

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

CONTEMPT PETITION NO. 291/06/2019
in
ORIGINAL APPLICATION NO. 291/43/2003

Order reserved on 04.12.2020

DATE OF ORDER: 17.12.2020

CORAM

HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER

Indra Pal S/o Sh Panna Lal aged 61 years, retired ELF,
NWR Diesel Shed Phulera R/o Dhani Gordhanpura
Phulera, Jaipur.

....Applicant

Shri S.K. Bhargava, counsel for petitioner (through
Video Conferencing).

VERSUS

1. Sh. Rajesh Tiwari, General Manager, NWR, Head
Qr. Office, Jagatpura, Jaipur.
2. Ms. Somya Mathur, Div. Railway Manager, North
Western Railway, PH Road, Jaipur – 302016.

....Respondents/Contemnors

Shri Anupam Agarwal, counsel for respondents
(through Video Conferencing).

ORDER

Per: DINESH SHARMA, ADMINISTRATIVE MEMBER

This Contempt Petition has been filed by the petitioner complaining against the alleged non-compliance of this Tribunal's order dated 12.02.2008 in OA No. 43/2003 (Annexure CP-1). The complainant has alleged that the O.A. was partly allowed with the following directions:

"The respondent Nos. 3 to 5 cannot be permitted to avail right of consideration for promotion both in Ajmer as well as in Jaipur Division when they subsequently found that some posts have been created in Jaipur Division are going to fall vacant and their chances of promotion to higher post is not available in Ajmer Division".

2. Two Writ Petitions bearing Nos. 6330/2008 and 12621/2008 filed by the said private respondents (against this decision) have been disposed of by the Hon'ble High Court of Rajasthan at Jaipur by their orders annexed at Annexures CP-4 and CP-5. Since these decisions amount to upholding the decision of this Tribunal, the applicants issued a "Notice for Contempt of Court" against the DRM, NWR, Jaipur

vide letter dated 30.11.2018 (Annexure CP-6). Since despite this notice, the respondents have not done anything to recast the seniority of the applicants, this contempt petition is filed.

3. Following a notice by the Tribunal, a reply has been filed by the counter petitioners (alleged contemnors). Besides rendering unconditional apology for any act or inaction of their that might have caused contempt, they have stated that issue of seniority of applicants in OA No. 43/2003, with respect to that of respondents Nos. 6 to 9 in that OA, was left open by para 4 of the order of the Tribunal (Annexure CP-/1). That matter has been later finally settled by the decision of this Tribunal (in OA 442/2012) dated 27.08.2019 (Annexure CPR/1). Thus, no contempt can be alleged with respect to the seniority vis a vis respondent Nos. 6 to 9 of the OA No. 43/2003. It is further stated that as far as the issue of seniority with respect to respondent Nos. 3 to 5 is concerned, this claim also does not stand in the light of the protection granted by the Hon'ble High Court in WP Nos. 6330/2008 and 12621/2008. The applicants of OA No. 43/2003, despite being parties to these

proceedings before the Hon'ble High Court, failed to appear before the Hon'ble High Court. The reply also states that the directions issued by this Tribunal vide order dated 12.02.2008, so far as it related to respondent No 3 to 5, were reversed by granting protection qua them and hence the submission of the contempt-petitioner that the Tribunal's order was upheld by the Hon'ble High Court is not correct. The reply also informed about change of officers holding posts of alleged contemnors. Consequently, an M.A. filed for transposing the present officer-bearers was allowed and fresh notices were issued. However, on a further date fixed for hearing of this matter, the learned counsel for the respondents submitted that the reply of the respondents already filed by them is not going to change and requested for dropping the contempt proceedings on the basis of that reply.

4. We have gone through the Contempt Petition and the reply and also heard the arguments of the learned counsels of both the parties through Video Conferencing.

5. There is no dispute regarding facts. The counter-petitioners have claimed that the order could not be complied with because the Tribunal had, by the same order, left the matter regarding seniority w.r.t. respondent Nos. 6 to 9 open. With respect to others, it could not be complied with due to orders of the Hon'ble High Court.

6. We have gone through the orders of the Hon'ble High Court in W.P. No. 12621/2008, passed on 12.07.2018 (Annexure CP-5), which includes the order of the Hon'ble High Court passed in WP No. 6330/2008, and thus covers the issues with respect to respondent Nos. 3 to 5 of the OA No. 43/2003. We reproduce concluding paragraphs 6, 7 and 8 here from the order of the Hon'ble High Court in W.P. No. 12621/2008:

"6. Taking into consideration that another proceedings where this matter was required to be heard, this Court passed following order in D.B. Civil Writs No. 6330/2008 decided on 23rd March, 2018 which reads as under: -

1. Both the petitioners: - No. 1 Trilochan Singh retired on 31st July, 2017 and No. 2 Balveer Singh retired on 31st October, 2017.
2. In view of the order passed by this Court on 07.11.2008 which reads as under: -

"The respondent filed the Original Application for settlement of seniority to the post of Diesel Electrical Fitter Gr. II. The petitioners respondents before the Tribunal in his reply have stated that they have been promoted. Unless order of promotion is challenged seniority cannot be disturbed. The Tribunal did not disturb the promotion but changed the seniority. There are no findings which regard to the promotion of the petitioners-respondents. Petitioners-respondents have filed an application challenging the order of suspension. This gives them fresh cause of action and cannot be determined in this writ petition. The application is rejected.

However, taking into consideration the merits of the writ petition the impugned judgment of the Central Administrative Tribunal, Jaipur Bench, Jaipur dated 12.2.2008 is stayed till further orders."

3. Both the petitioners having retired and they have been granted all the retiral benefit on the basis of interim order passed by this Court, therefore, no recovery shall be made from them.

4. The petition stands disposed of."

7. Taking into consideration the petitioner's case that though he has given option but the same was not considered by the Central Administrative Tribunal properly, in that view of the matter, it will not be appropriate to remit the matter after 10 years when interim relief is granted by this Court.

8. Hence, the petition stands disposed of with a direction that interim relief granted by this Court will continue qua the petitioner only."

7. Needless to say, the Hon'ble High Court, after staying action on the impugned judgment of the Tribunal, did not remand the matter only because of considerable lapse of time, during which the situation

changed due to promotions and retirements. It is also clear that the respondents before the Hon'ble High Court, which included the present contempt petitioner, did not appear to defend their case before the Hon'ble High Court. In the light of the Hon'ble High Court decision, which does not amount to a clear upholding of our decision dated 12.02.2008 in OA No. 43/2003, we do not consider the alleged inaction of the respondents in this matter as contemptuous. The contempt proceedings are, therefore, dropped and notices against the alleged contemnors discharged. Accordingly, Contempt Petition stands dismissed.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat