

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Contempt Petition No. 290/00056/2016
(OA No. 175/2012)**

RESERVED ON : 23.01.2020
PRONOUNCED ON: 04.02.2020

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)

Om Prakash Choudhary S/o Sh Laxman Ram Choudhary,
aged about 40 years, R/o A-25, Narsingh Vihar, Lal Sagar,
Jodhpur. Presently working on the post of Technician I in
the office of Carriage Works Shop, N.W.R., Jodhpur

...Petitioner

(By Advocate: Shri S.K.Malik)

Versus

1. Sh. Anil Singhal, General Manager, North Western Railway, Jaipur
2. Sh. N.S.Patiyal, Works Shop Manager, North Western Railway, Carriage Works Shop, Jodhpur
3. Sh Prmeshwar Sen, Senior Personnel Officer/Deputy CPO, North Western Railway, Carriage Works Shop, Jodhpur.

...Respondents

(By Advocate: Shri Kamal Dave)

ORDER

Per Mrs. Hina P.Shah

The present Contempt Petition has been filed u/s 17 of the Administrative Tribunals Act, 1985 alleging non-compliance of the order dated 22.11.2013 passed by this

Tribunal in OA No.175/2012 and other connected matters. It is the grievance of the petitioner that in spite of the orders of this Tribunal, the respondents are wilfully, intentionally and deliberately flouting the orders of this Tribunal. The order of this Tribunal was to the following effect :-

".....we direct the respondents No. 2 &3 i.e. Chief Workshop Manager, North Western Railway, Carriage Workshop, Jodhpur, and Senior Personnel Officer, North Western Railway, Carriage Workshop, Jodhpur to seek the instructions of the Railway Board for assessment of service record and paper screening based on criteria which is not discriminatory but is fair and wholesome and to re-assess the service record in a fair manner."

This Tribunal had also quashed process of selection pursuant to notification dated 12.7.2011 pertaining to selection for the post of Junior Engineer (Mechanical) against 25% intermediate apprentice quota.

2. The respondents thereafter approached the Hon'ble High Court in D.B. Civil Writ Petitions. There were also batch of Writ Petitions before the Hon'ble High Court in connecting matters. The Hon'ble High Court vide common order dated 17th March, 2015 dismissed the Writ Petitions by observing as under:-

"By considering the same we are in absolute agreement by the conclusion arrived by Hon'ble the Punjab and Haryana High Court to the effect that the procedure adopted is not only discriminatory, but is alien to service jurisprudence and will

cause heartburn amongst the senior employee and at the same time facilitate the authorities to adopt pick and choose policy in utter disregard to the concept of equality enshrined in Articles 14 and 16 of the Constitution of India. The employees who are competing for a promotional post should be tested on a uniform pattern without any undue advantage of fortuitous circumstances and in the instant matter the calling of special work reports extends the undue advantage to the members of Group 'D' service that being based on current work and conduct. In our considered opinion learned Central Administrative Tribunal, Jodhpur Bench, Jodhpur after examining merits of the case rightly followed the law laid down by Hon'ble Punjab and Haryana High Court.

The petitions for writ, thus, demands no interference, hence are dismissed."

3. The contention of the petitioner is that after dismissal of the Writ Petition, the respondents passed promotion orders in case of private respondents dated 9.1.2016 (Ann.CP/7) and 14.1.2016 (Ann.CP/9). It is the contention of the petitioner that accordingly he has filed the Contempt Petition on 16.8.2016, which is well within time and, therefore, the respondents are required to be punished u/s 12 of the Contempt of Courts Act, 1971 for disobeying the order of this Tribunal dated 22.11.2013.

4. The respondents, on the other hand, stated that there is no disobedience or disregard to the orders of this Tribunal and they have taken every possible care to implement the orders and have complied with the said order. The respondents stated that the only ground to support the Contempt Petition is regarding flouting the directions to

seek instructions from the Railway Board for assessment of service record and paper screening based on criteria, which is alleged as not having been implemented, which is denied by the respondents. They have also stated that the respondent department has taken a decision to revert the promoted incumbents out of the selected panel and produced order dated 17.3.2017 (Ann.R/1). The respondents have also raised objection regarding maintainability of the Contempt Petition. It is their contention that the present Contempt Petition has been filed on 16th August, 2016 against non-compliance of the order of this Tribunal dated 22.11.2013. As per Section 20 of the Contempt of Courts Act, 1971, it is very clear that "No court shall initiate any proceedings for contempt, either on its own or otherwise after expiry of a period of one year from date on which the contempt alleged to have been committed". It has further been pointed out that there is no provision by which the period of limitation can be condoned either in considering of application u/s 5 of the Limitation Act or otherwise, as Section 20 of the Act of 1971 strikes at the jurisdiction of the Court to initiate any proceedings for contempt.

In the additional reply, the respondents have pointed out that the orders of this Tribunal have been complied with and in support of compliance, they have placed on record the instructions issued by the Railway Board dated 18th July, 2018 for assessment of service record and paper screening based on criteria which is not discriminatory but a fair and wholesome (Ann.R/2). Pursuant to above clarification/instructions, the process of selection for the post of Junior Engineer (Mech.) against 25% intermediate quota was undertaken resulting in issuance of provisional panel dated 17.8.2018 followed by orders for promotion dated 18.8.2018 as per the provisional panel. (Ann.R/3 and R/4).

Accordingly, the respondents stated that the Contempt Petition is barred by the statutory period of limitation as also the order of this Tribunal dated 22.11.2013 in OA No.175/2012 has been complied with, therefore, the present CP does not survive and requires to be dismissed and the notices issued require to be discharged.

5. We have considered the matter of alleged non-compliance or disregard of the order dated 22.11.2013 passed in OA No.175/2012 as well the issue of limitation.

So far as the limitation is concerned, it is admitted position that the Hon'ble High Court dismissed the Writ Petition filed by the respondents vide order dated 17th March, 2015 and the petitioner should have filed the present Contempt Petition within one year from the date of receipt of the above order. But the present Contempt Petition has been filed on 16th August, 2016 i.e. after the period of one year as prescribed under the rules. It is also clear that there is no provision for condonation of delay in filing the Contempt Petition. In view of above position, the present Contempt Petition is not maintainable as it is barred by limitation.

6. So far as the alleged non-compliance is concerned, it is evident that vide order dated 22.11.2013, this Tribunal directed respondent No.2 and 3 to seek instructions of the Railway Board for assessment of service record and paper screening based on criteria which is not discriminatory but is fair and wholesome and re-assess the service record in a fair manner. Accordingly, instructions were sought and the Railway Board has issued letter dated 18.7.2018 (Ann.R/2). Thereafter as per these instructions, provisional panel and promotion orders on the basis of provisional panel has been

issued (Ann.R/3 and R/4). Therefore, we are satisfied that substantial compliance of the order has been made out.

7. In this regard, we may refer to the judgment of the Hon'ble supreme Court in the case of **J.S.Parihar vs. Ganpat Duggar**, reported in (1996)6 SCC 291, wherein it has been held that :

".....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 a willful violation of the order...."

8. In view of above, the Contempt Petition is liable to be dismissed as barred by limitation as also we do not find any wilful or deliberate disobedience on the part of the respondents. Therefore, the present Contempt Petition is dismissed. Notices issued are discharged.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/