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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P.No.418/2006 in
O.A.No.2014/2002

Hon'ble Mr.L.K. Joshi, Vice Chairman(A)
Hon'ble Mr.Mukesh Kumar Gupta, Member(J)

New Delhi, this the 14th day of May, 2007

Karnail Chand,
S/o Late Shri Nand Lal,
Aged about 71 years,
R/o WZ-107, Street No.14,
Krishna Puri, P.O. Tilak Nagar,
New Delhi-18

....Petitioner

(By Advocate: Shri A.K. Behera)

Versus

1. Shri V.K. Duggal,
The Secretary,
Ministry of Home Affairs,
North Block, New Delhi-110001

2. Shri R. Narayan Swami,
The Secretary,
Govt. of NCT of Delhi,
Delhi Administration,
Players Building, I.P. Stadium,
New Delhi-2.

....Respondents

(By Advocate: Shri R.V. Sinha and Shri Vijay Pandita)

ORDER

Mr. L.K. Joshi, Vice Chairman (A)

This Contempt Petition has been filed on the ground of alleged non-implementation of the order dated 05.08.2003 in O.A.2014/2002 by which this Tribunal had directed the Respondents to re-fix the seniority of the petitioner and to grant consequential benefits. This order was following the order of the Tribunal in O.A.No.1476/1998 dated 04.11.2000.

2. The operative part of the order dated 05.08.2003 in O.A. No.2014/2002 is as follows:

"9. For the reasons given above, the impugned order is quashed and it is directed :

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- (a) the respondents in terms of the earlier directions of this Tribunal dated 04.11.2000 in O.A. No.1476/1998 would re-fix the seniority of the applicant and he would be entitled to promotion on basis of refixation of his seniority;
- (b) consequential benefits would accrue after the said exercise is done;
- (c) this exercise should be done at the earliest and preferably within five months of the receipt of the certified copy of the present order because the applicant has since superannuated; and
- (d) the respondents shall pay Rs.5000/- as cost of litigation to the applicant."

3. The learned counsel for the Applicant has argued that instead of implementing the order of the Tribunal, the Respondents filed Writ Petition No.228/2004 in the Hon'ble High Court of Delhi. It is stated that the Writ Petition was dismissed by an order dated 11.05.2006. It is contended that in spite of the Writ Petition being dismissed, the Respondents have not re-fixed the seniority of the petitioner.

4. The Respondents in the counter affidavit filed on 12.01.2007 had requested for some more time to comply with the orders of the Tribunal. On 09.02.2007, one month's time for compliance was given to the Respondents. On 20.03.2007, Shri R.V. Sinha, learned counsel for the Respondents produced an order dated 19.03.2007 contending that directions of this Tribunal given in the order dated 05.08.2003 had been complied with. Subsequently, an affidavit was also filed by Shri S.C.L. Das, Director, Ministry of Home Affairs, Government of India on 24.04.2007 annexing along with it the order dated 19.03.2007 as compliance report.

5. The Applicant is not satisfied with this compliance report. The learned counsel for the Applicant has argued that no reasonable explanation for fixing the seniority of the petitioner at Serial Number 85 in the revised seniority list of Grade-II of DANICS officers has been given in the final seniority list enclosed with letter No.14040/1/2007-UTS-II dated 03.04.2007. It has been argued that rationale for this particular date should be explained otherwise it could have been

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any day in the year 1985. It is further contended that the whole seniority list is a subterfuge to defeat the spirit of the order of this Tribunal in O.A. No.2014/2002 given on 05.08.2003. It is contended that the officers with date of appointment to DANICS in the year 1990 have been placed at Serial Number 4, 6, 8, 10 etc., much above the petitioner who is placed at Serial Number 85.

6. The learned counsel has cited the order of the Hon'ble Supreme Court in T.R. Dhananjaya v. J. Vasudevan, (1995) 5 SCC 619 in which it had been held as follows :

"11., it is no longer open to the Government to go behind the orders and truncate the effect of the orders passed by this Court by hovering over the rules to get round the result, to legitimize legal alibi to circumvent the orders passed by this Court. Thus it is clear that the officers concerned have deliberately made concerted effort to disobey the orders passed by this Court to deny the benefits to the petitioner. So, we are left with no option but to hold that the respondent has deliberately and wilfully, with an intention to defeat the orders of this Court, passed the impugned order."

It is argued that in the instant case also, the Ministry of Home Affairs, Government of India and the Government of NCT of Delhi have made an attempt to circumvent the order and deny its benefits to the petitioner. Reliance has also been placed on the order of the Hon'ble Supreme Court in Sri Krishna Singh v. Mathura Ahir and others, (1981) 4 SCC 421 in which it has been held as follows:

"24. Having regard to the most reprehensible conduct of Sri Krishna Singh who has shown scant respect for and utter disregard of the order of this Court and tried to delay or defeat the delivery of possession by adopting ingenious devices and subterfuges, we find a prima facie case for taking proceedings for contempt of Court has been made-out against Sri Krishna Singh. Let notice be issued to Sri Krishna Singh to appear in person on Sept. 25, 1981 to show cause why he should not be punished for contempt of court."

7. It has been contended that in the instant case also, the alleged contemnors have adopted dilatory tactics and engineered devious methods to foil the letter and spirit of the order of this Tribunal.

8. The learned counsel for the Respondents has argued that the Respondents in the O.A. have fully complied with the orders of the Tribunal passed in O.A. No.2014/2002 and O.A. No.1476/1998. It is argued that it is not for the court in Contempt Petition to decide whether the order is according to the

Rules and whether the decision taken is correct. In this context, reliance has been placed on the order of the Hon'ble Supreme Court in J.S. Parihar v. Ganpat Duggar and others, AIR 1997 SC 113 in which the Hon'ble Supreme Court has held as follows:

"5. The question then is whether the Division Bench was right in setting aside the direction issued by the learned single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the single Judge, the Division Bench corrected the mistake committed by the learned single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

9. It is further contended that in case the petitioner is not satisfied with the seniority list by which the order of the Tribunal has been claimed to have been complied with by the Respondents in the O.A., it would give rise to a fresh cause of action as laid down by the Hon'ble Supreme Court in State of Haryana and others v. M.P. Mohla, (2007) 1 SCC 457. Reliance has also been placed on Chhotu Ram v. Urvashi Gulati and another, (2001) 7 SCC 530 in which the Hon'ble Supreme Court has held as follows.

"7. Briefly stated the petitioner's grievance is based on the factum of non-consideration of the petitioner's case or if considered not

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properly so considered on the basis that the petitioner was qualified by the cut-off date (1-1-1980). Be it noted however, that this Court as noticed above directed in the event the petitioner is fit for promotion as in Sept. 1980, he should be given the necessary promotion with all consequential benefits.

8. Mr. Mahabir Singh, learned counsel, appearing for the respondents however, firstly, very strongly contended that question of there being any act or conduct contemptuous in nature in the matter under consideration cannot arise. The conduct in order to come within the purview of the statutory provisions must be willful and deliberate and in the contextual facts, question of there being any willful and deliberate act does not and cannot arise. There is not even a whisper even in the petition of contempt as regards willful neglect to comply with the order of the Court. The language of the statute being a requirement in order to bring home the charge of contempt shall have to be complied with in its observance rather than in breach and in the absence of which, the same cannot be termed to be an act of contempt and resultantly therefore, the application must fail. The submission of Mr. Mahabir Singh appears to be of some signature. The proceeding in the Contempt of Courts Act being quasi-criminal in nature and the burden being in the nature of criminal prosecution, namely to prove beyond reasonable doubt as noticed above, requirements of the statute thus have pivotal role to play. On merits as well Mr. Mahabir Singh contended that the petitioner is confusing the issue by treating the direction as a mandate for his promotion whereas this Court had directed the respondents to consider the promotion by treating the petitioner to be qualified on the cut-off date on 1-1-1980. There was no mandate as such to offer promotion to the petitioner. Incidentally, the petitioner's case was duly considered but since the latter was not found eligible and fit for promotion for reasons noticed as below, no promotion could be offered to the petitioner. Promotion was to be offered only however, upon compliance with certain eligibility criteria. This Court by reason of the order dated 8th Oct., 1999 did not issue a mandate but issued a direction for consideration only. In the event however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, initiation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any act of contempt would not arise."

10. Mr. R.V. Sinha, learned counsel for the Respondents has further argued that in deciding Contempt Petition, it is not the function of the court to determine the dispute between the parties. He has contended that the only point to be seen is whether there has been a deliberate or wilful disobedience of the order of the court. In this context, reliance has been placed on Jhaleswsar Prasad Paul and another v. Tarak Nath Ganguly and others, 2002 (4) SCALE 546 in which it has been held as follows :

12. The purpose of contempt jurisdiction is to uphold the majesty and dignity of the courts of law Since the respect and authority

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commanded by the courts of law are the greatest guarantee to an ordinary citizen and the democratic fabric of society will suffer if respect for the judiciary is undermined. The Contempt of Courts Act, 1971 has been introduced under the statute for the purpose of securing the feeling of confidence of the people in general for true and proper administration of justice in the country. The power to punish for contempt of courts is a special power vested under the Constitution in the courts of record and also under the statute. The power is special and needs to be exercised with care and caution. It should be used sparingly by the courts on being satisfied regarding the true effect of contemptuous conduct. It is to be kept in mind that the court exercising the jurisdiction to punish for contempt does not function as an original or appellate court for determination of the disputes between the parties. The contempt Jurisdiction should be confined to the question whether there has been any deliberate disobedience of the order of the court and if the conduct of the party who is alleged to have committed such disobedience is contumacious. The court exercising contempt jurisdiction is not entitled to enter into questions which have not been dealt with and decided in the Judgment or order, violation of which is alleged by the applicant. The court has to consider the direction issued in the Judgment or order and not to consider the question as to what the Judgment or order should have contained. At the cost of repetition be it stated here that the court exercising contempt Jurisdiction is primarily concerned with the question of contumacious conduct of the party, which alleged to have committed deliberate default in complying with the directions in the Judgment or order. If the Judgment or order does not contain any specific direction regarding a matter or if there is any ambiguity in the directions issued therein then it will be better to direct the parties to approach the court which disposed of the matter for clarification of the order instead of the court exercising contempt Jurisdiction taking upon itself the power to decide the original proceeding in a manner not dealt with by the court passing the Judgment or order. If this limitation is borne in mind then criticisms which are sometimes levelled against the courts exercising contempt of court Jurisdiction "that it has exceeded its powers in granting substantive relief and issuing a direction regarding the same without proper adjudication of the dispute" in its entirety can be avoided. This will also avoid multiplicity of proceedings because the party which is prejudicially affected by the Judgment or order passed in the contempt proceeding and granting relief and issuing fresh directions is likely to challenge that order and that may give rise to another round of litigation arising from a proceeding which is intended to maintain the majesty and image of courts."

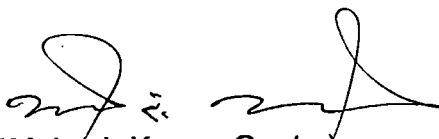
11. The learned counsel for the Respondents has further argued that the seniority list contains both the direct recruits and the promotees, for whom there is a fixed quota and there is a rotation of vacancies between the direct recruits and promotees. It is because of this that the petitioner appears at Serial Number 85 whereas officers with date of appointment to DANICS, which is later than 1985, appear above him in the list.

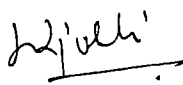
12. The orders of the Tribunal in O.A. No.2014/2002 to appoint the petitioner in DANICS notionally with effect from 31.12.1985 have been complied with in the

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seniority list which has been circulated. It has also been stated in the compliance report that the petitioner could not be considered for promotion to selection grade of the service because his immediate senior and junior were promoted with effect from 01.05.1995 after retirement on superannuation of the petitioner on 30.04.1994. The Respondents have averred in the counter affidavit that they have pursued the matter with due diligence and have consulted the Ministries of Law and Legal Affairs and Personnel and Public Grievances. It cannot, on the basis of record, be said that the Respondents have wilfully and deliberately tried to disobey the orders of this Tribunal. We cannot go into complexities of the revised seniority list circulated by the order dated 19.03.2007. In case the petitioner is not satisfied with this order, it is open to him to take suitable appropriate legal measures to contest the seniority list.

13. On the consideration of rival contentions and perusal of the record, we are satisfied that there is no wilful and deliberate disobedience of the directions of this Tribunal and, therefore, we find no merit in the petition. The Contempt Petition is accordingly dismissed and notices are discharged. No order as to costs.


(Mukesh Kumar Gupta)
Member (J)


(L.K. Joshi)
Vice Chairman (A)

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