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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

CP (C) NO. 12 OF 2003

IN

OA NO.2387 OF 1995

New Delhi this the 22nd day of April, 2003

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Shri Govindan S. Tampi, Member (A).

1. Jagmohan Singh,
S/o Shri Tirath Singh;
2. Smt. Sushama Kapoor,
W/o Shri V.K. Kapoor;

(Both working as Office Supdt. Gr.I)

3. Mrs. Urmila Devi,
D/o Shri Kunj Behari Lal
working as Office Supdt. Gr.II;

(All at General Branch, Northern Railway,
Headquarters Office, Baroda House,
New Delhi). ... Petitioners.

(By Advocate Shri T.S. Pandey, senior counsel with
Shri H.P. Chakravorty)

Versus

Shri R.K. Singh,
General Manager, Northern Railway,
Baroda House,
New Delhi. ... Respondent.

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

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).

Shri T.S. Pandey, learned senior counsel has advanced lengthy arguments in the contempt petition, alleging that the respondents have contumaciously and wilfully disobeyed the Tribunal's order dated 25.10.1999 in OA 2387/1995, when they had issued the revised provisional seniority list of Office Superintendents (OS)

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Grade-I dated 27.12.2002. He has contended that the order of the Tribunal dated 25.10.1999 has become final and binding after CWP 6923 of 1999 filed by the petitioners (respondents in OA 2387/95) was dismissed by the Hon'ble High Court by order dated 6.9.2002. Prior to that, the Hon'ble High Court had passed an interim order to the effect that the interim order earlier passed will continue and it will not debar the respondents to proceed in accordance with law, in terms of the judgement of the Hon'ble Supreme Court in Ajit Singh & Ors. Vs. The State of Punjab & Ors. (JT 1999 (7) SC 153), in its order dated 20.9.2000. Learned senior counsel has submitted that the provisional seniority list prepared by the respondents dated 21.6.2002 was issued in pursuance of the directions of the Tribunal read with the orders of the Hon'ble High Court and there was absolutely no rhyme or reason for the respondents to revise/reverse the earlier seniority list by the impugned provisional seniority list dated 27.12.2002. According to him, the directions of the Tribunal were very clear in Paragraph 18 of the order, i.e. the respondents were to consider the applicants who belong to the general category for promotion to the posts of OS Grade-I, on the basis of their revised seniority, in terms of Ajit Singh's case (supra) with all consequential benefits which meant promotion and consequential monetary benefits. These benefits have not been given to the petitioners. He has also submitted that in the revised provisional seniority list dated 27.12.2002, the respondents have placed the reserved category candidates above the general category candidates which is not in terms of Ajit Singh's case (supra) and, therefore, is in wilful and deliberate

disobedience of the Tribunal's orders, justifying punishment to be given to the alleged contemners under the provisions of the Contempt of Courts Act, 1971.

2. Learned senior counsel for the applicants has also taken a ground that the reply affidavit filed by the respondents can neither be termed as a reply or an affidavit as it is not in terms of Rule 11 of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992. He has pointed out that a prayer has been made in the so called reply affidavit which, therefore, takes it out of the realm of an affidavit. He has also submitted that it has been filed by a person who is not competent to file on behalf of the respondents. He has referred to the averments in the reply affidavit and has submitted that the respondents cannot refer to the 85th Amendment of the Constitution or the other orders of the Hon'ble Apex Court as a justification to revise the provisional seniority list, as they have done by the order issued by them dated 27.12.2002. He has also submitted that the previous revised seniority list dated 21.6.2002 had been made subject to any objections that may be raised by the interested parties and, therefore, in terms of respondents' own letter dated 21.6.2002, the earlier provisional seniority list has to be treated as a final seniority list and not the provisional seniority list of 27.12.2002. Finally, he has relied on the judgement of the Hon'ble Apex Court in Murray & Co. Vs. Ashok Kr. Newatia and Anr. (2000 (2) SCC P-367), Paragraphs 8,9 and 13. He has, therefore, submitted that it is for the

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Tribunal to uphold the majesty of law and to see that the respondents fully and faithfully comply with the aforesaid orders of the Tribunal dated 25.10.1999.

3. On the other hand, Shri V.S.R. Krishna, learned counsel for the respondents has submitted that the respondents in the reply affidavit have clearly referred to their sentiments with regard to the implementation of the Tribunal's orders at all times, i.e to implement the directions of the Tribunal in every case in true letter and spirit. He had adverted to the peculiar and particular facts and circumstances of the case and the very sensitive nature of the issues involved in the case, which are also sub-judice before the Hon'ble Supreme Court where a number of writ petitions have been filed challenging the 85th Amendment of the Constitution which came into effect on 17.6.1995. He has drawn our attention to the detailed reply which has also been referred to by the learned senior counsel for the petitioners. Both learned counsel have also referred to the interim order of the Hon'ble Supreme Court dated 11.11.2002. The relevant para. of this order reads as follows:

"These writ petitions involve the constitutionality of Article 10 (4A). The Court, by an interim order, has directed not to revert any of the petitioners from their existing placement nor affect their standing in the seniority list, but at the same time the provisions of Article 16 (4A) can be implemented and by virtue of that provision if some of the reserve category candidates are entitled to promotion, they shall be promoted. The obvious idea being the Court should not stay the operation of a constitutional provision. The State finds difficulty in implementing the order on the ground that there does not exist sufficient vacancy of posts in a particular cadre to give effect to the provisions contained in Article 16 (4A). This being an interim arrangement, we direct that they should apply to the number of vacancies available

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in a cadre to give effect to the promotional policy and undoubtedly, such a promotion can be granted only when the State makes a provision for reservation in terms of Article 16 (4A). In view of the fact that the implementation of interim order may cause a lot of chaos in the service, it is made clear and proper that the matter should be firstly heard and disposed of and we, therefore, direct that this batch of writ petitions be listed before a Constitution Bench in the month of February, 2003."

It is also relevant to note that by this order, the Hon'ble Supreme Court has observed that in view of their clarificatory order passed in certain I.As filed in the batch of connected writ petitions, the contempt petitions were dropped.

4. Shri V.S.R. Krishna, learned counsel has submitted that in the circumstances of the case and having regard to the aforesaid order of the Hon'ble Apex Court, since the respondents had been directed to act in accordance with the provisions of Article 16 (4A) of the Constitution, notwithstanding the fact that the same would be counter to the express dicta of the Apex Court in Ajit Singh's case (supra), they were bound by those directions. With regard to the other procedural aspects of the reply affidavit, learned counsel for the respondents has submitted that at best the prayer clause may be treated as being deleted from the reply affidavit. In the prayer clause, the respondents have submitted that the present CP is devoid of any merit and may be dismissed which has also been orally submitted by the learned counsel. He has also fairly submitted that if any further directions are given by the Tribunal, the respondents will abide by those directions in case they have ~~intentionally~~ not followed the Tribunal's order, in view of the further directions of

the Hon'ble Supreme Court in the manner they have understood those directions. They have also tendered their unconditional apology.

5. We have carefully considered the pleadings and the submissions, somewhat lengthy by the learned counsel for the petitioners and the respondents in the writ petitions. We have also carefully considered the directions of the Hon'ble Supreme Court in the order dated 11.11.2002. The principle of law laid down by the Hon'ble Supreme Court in Murray & Co.'s case (supra) has reiterated the well established law on the subject of contempt petition that the "purpose of contempt jurisdiction is to uphold the majesty and dignity of the court of law since the image of such a majesty in the minds of the people cannot be left to be distorted. The respect and authority commanded by courts of law are the greatest guarantee to an ordinary citizen and the entire democratic fabric of the society will crumble down if the respect for the judiciary is undermined". We respectfully follow these principles. In the present case, although it appears that the petitioners are satisfied with the earlier order passed by the respondents dated 21.6.2002, the further action taken by the respondents in passing the revised seniority list of OS Grade-I by the order dated 27.12.2002 cannot be faulted. As mentioned above, very lengthy and complicated arguments were advanced by the learned senior counsel for the petitioners to buttress his case that there has been a clear, wilful and deliberate disobedience of the Tribunal's order by the respondents justifying action to be taken against them under Section 17 of the Administrative Tribunals Act, 1985 read with the

provisions of the Contempt of Courts Act, 1971. We are unable to agree with this contention having regard to the nature of the orders of the courts and particularly those of the Hon'ble Apex Court and the action taken thereon by the respondents.

6. It is relevant to note here that the learned senior counsel for the petitioners had referred to a more recent order of the Hon'ble Apex Court in Alok Kumar Ganguly & Ors. Vs. Union of India & Ors. (WP (Civil) No. 640 of 2002 dated 3.3.2003, copy placed on record. This order also refers to the 85th Constitutional Amendment giving also liberty to the respondents to promote those who are benefitted by the impugned amendment, that is the reserved category candidates but so that it does not affect the petitioners, that is the general category candidates in any manner and subject to the result of the writ petition. He has, however, submitted that it cannot be stated that the issues raised in the aforesaid judgement of the Tribunal dated 25.10.1999 read with the Hon'ble High Court order dated 6.9.2002, are sub judice before the Hon'ble Supreme Court. Taking into account the totality of the facts and circumstances of the case, the action and orders of the respondents in terms of the Hon'ble Apex Court's directions in this matter, it cannot, therefore, hold as contumacious disobedience of the Tribunal's order justifying any further action to be taken against the alleged contemners in this contempt petition. Reference may also be made to the earlier contempt petition No. 18.

671/2002 which has been dismissed by Tribunal's order dated 7.5.2002. We do not also find merit in the other contentions raised on behalf of the petitioner. Having considered the relevant issues, including the judgements of the Hon'ble Supreme Court cited before us, we come to the conclusion that there is no justification to proceed further in the contempt petition.

7. In the result, for the reasons given above, CP 12/2003 is dismissed. Notice issued to the alleged contemner is discharged.

(Govindan S. Tampi)
Member (A)

'SRD'

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Vice Chairman (J)