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Central Adminisrative Tribunal
Principal Bench

CP 293/2002 in
MA 1380/2002
MA 1997/2002
OA 2026/2000
MA 2240/2000
MA 2241/2002
MA 2491/2002
MA 2809/2002
WITH
CP 170/2001 in
OA 58/2000

Hon'ble Shri Govindan S. Tamai, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 6th day of March, 2003

CCP No.293/ in OA 2026/2000:

CPWD Graduate Engineers Association, CPWD
& Others (as per memo of parties in CP) .. Applicants
v.

Sh. M.Shankar, Secretary
M/o Urban Dev. & Poverty Alleviation
& Others (as per memo of parties in CP) .. Respondents
with

CCP No.170/2001 in OA 58/2000:

CPWD Graduate Engineers Association, CPWD
& Others (as per memo of parties) Applicants
v.

Sh.. N.K.Khanna, Secretary
M/o Uraban Dev. & Employment & Oths. .. Respondents

Present: Shri P.P.Khurana, senior counsel with
in OA Shri Sohan Lal, counsel for applicants
2026/00 Shri D.S.Mahendru, counsel for official
respondents with Sh. H.K.Gangwani, Sr. Counsel.

Sh. R.V.Sinha, through Sh. Vivek, counsel for
respondents.

Present: Shri P.P.Khurana, senior counsel with
in OA Shri Sohan Lal, counsel for applicants
58/2000 Shri D.S.Mahendru, learned
counsel for official respondents with Sh. H.K.
Gangwani, Id. sr. counsel.
Shri R.Venkataranini, senior counsel with
Mrs. B.Rana, counsel for UPSC (R-3).
Shri B.S.Mainee, counsel for pvt. respodts.

O R D E R

By Shri Shanker Raju, M(J):

Contempt Petitions, CP No.293/2002 in OA
2026/2000 as well as CP 170/2001 in OA 58/2000, are
emanated from two Judgments having common question of law

and fact and are being disposed of along with other MAS by this common order.

2. Brief background, leading to the present Contempt Petitions, was in pursuance of decision of CA 5363/90 (Shri J.N.Goel v. Union of India & Others, decided by the Apex Court on 14.1.1997) wherein it has been held that regular promotion to the post of Executive Engineer (hereinafter called as "EE") in CPWD against vacancies occurred prior to promulgation of 1996 Rules shall be governed by 1954 Rules. Accordingly, promotion of Diploma holder Assistant Engineers (hereinafter called as "AEs") who have been promoted on the posts of EE on ad hoc basis have to be reviewed. In pursuance, Graduate AEs, Shri B.M.Singhal & Others OA 1461/97 was filed for a direction to restrain the respondents from making ad hoc promotions of diploma holder AEs to the post of EE as per the Central Engineering Services Rules of 1996. The aforesaid OA was disposed of on 18.8.1997 with direction to respondents to make ad hoc promotions to the post of EEs in administrative exigency and on urgency and would confine only for a period of six months and thereafter those holding the post of EE on ad hoc basis shall automatically stand reverted to the regular substantive post which they were holding as on 18.8.1997. In pursuance, ad hoc promotions have been made in 1998. In order to regularise of those EEs working prior to 28.10.1996 as per the 1954 Rules, a policy decision was taken by the Government in consultation with UPSC to divert as a one time measure unfilled vacancies belonging to AE(E)'s quota to regularise all the ad hoc appointments, and the number of unfilled vacancies were worked out as 430 on civil

side and 120 on electrical side. In 1999 a DPC was held in UPSC and accordingly an order for regular promotion in the grade of EE (C) and EE(E) in respect of 314 (Civil) and 83 (Electrical) were issued. Subsequently, 14 more AEs(C) and 3 AEs(E) were also promoted. This necessitated the orders for reversion of 25 ad hoc EE(C) and 17 EE(Electrical). A number of AEs, who failed to obtain the prescribed benchmark as per the recruitment rules, were not recommended for regularisation. OA 58/2000 was filed by the CPWD Graduate Engineers' Association was disposed of on 5.12.2000 with direction to respondents to constitute a three member Committee of Senior Officers with one representative of each of DP&T and DG(W), CPWD to determine the eligibility of Diploma holder Assistant Engineers on the basis of their "outstanding ability and record" and would thereafter to place them, if found eligible by the aforesaid Committee, at par with degree holder AEs having more than three years experience, with combined list, prepared on the basis of common seniority list.

3. Meanwhile, in September, 2000, CPWD Graduate Engineer's Association, filed OA 2026/2000, seeking reversion of ad hoc EEs (Civil) and (Electrical) who have been found ineligible by the UPSC in 1999 and to direct the vacancies of 1954 Rules, i.e., 162 Nos. in Civil and 54 Nos. in Electrical, to 1996 Rules. By an order dated 14.3.2001, time to comply with the directions of the OA 58/2000 was extended till 21.8.2001. On 30.8.2001, on the basis of Screening Committee, respondents submitted the necessary proposals to UPSC for holding DPC to fill the balance vacancies, i.e., 152 in

number, in the grade of EE(C) and 54 in EE(E) respectively, as per 1954 Rules.

4. Group of Class-I (Direct Recruit AEs(E)) Officers, namely, Sh. N.K.Bansal and Others filed CWP No.6819/2001 which was dismissed on 4.3.2002 with liberty to petitioners therein to file a review application in OA 58/2000. Accordingly RA 90/2002 has been filed.

5. In the interregnum, OA 2026/2000 was allowed with direction to respondents to fully implement the decision in OA 1461/97 by ensuring that all those who were promoted on ad hoc basis during 23.4.1998, 24.4.1998 and 23.9.1998 but have not been found fit for regularisation by DPC and are continuing as ad hoc EEs are reverted and are not given any extension except by any common order passed by the Tribunal.

6. RA 90/2002 was disposed of on 30.5.2002 with an observation that as there was no final determination of the exact number of vacancies in the rank of EEs which could be filled by promoting AEs, respondents shall proceed to make further promotions only after the actual position of the vacancies is available under 1954 Rules has been ascertained.

7. On 5.7.2002 respondents have reviewed about the number of vacancies pre 29.10.1996 period in the grade of EE(C) and EE(E), and on review the same have been found 28 of EE(C) and no vacancy in the grade of EE(E). Accordingly, revised orders for holding DPC was submitted to the UPSC with a stipulation that no further DPC is required to be held for EE(E). The UPSC, in turn, examined the proposals and returned the same with an advice to obtain the

approval of DoPT regarding revised/changed number of vacancies.

8. Tribunal, in MA 1380/2002 along with CP 293/2002 in OA 2026/2000 ordered necessary steps to be taken to pass reversion orders which the respondents have complied with reverting 23 ad hoc EE(C) and 2 ad hoc EE(E) on 28.2.2002.

9. On 11.12.2002, on the advice of the UPSC with regard to the revision of vacancies was referred to DP&T, it was pointed out that the method adopted by the Ministry for calculating the backlog vacancies in the quota of AEs for diversion in favour of AEs was not correct. It has been advised to determine the correct number of vacancies of EE as on 28.10.1996, for the quota of AE(C) as well as AE(E) and it was observed that the approval given by them for diversion of backlog of unfilled vacancies could be utilised only for regularisation of ad hoc EEs as on 28.10.1996 and not for making fresh regular promotions of AEs. The aforesaid proposal was examined by respondents on 7.1.2003 and it was decided that in the first instance, 50 and 20 vacancies in the grade of EE(C) and EE(E) pertaining to the AE's own quota would be filled up respectively by holding a year-wise DPC from 1994-95, 1995-96 & 1996-97 (upto 28.10.1996) in accordance with 1954 Rules. It was also decided that ad hoc EEs remaining as on 28.10.1996 would be considered for regularisation as per the vacancies diverted as on 28.10.1996 from AE(E) quota subject to their suitability and eligibility. The zone of consideration would be restricted to the last person in the combined seniority list of AEs holding the higher post of EE on ad hoc basis on 28.10.1996 and

would include all persons seniors to him. That is to say, that the number of vacancies to be diverted from the AEs(E) quota would be determined so as to include the last ad hoc promotee in the zone of consideration in the respective discipline. As regularisation required holding of review DPC in the case of over reporting of vacancies and in the process there would be some reversions, yet to be placed on the of DPC held in 1999 but would be regularised under 1996 Rules. The vacancies of Civil and Electrical side under AEs(E)' quota remain unfilled would be carried forward beyond 28.10.1996 and would be filled in accordance with 1996 Rules.

10. In the aforesaid background, the learned senior counsel of applicant Shri P.P.Khurana appearing with Shri Sohan Lal, vehemently contended that applicants have committed wilful, deliberate, intentional and contumacious disobedience of the Court's order in OA 58/2000 as well as in OA 2026/2000 inasmuch as despite diversion of quota, through policy decision of 6.7.1999 and the same having reiterated in all the OAs decided, has been arbitrarily changed which amounts to sitting over the judgment/Orders of the Tribunal which cannot be countenanced. This, according to the senior counsel, cannot be modified without filing a review and has been done on behest of direct AE(E)s and just to favouritism them. However, extensive arguments have been made in this regard. These Contempt Petitions along with MAs have been reserved for orders on 27.1.2003. Before that the learned counsel of the respondents assisted learned senior counsel, Shri R.Venkataramini along with Ms. B.Rana, counsel for the UPSC, brought to our

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notice an information given by M/s Sikri & Co. and other Advocates on 1.2.2003 whereby it has been pointed out that CWP No.849/2003 and CWP No.858/2003 filed in OA 58/2000 as well as OA 2026/2000 respectively had come for hearing before the High Court of Delhi wherein after issuance of notice the status-quo has been maintained till 18.3.2003. This necessitated listing of these CPs and MAs for being spoken and the case was listed on 24.2.2003.

11. Shri P.P.Khurana, learned senior counsel for applicants contended that the issue before this Court is that the contumacious and deliberate violation of directions of this Court contained in these OAs and the present issue is for taking necessary action against the respondents whereas regarding implementation of the orders, the cause of action proceedings have not been filed and in the CPs only relief prayed is to institute appropriate proceedings to punish the contemnors. Moreover, by referring to an order passed by the Delhi High Court on 31.1.2003 it is contended that therein the orders passed in OA 58/2000 as well as OA 2026/2000 have not been stayed rather status-quo with regard to the promotions in terms of order passed in OA 58/2000 dated 5.12.2000 has been ordered with respect to respondents 1, 2 and 4 as such this Tribunal is not precluded from proceeding further in the contempt proceedings.

12. On the other hand, respondents' counsel Shri H.K.Gangwani, contended that once the directions contained in OAs have been challenged before the High Court and the same are sub-judice, it would not be, in the interest of justice, to proceed further in the

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contempt and the same may be kept in abeyance till the issue is finally decided by the High Court of Delhi.

13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. In T.Sudhakar Prasad v. Govt. of A.P. & Ors., JT 2001(1) SC 204, the Apex Court while upholding the powers of review under Section 17 of the Central Administrative Tribunals Act, 1985, the following observations have been made:

"Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and Tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance of orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity wilful defiance with the mandate of the court is treated to be contemptuous. Availability of jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent affect on avoidance. Viewed from this angle the validity of Section 17 of the Act is protected not only by Sub-clause(b) of Clause (2) of Article 323-A but also by Sub-clause (g) thereof."

15. The Apex Court in Modern Food Industries (India) Limited & Another v. Sachidanand Dass & Another, 1995 Supp(4) SCC 465 has observed as under:

"4. Before the High Court, appellants urged that before any contempt proceedings could be initiated, it was necessary and appropriate for the Division Bench to examine the prayer for stay, or else, the appeal itself might become infructuous. This did not commend itself to the High Court which sought to proceed with the contempt first. We are afraid, the course adopted by the High Court does not commend itself as proper. If, without considering the prayer for stay, obedience to the Single Judge's order was insisted upon at the pain of committal for contempt, the appellants may find, as has now happened, the very purpose of appeal and the prayer

for interlocutory stay infructuous. It is true that a mere filing of an appeal and an application for stay do not by themselves absolve the appellants from obeying the order under appeal and that any compliance with the learned Single Judge's order would be subject to the final result of the appeal. But then the changes brought about in the interregnum in obedience of the order under appeal might themselves be a cause and source of prejudice. Wherever the order whose disobedience is complained about is appealed against and stay of its operation is pending before the Court, it will be appropriate to take up for consideration the prayer for stay either earlier or at least simultaneously with the complaint for contempt. To keep the prayer for stay stand-by and to insist upon proceeding with the complaint for contempt might in many conceivable cases, as here, cause serious prejudice. This is the view taken in State of J & K v. Mohd. Yaqoob Khan."

16. The Apex Court in Suresh Chandra Poddar v. Dhani Ram & Others. 1995 (2002) DLT 9 (SC) has made the following observation:

"9. Section 12 of the Contempt of Courts Act, 1971 has indicated a caution that while dealing with the powers of contempt, the Court should be generous in discharging the contemner if he tenders an apology to the satisfaction of the Court. In the present case the apology tendered was found to be not genuine by the Tribunal. We are dismayed, if not distressed, that despite delineating on all the steps adopted by the appellant for challenging the order of the Tribunal before the High Court and despite the fact that the appellant had implemented the order even though there was no time schedule to do so, the Tribunal has chosen to depict the apology tendered by the appellant as one without contrition.

10. Section 13 of the Contempt of Courts Act says that notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence "unless satisfied that the contempt is of such a nature that it substantially interferes, or tends substantially to interfere with the due course of justice."

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11. Even if appellant had not implemented the order and if the appellant had brought to the notice of the Tribunal that the order of the Tribunal is under challenge before the High Court under Article 226 of the Constitution of India (the course which has been judicially recognised by a seven-judge Bench of this Court in L. Chandra Kumar v. Union of India & Others, III (1997) CLT 114 (SC)=(1997) 3 SCC 261, the Tribunal should have been slow to proceed against the party in a contempt action. Of course it can be said that no stay was granted by the Court when the appellant moved the Division Bench of the High Court under Article 226 of the Constitution. Not granting the stay by itself is not enough to speed up

proceedings against a person in contempt because the very order is yet to become final. At any rate the Tribunal should have directed the appellant to implement the direction, in the absence of the stay order from the High Court, within a timeframe fixed by it. We would have appreciated if the Tribunal had done so and then considered whether action should be taken in the event of the non-implementation of the order after the expiry of the said timeframe.

12. We have chosen to say so much in this case to give a message to the Tribunal that contempt jurisdiction is not to be exercised casually but only sparingly and in the power of giant, but not good to use it always."

17. The Apex Court further in J.S.Parihar v. Ganapat Duggar & Others, AIR 1997 SC 113 has observed as under:

"5. The question then is: whether the Division Bench was right in setting aside the direction issued by the learned single judge to redraw the seniority list. It is contended by Mr. S.K.Jain, learned counsel appearing for the appellant, that unless the learned judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned single judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2.7.1991. Subsequently promotions came to be made. 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 the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh direction by the learned single judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or

order of the single judge, the Division Bench corrected the mistake committed by the learned single judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned single Judge when the matter was already seized of the Division Bench."

18. The Apex Court in Kapildeo Prasad Sah & Others v. State of Bihar & Others, 1999(7) SCC 569 the following observations have been made:

"9. For holding the respondents to have committed contempt, civil contempt at thata, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the court's order has been made out. Whether disobedience is wilful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person si drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice."

19. If one has regard to the aforesaid rulings of the Apex Court, and in the facts and circumstances of the present case, where the orders of which contempt has been alleged, have already been challenged before the Apex Court, and the request for stay of the orders passed by the Tribunal is pending, it would not be, in the interest of justice, and in the light of the decision in Modern Food Industries (India) Limited & Another's case (supra), it is not appropriate to go further into the question of contempt, which would virtually render infructuous, the stay application of the respondents before the High Court, cause a serious prejudice.

20. Moreover, when the issue regarding the directions in RA 90/2002 and subsequent revision/modification of vacancies as earlier resorted to in July, 1999 is a subject matter of the Writ Petition which is pending consideration of the High Court of Delhi, recording of any finding on contempt would not be appropriate, in the interest of justice, at this stage.

21. Accordingly, for the foregoing reasons, CPs and MAS are directed to be kept in abeyance pending Writ Petitions before the Delhi High Court with liberty to either of the parties to revive the same at an appropriate stage subject to the final outcome to be arrived at by the Hon'ble High Court, Delhi in the Writ Petitions supra. No costs.

S. Raju
(Shanker Raju)
Member (J)

/rao/

G. S. Tampi
(Govindan S. Tampi)
Member (A)