

**CENTRAL DMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Miscellaneous Application No. 1004 of 2019
(Arising out of O.A.No. 902 of 2006 disposed of on 02/04/2009)

Reserved on: 4.12.2020

Pronounced on: 16.12.2020

CORAM:

HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)
HON'BLE MR. TARUN SHRIDHAR, MEMBER (ADMN.)

1. Gitarani Biswas, W/o. Late Tarapada Biswas
2. Tarun Kumar Biswas, S/o. Late Tarapada Biswas,
MV-9, PO/PS-Goudaguda, Dist. Malkangiri-76402.

.....Applicants

-Versus-

1. Union of India represented through its Director General, All India Radio, Akashavani Bhawan, Parliament Street, New Delhi-110001.
2. The Pay & Accounts Officer, Pay & Accounts Officer, All India Radio, Akashavani Bhawan, Kolkata.
3. Station Director, All India Radio, Cantonment Road, Cuttack-753001.
4. Station Director, All India Radio, Jaypur, Dist. Koraput.

.....Respondents.

For the Applicant :Mr.D.P.Dhalsamant, Advocate
For the Respondents :Mr.D.K.Mallick, Advocate

O R D E R

MR. SWARUP KUMAR MISHRA, MEMBER (J)

The brief facts of the matter are that Tarapada Biswas an UDC of All India Radio, Jeypore had filed O.A. No. 902/2006 seeking direction to the Respondents to grant him 1st financial up gradation in the scale of pay of Rs. 1200-2040/- w.e.f. 09/08/1999 and 2nd Financial up gradation in the scale of pay of Rs. 6500-10,500/- w.e.f. 24/06/2000 and release the arrears in his favour. He died during the pendency of the said O.A. His widow and Son, the present Applicants were arraigned as Applicants in

the said O.A. The OA was finally disposed of on 02/04/2009. The order of this Bench was upheld in W.P (C) No. 255 of 2010 disposed of on 06/01/2015 and RVWPET No. 253/2015 disposed of on 28/08/2019 filed by the Respondent-Department before the Hon'ble High Court of Orissa. Alleging non compliance of the order 02/04/2009 in O.A. No. 902/2006 of this Bench, the instant MA u/s.27 of the A.T. Act, 1985 has been filed by the Applicants seeking execution of the order of this Bench.

2. Respondent-Department filed reply to the M.A enclosing thereto a copy of the order dated 11/06/2020 passed by them in compliance of the order of this Bench in OA No. 902/2006. The operative part of the speaking order dated 11/06/2020 is quoted herein below:

“In view of above DOPT’s norms for ACP dated 10.02.2000, FRSR Appendix-8 of FR/SR (Part-I) (Thirteenth Edition) and Surplus Cell’s guidelines, Sh. Tarapada Biswas was eligible for 1st ACP w.e.f. 09.08.1999, however, since he got 1st promotion on 13.02.1995 in the pay scale of Rs. 1200-2040 and his pay scale was not merged in new pay scale effective from 01.01.1996, his promotion will be counted for 1st financial up gradation and so he is not eligible for 1st ACP. As per DOPT’s norms, Sh. Tarapada Biswas was eligible of 2nd financial up gradation under ACP on completion of 24 years w.e.f. 2000 in the pay scale of Rs. 5500-9000 and not in the pay scale of Rs. 6500-10500, as such the matter is disposed off accordingly.”

3. According to learned counsel for the Applicants, the compliance order issued by the Respondents is no compliance because as per the Rules, the ex employee was entitled to the 1st and 2nd financial up gradation under ACP with effect from the date(s) claimed in the OA which was illegally denied to him. Therefore, the Respondents may be directed to correctly examine the matter and grant the applicants arrears

upon conferment of 1st and 2nd financial up-gradation to the ex employee.

On the other hand, by reiterating the stand taken in the speaking order, learned counsel appearing for the Respondents strongly opposed the stand of the Applicants and reiterated that in view of the OM of the DoP&T, the ex employee was not entitled to the benefits claimed by the Applicants.

4. Having considered the rival submission of the parties perused the records. We are of the view considered view that the legality or otherwise of the speaking order dated 11/06/2020 (Annexure-R/1) cannot be looked into in exercise of power conferred under section 27 of the A.T. Act, 1985. If the Applicants are not satisfied with the compliance order passed by the Respondents the remedy for them is to challenge the same in separate OA. Our views is fortified by the decision of the Hon'ble Apex Court in the case of **J.S. Parihar Vs. Ganpat Duggar and others** reported in (1996) 6 SCC 291. Paragraph-6 of the said Judgment reads as under:

“6. 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 take 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 willfully 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, a fresh 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.” *(emphasis added)*

5. In view of the facts and law discussed above this MA, on the face of the speaking order dated 11/06/2020 (Annexure-R/1) there remains nothing further to be adjudicated in this MA. MA is accordingly dismissed leaving the parties to bear their own costs.

(Tarun Shridhar)
Member (Admn.)

(Swarup Kumar Mishra)
Member (Judicial)