

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

C.P. No.383/2003 in  
O.A. No.1440/1995

New Delhi this the 10th day of March, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)  
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Shri Sewa Dass Nimbaker,  
Superintendent (Commercial),  
Northern Railway,  
SD D.R.M. Office,  
State Entry Road,  
New Delhi.

-Petitioner

(By Advocate Sh. K.K. Patel)

-Versus-

Shri R.R. Jaruhara,  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

-Respondent

(By Advocate Sh. V.S.R. Krishna)

... O R D E R (ORAL.)

By Mr. Shanker Raju, Member (J):

Petitioner assails non-implementation of directions of this Tribunal contained in order dated 25.7.2003, which is reproduced as under:

7. We have carefully considered the rival contentions of the parties and perused the material on record. The High Court of Delhi remitted the above case to be disposed of in the light of the decision of the Apex Court in Prabhakara Rao's case (supra). On re-consideration, we find that laying down minimum qualifying marks under paragraph 205 of the IREM has been held to be not in accordance with law and the action of the respondents not empanelling applicant despite the fact that he is qualified in all other respects, cannot be sustained in law. Accordingly, we allow this OA and direct the respondents to hold a review DPC and to consider the case of applicant for being empanelled as Assistant Commercial Manager, Group 'B' from the date of his immediate junior.

8. If applicant is found otherwise fit, he be accorded notional promotion but would be entitled to all consequential benefits, including revision in the terminal benefits. Aforesaid directions shall be complied with, within a period of three months from the date of receipt of a copy of this order. No costs."

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(2)

2. In compliance thereof, respondents passed an order on 5.3.2004, whereby placement of applicant's name in the panel of ACM, Group 'B' and further promotion was considered, taking into account that minimum qualifying marks for viva voce test under para 205 of the IREM cannot be countenanced, yet as applicant failed to secure 60% of marks on overall performance, his case was not recommended.

3. Learned counsel for petitioner Sh. K.K. Patel contends that decision of the Tribunal was assailed in RA, which was rejected and by an order dated 9.1.2004 in CP-383/3003 respondents were directed to fully comply with the orders. The present MA-397/2004 filed by petitioner is for revival of the CP.

4. It is contended by the learned counsel of petitioner that before the High Court of Delhi in WP No.2444-45/2004 the stand taken by them is that petitioner could not qualify, as he failed to secure minimum qualifying marks in the viva voce test. This stand was also re-iterated in the reply filed by the respondents to the OA.

5. In this view of the matter learned counsel states that year-wise vacancies were to be filled as per the rules in vogue. Para 205 of IREM was amended in August, 1999, whereas earlier 60% marks were not the eligibility criteria. In this backdrop it is stated that the respondents have not complied with the directions of the Court and they are liable to be proceeded in the contempt.

6. On the other hand, learned counsel for respondent Sh. V.S.R. Krishna contends that in good faith the respondents have fully complied with the directions and any contentious matter now raised would not be a subject matter of the CP and having constituted a fresh cause of action in the light of the decision of the Apex Court in J.S. Parihar v. Ganpat Duggar, JT 1996 (9) SC 611, remedy lies by way of challenge to the orders passed by the respondents...

7. We have carefully considered the rival contentions of the parties and perused the material on record. In Ganpat Duggar's case (supra) the Apex Court has ruled that a fresh cause of action, contentious one, is to be gone into in a separate proceeding.

8. In a contempt proceeding Tribunal should only concern with the compliance as held by the Apex Court in S.K. Poddar v. Dhani Ram, 2002 (1) SCSLJ 150. In the contempt proceeding order passed by the Tribunal cannot be reviewed as held by the Apex Court in K.G. Derasarai v. Union of India, 2002 (L&S) SCC 756. In a contempt if a bonafide exercise has been undertaken by the respondents the same cannot constitute a wilful disobedience. We find that the directions were to ignore the qualifying marks. The question whether the vacancies pertain to the year 1990-91 or whether the unamended para 205 of IREM is to be resorted to or not, was not the subject matter before the Tribunal. Accordingly, as it is a fresh cause of action, giving liberty to petitioner to assail the impugned order in accordance with law, CP is dismissed. Notices are discharged.

S. A. Singh  
(S. A. Singh)  
M(A)

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S. Raju  
(Shanker Raju)  
M(J)