation since 1990 and also that the contesting respondents are quite content with having their alternative prayer as granted by the Tribunal we do not do so.

In addition to the fact that the scheme is in contravention of the existing Rules, by virtue of the BCR scheme the contesting respondents' seniority in Grade-II was taken away. Those who had not been able to pass the examinations for promotion from Grade-I to Grade-II and who had continued to serve in Grade-I were allowed to leap -frog over the contesting respondents by the BCR scheme by being granted scales of pay in respect of posts in Grade-III. As a result not only were the contesting respondents superseded without being considered for promotion to Grade-III at all when their juniors were considered, but their chances of being further promoted to Grade-IV were effectively forestalled as promotion from Grade-III to Grade-IV would be strictly on the basis of seniority prsumbaly in the grade below. Since the contesting respondents having not all being promoted to Grade-III they would not be in a

position to be considered for promotions to Grade IV whereas the beneficiaries of the BCR scheme would, by virtue of the scheme be in a position to be considered for further promotion to Grade-IV. Indeed according to the contesting respondents the BCR scheme has resulted in some of its beneficiaries getting Grade-IV of pay already. There is also substance in the submission of learned counsel for the respondents that the recruitment rules as well as the BCR scheme provide for consideration of suitability and fitness as criteria for advancement. Necessarily the consideration for promotion to the next grade should be from the grade immediately below. As a result of the BCR scheme however the beneficiaries have been promoted from Grade-I to Grade-III and possibly Grade-IV without any consideration of their suitability in terms of the rules of scheme. Nevertheless the contesting respondents do not seek the withdrawal of any benefits which may have already been granted under the BCR scheme to these employees. What they only want is that they should be granted at least a parity with those who in Grade-II were junior to them. It has to be recorded that the system of promotion by examination from Grade-I to Grade-II has since been abolished in 1983 therefore, the contesting respondents represent a class of employees who had been promoted on the basis of departmental examinations successfully taken by them prior to that date.

The decision in Santosh Kapoor's case has rightly been distinguished by learned counsel appearing on behalf of the respondents. That decision was concerned with an interpretation of the scheme vis-à-vis the beneficiaries therein.

The dispute was with regard to the respective inter se seniority of the beneficiaries under the scheme. We are on the other hand concerned with a challenge to the scheme and its effect on persons claiming seniority under the Rules. The decision in Santosh Kapoor of the Tribunal or of this Court upholding the decision of the Tribunal is therefore no material.

Incidentally clarifications have been issued from time to time by the appellants in 1992 and in 1994 by which it appears to us that the appellants have compounded the confusion. The clarification purport to state that the seniority of those who were in Grade-II by reason of their merit would be maintained in Grade-II although they would not be entitled to the scales of pay which their juniors were getting in Grade-III. It has also been "clarified" that the promotion of such officials namely merit based Grade-II employees to Grade-IV that is in the pay scale of Rs. 3200/- would be governed by their seniority quite over looking the fact that if the contesting respondents remained in Grade-II they would not be in a position to be considered for promotion to Grade IV at all. The 'clarification' cannot take away the rights of the contesting respondents for promotion on the basis of the seniority in Grade-II as obtained in 1983. Nor can they be denied any benefit to which any of their juniors may be entitled by virtue of either of the OTBP scheme on the BCR scheme.

3. Thus, we do not find any infirmity in the order passed by the Tribunal which calls for no interference of this Court while exercising its jurisdiction under Article 226 of the Constitution of India for the simple reason that firstly, there is no infirmity in the order of the Tribunal;

and, secondly, this Court cannot sit in appeal against the judgment delivered by the Hon'ble Supreme Court after considering its own judgment in the case of *Santosh Kapoor (supra)*. The writ petition is accordingly dismissed.

CM No. 1594/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is disposed of accordingly.

MOOL CHAND GARG, J.

FEBRUARY 05, 2010

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ANIL KUMAR, J.