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Central Administrative Tribunal
Principal Bench, New Delhi

C.P.No.343/2001 in
O.A.No.1090/1997

Hon'ble Shri M.P.Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

Friday, this the 7th day of June, 2002

Shri Satya Prakash
s/o Shri Jivan Das
Skilled Khallasi
under DCE (Survey)
Northern Railway
Tilak Bridge
New Delhi.

... Applicant

(By Advocate: Shri K.K.Patel)

Vs.

1. Shri Sampath Dhasepathy
General Manager
Northern Railway
Baroda House
New Delhi.

2. Shri Sita Ram Ujjalan
Chief Administrative Officer (Construction)
Northern Railway
Kashmiri Gate
New Delhi.

... Respondents

(By Advocate: Shri H.K.Gangwani)

O R D E R (Oral)

By Shanker Raju, M(J):

Heard the learned counsel on either side.

2. In view of the decision of the Apex Court in Shri J.S.Parihar Vs. Ganpat Duggar & Ors., 1997(1) SLJ 236, a new cause of action cannot be entertained in contempt proceedings.

3. By an order dated 29.1.1999 in OA No.1090/1997 directions have been issued to the respondents to consider for absorbing the applicant against Group 'C' post if such vacancy is available within 25% quota in Group 'C'. Applicant being aggrieved by the inaction of the respondents,

preferred the aforesaid Contempt Petition, wherein by an order dated 2.5.2002 as the applicant has taken a specific averment that on the death of one Shri Mange Ram, who held the post of Tracer in Group 'C', the said post was vacant, the applicant should be regularised against the same, respondents have been asked to file an additional affidavit. Learned counsel for applicant stated that applicant, who had been working since 1985 as an ad hoc Tracer, is entitled to be regularised. It is also stated that the post of Tracer is not abolished and is still continuing. Further it is stated that the action of the respondents in regularising the services of the five ad hoc Tracers but by not regularising the applicant in Group 'C', have contumaciously and wilfully disobeyed the directions of this Tribunal. It is further that despite being directed to consider the case of the applicant, a final decision is yet to be arrived by the Railway Board and from the record it does not transpire.

4. It is also stated that against the decision of the Tribunal having filed CWP before the High Court, which was subsequently withdrawn and thereafter review filed before the Tribunal was also rejected and against which a CWP filed which was also dismissed, the decision attained finality and is to be implemented to its true letter and spirit.

5. Respondents in their reply by referring to their additional affidavit, contended that the directions issued by the Court is to consider the case of the applicant against Group 'C' post, the applicant

who had been offered Group 'C' post in other categories, has not been accepted it and rather presses his regularisation against Group 'C' post of Tracer. As regards Mange Ram's case, the post meant for Bikaner, cannot be offered to the applicant. Mange Ram was further by relaxation of the rules has been regularised as Tracer by the Railway Board and the post of Tracer has been abolished, the case of applicant cannot be considered against that post. In this view of the matter the plea of the respondents that having no clear directions by the Court for regularisation of applicant as Tracer in Group 'C' post, this Court has no jurisdiction to adjudicate the matter in contempt as it constitutes new cause of action.

6. We have carefully considered the rival contentions of both the parties and perused the material on record. Although we find that the respondents have offered and taken steps to regularise applicant against Group 'C' post but as the applicant insisted upon his regularisation as Tracer the same cannot be finalised. In so far as the plea of the applicant that directions have been issued to regularise him against Group 'C' post as a Tracer has not forthcome from the decision of the Tribunal. In OA also the applicant has claimed that as he was screened and regularised in Skilled category be accorded temporary status. No relief was claimed by the applicant in the OA to be regularised against Group 'C' post of Tracer as the directions of the Court is to consider the applicant against Group 'C'

post and against the vacancy within 25% quota. It cannot be construed that the directions pertain to consideration in Group 'C' post as Tracer.

7. In this view of the matter, we do not find any wilful or contumacious disobedience on the part of the respondents. However, the respondents are accorded two months time to regularise the applicant against any Group 'C' post if the applicant is willing to accept the same. However, this will not preclude the applicant to assail his grievance of his non-regularisation against Group 'C' as Tracer in a separate proceedings in accordance with law. The CP is dismissed accordingly. Notices issued to the respondent are discharged. As the pay of the applicant has already been protected the same is to be continued till a decision is taken by the respondents.

S. Raju
(Shanker Raju)
Member(J)

M.P. Singh
(M.P. Singh)
Member(A)

/rao/