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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

C.P. NO. 364/94

IN

O.A. NO. 1245/87

New Delhi this the 23rd day of January, 1995

HON'BLE SHRI JUSTICE S. C. MATHUR, CHAIRMAN  
HON'BLE SHRI P. T. THIRUVENGADAM, MEMBER (A)

Sube Ram S/O Nahar  
Ex. Khalasi, N. Railway,  
R/O Vill. Rajpur,  
P.O. Sherpur,  
Distt. Gurgaon.

... Applicant

( By Advocate Shri B. S. Mainee )

Versus

Lalit Kumar Sinha,  
General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.

... Respondent

ORDER (CRAL)

Shri Justice S. C. Mathur —

The applicant alleges disobedience by the respondent of the Tribunal's judgment and order dated 24.12.1992 passed in O.A. No. 1245/87.

2. The aforesaid O.A. was directed against the punishment of removal from service imposed upon the applicant. It appears that the charge against the applicant was of unauthorised absence. It appears from the judgment of the Tribunal that before the enquiry officer the applicant had confessed his absence without leave. The Tribunal found no reason to allow the application of the applicant. Even then the Tribunal made this observation :-

"Although, we are dismissing this application but with the observation that it is a case in which re-appointment

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can be given to the applicant and as far as possible, re-appointment should be given to the applicant by the respondents."

The learned counsel for the applicant submitted that the direction of the Tribunal is of a mandatory character inasmuch as re-appointment could be denied only if it could be shown by the respondent that it was not possible. In support of this submission, the learned counsel cited 1990 (1) SLJ 17 - Obedullah Shariff vs. The Osmania University, Hyderabad. In this case, the Division Bench of the Andhra Pradesh High Court was interpreting Section 38 of the Osmania University Act, which has been extracted in paragraph 6 of the report. Sub-section (I) of Section 38 reads thus :-

"(I) Save as otherwise provided every salaried officer and teacher of the University shall be appointed under a written contract, and the conditions of service relating to them, shall as far as possible, be uniform except in respect of salaries payable to them."

Interpreting the expression 'as far as possible', used in the above provision, it has been observed by the Division Bench in paragraph 9 as follows :-

"9. The next question to be considered is whether Section 38 of the Act makes it obligatory and mandatory for the University to prescribe uniform conditions of service for salaried officers and teachers. The learned counsel for the University relied upon the expression "as far as possible" occurring in Section 38 (1) and submitted that it is only an enabling provision and does not confer any right on the petitioners. We do not think we can accede to this contention. The words "as far as possible" is preceded by the word

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\*shall\*. It means that the service conditions shall be the same except when it is impossible."

In the present case, the Bench of the Tribunal has not used any mandatory expression like the word 'shall' while making the observation upon which reliance has been placed by the applicant for alleging disobedience. In our opinion, the observation of the Division Bench is only of recommendatory nature. The respondent cannot, therefore, be held guilty of deliberate disobedience within the meaning of Section 2 of the Contempt of Courts Act.

3. It appears that after the judgment was rendered by the Tribunal, the applicant made representation for re-appointment which was disposed of by order dated December, 1993, copy of which has been filed as Annexure C-2. In this order it is mentioned that the applicant cannot be given re-appointment in view of his bad record of service. It is mentioned that in 11 years, the applicant had been on leave/unauthorised absence for about 4 years. The Administration has, therefore, given reason for inability to give re-appointment to the applicant. In our opinion, the reason given is not illusory.

4. Learned counsel for the applicant has submitted that after the Bench of this Tribunal had found that re-appointment can be given to the applicant it was <sup>not</sup> open to the administration to say that appointment cannot be given to the applicant. As we have held hereinabove that the direction of

the Tribunal is not of mandatory nature, in our opinion, it was open to the administration to deal with the applicant's request in the manner done by it.

5. In view of the above, this application is rejected.

*P. T. Thiruvengadam*  
( P. T. Thiruvengadam )  
Member (A)

*S. C. Mathur*  
( S. C. Mathur )  
Chairman

/as/