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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

C.P. No. 235/2002 In
Original Application No. 378/2001

New Delhi, this the 11th day of July, 2003

HON^{BLE} MR. V.K. MAJOTRA, MEMBER (A)
HON^{BLE} MR. KULDIP SINGH, MEMBER (JUDL)

Khacheru Singh
S/o Shri Harbans Singh
Khaallasi/Gangman,
under Northern Railway
Hapur.

-APPLICANT

(By Advocate: Shri G.D. Bhandari)

Versus

Union of India through

1. Shri R.K. Singh
General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. Shri S.M. Upadhyay
Divisional Railway Manager,
Moradabad.
3. Shri Y.S. Chaudhary
Divisional Engineer (HQ),
Northern Railway,
Moradabad.

-RESPONDENTS

(By Advocate: Shri V.S.R. Krishna along with
Shri Rajinder Khatter)

ORDER

By Hon^{ble} Mr. Kuldip Singh, Member (Judl)

Applicant has filed this CP alleging the non-compliance of the order passed in OA-378/2001 wherein the respondents are given following directions:

"If respondents find that persons senior to applicants are already engaged or are not interest in getting employment, then it will be open to respondents to reengage applicants as per their seniority in LCL Register."

2. Applicant in the CP allege that the same order has not been complied with. Applicant submit that he was appointed

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from 1973 onwards but their services have been terminated in
~~from 1973 onwards but their services have been terminated in~~ ^W 35
an illegal and arbitrary manner and he has filed an OA-163/92
wherein directions were given for re-engagement of the
applicant alongwith the other applicants. The same was not
complied with. CP was filed, ~~and~~ ^W the applicants were
re-engaged. Again their services were terminated which was
again challenged. However, the Tribunal had set aside and
quashed the order and respondents were directed to issue show
cause notice before being disengaged. But after that again
their services were disengaged which was challenged in the
OA-378/2001 wherein the Court had observed that if the seniors
are awaiting for their engagement they have a preferential
right and if they are called for work and still donot turn up
then only applicants would have a right for reengagement.

3. Thus. it is stated that the case of the applicant is
founded on the crucial facts where if seniors are awaiting and
whether or not juniors have been regularised in that event
~~and~~ seniors have to be regularised, juniors have to make way
for them. On the basis of this, notice was issued to the
respondents. Respondents passed an order holding thereby that
the termination of the applicants has been upheld as the
applicant was listed at Sl. No. 12 under PWI Hapur and it
was also told to him that he may be considered for
re-engagement as per his turn and as and when vacancy arises.
~~he was satisfied with this contention which~~ ^L The applicant
submitted that there are certain juniors who are already
working and since out of the seniors 4/5 persons had not
turned up and 4/5 persons had already left, so the vacancies
are still available. As such the applicant submitted that
respondents have committed a grave contempt in terminating the

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services of the applicant. Respondents in their reply pleaded that since the case of the applicant has been reconsidered and they are willing to re-engage them as and when vacancies become available, so there is no wilful contempt on the part of the respondents and as per the seniority position reflected in the LCL Register, the applicant's turn for re-engagement has not yet matured. Thus, there is no contempt.

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4. We have heard the learned counsel for the parties and gone through the record.

5. At the outset, we may mention that against the orders passed by this Tribunal in the OA, the applicant had filed a writ petition before the Hon'ble High Court which was dismissed. However, the Hon'ble High Court had observed that certain contentions have not been pressed before the Tribunal for which applicant may file a review petition. Applicant did file a review petition but the same was not pressed by him as such the review petition was dismissed.

6. We may further add that the applicant has also challenged the order passed by the respondents in compliance of the orders of this OA by filing a separate OA.

7. In this background, we have to consider whether the applicants are entitled to be re-engaged or whether the order has been passed in defiance of the directions issued by the Tribunal.

8. As far the right to be re-engaged is concerned, since the applicant has filed a separate OA in which he has agitated to show as to on which position he stands in the LCL Register and

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at what seniority point his name is existing and how he is entitled to be re-engaged. So that is a subject matter of separate OA which we would not like to comment in this CP. As regards the defiance of the orders passed in this case are concerned, we again refer to the directions given by the Tribunal in the OA where it has been mentioned only that "if the respondents find certain persons senior to the applicant are already engaged are not interested to get re-engaged only then it is open to the respondents to re-engage the applicants in the seniority in the LCL Register."

9. The question of juniors persons who are already in services has not been raised in this case. Though the learned counsel appearing for the applicant submits that certain persons junior to the applicant in LCL Register are there so they should make way for the seniors and the applicant should be re-engaged in place of those juniors. To this, learned counsel for the respondents submitted that those juniors who have been engaged they may have been engaged because they have worked with certain other PWIs of different units but that question cannot be gone into in the contempt proceedings. Moreover, the court did not direct the respondents to disengage those juniors and reengage the applicants.

10. As far the case of applicant is concerned, the department has already stated in their order that they would be willing to re-engage the applicant as and when vacancy becomes available as per his seniority position. So we find that in these circumstances it cannot be said that there is any wilful disobedience of the directions given by this Tribunal on the

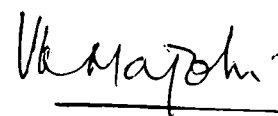
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part of the respondents which may invite action under Contempt
of Courts Act against the respondents. No case of contempt is
made out. Hence the CP is dismissed.

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(KULDIP SINGH)
MEMBER (JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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