

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

**Contempt Petition No. 290/00014/2019
(OA No. 522/2011)**

RESERVED ON : 10.01.2020
PRONOUNCED ON: 20.01.2020

CORAM:

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

Ramesh Kumar Panwar s/o Sh. Mangi Lal Ji, aged 42 years,
R/o B-63 Pratap Nagar, Jodhpur presently posted as Tax
Inspector in the office of Income Tax Officer (I&C) Jodhpur

...Petitioner

(By Advocate: Shri Kamal Dave)

Versus

1. Neena Nigam, Principal Chief Commissioner of Income Tax, Jaipur Rajasthan – 302008
2. Shri Sandeep Kapur, Chief Commissioner of Income Tax, Jodhpur-342001.

...Respondents

(By Advocate: Shri Sunil Bhandari)

ORDER

Per Mrs. Hina P.Shah

The present Contempt Petition has been filed for alleged non-compliance of the order dated 9.8.2012 passed in OA No.522/2011 by which the OA was disposed of with following directions:-

"For the foregoing reasons, the applicant has established that he is eligible for promotion to the post of Senior Tax Assistant under the Recruitment Rules. The respondents are directed to consider the service of the applicant from the date of initial appointment in Gujarat Region from 24.10.2007 till the date of DPC ie., on 29.6.2011. The respondents are directed to obtain vigilance clearance, conduct review DPC and consider the name of the applicant for promotion to the post of Senior Tax Assistant within a period of three months from the date of receipt of a copy of this order. We are inclined to quash the impugned order for the reason that the impugned order is violative of the Recruitment Rules."

2. The order of this Tribunal was further challenged by the respondents by filing Writ Petition No. 5148/2013 before the Hon'ble Rajasthan High Court and the Hon'ble High Court in D.B.Civil Misc. Stay Petition No.4159/2013 vide its order dated 24.5.2013 directed that review DPC in pursuance of order of this Tribunal will be convened and the case of respondent No.1 (applicant in the OA) will be considered as per directions of this Tribunal, but result of the DPC will be kept in sealed cover and the same will be subject to decision of the Writ Petition. Thereafter the said Writ Petition was dismissed affirming the order passed by this Tribunal, vide order dated 26.05.2015.

3. The respondents further filed SLP (C) No. 3479/2016 which was also dismissed by the Hon'ble Supreme Court vide order dated 10.4.2019. The order passed in the above SLP was to the following effect:-

"We see no reason to entertain this petition. Accordingly, the special leave petition is dismissed."

4. After dismissal of the SLP, the petitioner represented the respondents vide representation dated 23.04.2019 for the relief as granted by this Tribunal. He has also added some consequential reliefs which were not mentioned in the directions issued by this Tribunal vide order dated 9.8.2012. Thereafter reminder was also sent. It is the contention of the petitioner that the respondents have flouted with the orders passed by this Tribunal on 9.8.2012. Therefore, the petitioner has filed the present Contempt Petition.

5. The respondents by filing reply to the Contempt Petition stated that after dismissal of the SLP, they took every step to comply with the directions issued by this Tribunal and the petitioner has been promoted as Senior Tax Assistant w.e.f. 29.06.2011 notionally in the pay scale of Rs. 9300-34800 vide order dated 4.10.2019 (Ann.R/1) after counting the service rendered by him in Gujarat region from 24.10.2007. Thus, the order dated 9.8.2012 has been complied with and the Contempt Petition may accordingly be dismissed.

6. Heard the learned counsel for both the parties.

7. The learned counsel for the petitioner contended that the respondents have not paid the due financial benefits and not fixed the seniority in the cadre of Senior Tax Assistant. After re-fixation of seniority in the Senior Tax Assistant, the respondents ought to have revised the effective date of promotion for the post of Inspector through review DPC.

8. On the other hand, the learned counsel for the respondents contended that there is no disobedience on the part of the respondents as the order has been complied with. In compliance of the order, the respondents have promoted the petitioner as Senior Tax Assistant in the pay scale of Rs. 9300-34800 with Grade Pay of Rs. 4200 (pre-revised) notionally w.e.f. 29.06.2011 after counting the service rendered by the petitioner in Gujarat region from 24.10.2007. Therefore, the Contempt Petition is required to be dismissed. The learned counsel further contended that the while filing representation dated 23.4.2019, the petitioner prayed for some additional reliefs which cannot be taken into consideration in the contempt proceedings. The Tribunal has directed to consider the service of the applicant from the date of initial appointment in Gujarat region from 24.10.2007 till the date of DPC i.e. 29.6.2011.

In compliance of above direction, the respondents have passed order dated 4.10.2019 by counting the service rendered by the petitioner in Gujarat region from 24.10.2007 and he has been promoted as Senior Tax Assistant w.e.f. 29.06.2011 notionally. Therefore, there is no question of disobedience of the order of this Tribunal.

9. After considering the matter of alleged disobedience of the order of this Tribunal, we are of the view that the order of this Tribunal has been complied with by the respondents and we do not find wilful or deliberate disobedience on the part of the respondents. Pursuant to the directions issued vide order dated 9.8.2012, the respondents have passed order dated 4.10.2019 and counted the service rendered by the petitioner in Gujarat region from 24.10.2007 and he has been promoted as Senior Tax Assistant w.e.f. 29.06.2011 notionally. The additional/consequential reliefs claimed by the petitioner vide his representation 23.4.2019 cannot be entertained in these proceedings.

10. We have also gone through the judgment cited by the learned counsel for the petitioner in the case of **Union of India and Ors. vs. K.V.Jankiraman and Ors.**, (1991) 4 SCC 109, but the ratio of judgment cannot be applied in these proceedings.

11. We have also perused the judgement referred by the learned counsel for the respondents in the case of **Union of India and Ors. vs. Subedar Devassy PV** reported in 2006 AIR SCW 342, wherein it was held that:-

"If any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach the Court that passed the order or invoke jurisdiction of the appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong, the order has to be obeyed contempt Court cannot test correctness or otherwise of the order or given additional direction or delete any direction."

12. 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...."

13. Here, it will also be useful to refer to the judgment of the Hon'ble Calcutta High Court in the case of **Dr. Tapas Kumar Mandal vs. Dr. Sekhar Basu and Ors.** in C.P.A.N.

No. 119 of 2018 decided on 29th March, 2019 wherein the Hon'ble High Court in para 13 observed as under:-

"13..... The non-compliance of an order has to be wilful and deliberate and not mere accidental or unintentional. It is well settled that once an order is passed by a party to a proceeding on the basis of the direction issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. The court in exercise of contempt jurisdiction cannot test the correctness of the order passed or to give any additional direction or to delete any direction."

14. In view of above, we do not find any wilful or deliberate disobedience on the part of the respondents and the Contempt Petition is liable to be dismissed, which is accordingly dismissed. Notices issued are discharged.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/