

(61)

Central Administrative Tribunal  
Principal Bench: New Delhi

C.P.215/97 in  
OA No. 980 of 1989 decided on 29.6.98

Name of Applicant: Girdhari Lal  
Shri H.K.Gangwani  
By advocate: .....

Versus

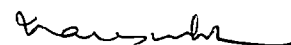
U.O.I. thro' ShS.P.Mehta,GM,N.R. & anr-  
Name of Respondents:.....  
By advocate :...Shri.B.S.Jain.....

Corum

Hon'ble Mr. N. Sahu, Member (A)

Hon'ble Dr.A.Vedavalli,M(J)

1. To be referred to the Reporter or not? No.
2. Whether to be circulated to other Benches of the Tribunal? No.

  
(N. Sahu)  
Member (A)

(2)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

C.P. No. 215 of 1997

(in Original Application No. 980 of 1989)

New Delhi, this the 29<sup>th</sup> day of June, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)  
Hon'ble Dr. A. Vedavalli, Member(J)

Girdhari Lal, S/o Mulakhraj, Ex-Works  
Accountant in the Office of the  
Divisional Rly. Manager, Northern  
Railway, Ferozpur. Presently residing  
at 1011, Sector A, Pocket B,  
Vasantkunj, New Delhi-110070

- -APPLICANT

(By Advocate Shri H.K. Gangwani)

**Versus**

Union of India and others through

1. Shri S P Mehta, General Manager,  
Northern Railway, Baroda House,  
New Delhi.

2. Raj Kumar, Divisional Railway  
Manager, Northern Railway,  
Ferozpur.

- -RESPONDENTS

(By Advocate Shri B.S. Jain)

**O R D E R**

By Mr. N. Sahu, Member(Admnv) -

This C.P. filed on 29.7.1997 prays that contempt of court proceedings may be initiated against the respondents for not complying with the orders of the Tribunal in O.A.No.980 of 1989 disposed of on 6.9.1996, although the applicant had submitted several representations and brought to the notice of the respondents the time limit of three months set by the Tribunal.

2. The admitted fact is that the respondents had received the Tribunal's order in the third week of September, 1996. In the reply filed on



24.10.1997, the respondents submit that they have complied with the orders of the Tribunal. The operative portion of the Tribunal is reproduced below :

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"14. Under the circumstances, as we are to go strictly in accordance with the Hon"ble Supreme Court's decretal order dated 3.1.96, what the applicant Girdhari Lal will be entitled to is improved seniority position over the Heard (sic) Clerks as Works Accountant and refixation of the date(s) from which he would be eligible for proforma promotion as ASW/SW on the basis of revised seniority with reference to his junior, and with grant of annual increments notionally thereon, but with payment of arrears only from the date he actually shouldered higher responsibilities. The applicant's pay should be refixed on that basis. Thereafter the applicant's retiral benefits should also be refixed on the basis of the above pay fixation, and payment of such retiral benefits so refixed, less what has already been paid, together with arrears of such retiral benefits (but without any payment of interest thereon) should be released to the applicant within 3 months from the date of receipt of a copy of this judgment."

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3. The respondents submit that the applicant was placed above Shri Devki Nandan Bajpai, Head Clerk, who was senior most amongst the Head Clerks promoted on 20.12.1961. The admitted fact is that the applicant was selected as a Works Accountant with effect from 12.8.1965. He retired from service with effect from 31.1.1982. According to Annexures R-2 and R-3 the applicant refused to avail of several chances of promotion as Assistant Superintendent and preferred to work as Works Accountant rather than

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Assistant Superintendent. By a letter dated 4.11.1980 he clearly stated that he unconditionally refused to accept promotion to the post of Assistant Superintendent Works in the scale of Rs.550-750. It is also stated in a notice under Section 80 of Civil Procedure Code issued to the General Manager, Northern Railway that his claim was he should be given promotion in the grade of Rs.550-750 with effect from 1.1.1979 and in the grade of Rs. 700-900 with effect from 1.6.1979 as Superintendent. Even his claim before the CAT was in terms of the above requests. Annexure-R-1 states the seniority position of the applicant above Shri Devki Nandan Bajpai, Head Clerk. He was proforma promoted as Assistant Superintendent grade Rs.550-750 with effect from 1.1.1979 which was the date from which his junior Shri Devki Nandan was promoted. Notional fixation of pay was exhibited upto 1.6.1981.

4. In the reply filed on 23.9.1997 the respondents have produced the PPO order dated 26.8.1997 which modified and revised his pension from Rs.445/- to Rs.578/- with effect from 1.2.1982. The retiral benefits of the applicant have also been revised in the light of the increased pension. The payment on account of difference of gratuity, commuted value of pension, and leave encashment have also been arranged and sent to the applicant by a letter dated 28.8.1997 (Annexure-R-2). The cheques have been received by the applicant also. The respondents expressed their regret that they could not comply with the orders of the Tribunal within

three months from the date of receipt of a copy of the order, due to the fact that the matter was to be co-ordinated by respondent no.1 with respondent no.2. An unqualified apology was tendered in the counter filed.

5. The learned counsel for the applicant explained that in spirit and in substance the respondents did not implement the order of the Tribunal. The applicant was the senior most Works Accountant of 1963 panel and he should have been given integrated improved seniority position over the Head Clerks of 1963 panel and then interpolated in the panel of Assistant Superintendents dated 21.3.1964. He similarly states that he should have been interpolated in the panel of Superintendent Works Grade Rs.700-900 and his pay should thereafter be fixed as Assistant Superintendent from 21.3.1964 and Superintendent from 23.11.1966. As against this the respondents had given the applicant proforma position as Assistant Superintendent from 1.1.1979 and as Superintendent from 1.6.1979 respectively. The learned counsel argued at length that this amounted to discrimination. It is submitted that the name of the applicant is to be interpolated as has been done in the case of other 15 junior colleagues in the panel of 1965. The learned counsel also pointed out that the reply filed in this CP was by a Deputy CPO, Headquarters whereas the alleged contemners are 'Shri S.P.Mehta, General Manager and Shri Raj Kumar, Divisional Railway Manager. It is

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also submitted that there is no authority from the alleged contemner authorising the deponent to file a reply to the contempt petition.

6. On the merits in the contempt petition, we are satisfied that the respondents have complied with the orders of the Court though in a belated manner. The claim of the applicant about fixing his seniority as Assistant Superintendent from 7.12.1966 and as Superintendent from 16.10.1978 in the place of 1.1.1979 and 1.6.1979 is a matter that would take us into a discussion of the merits of the case. This has to be viewed in the light of the refusal of the applicant to accept the promotions made as Assistant Superintendent at a later date. We are not inclined to adjudicate on merits in a contempt petition. What the O.A. directed was (i) refixation of the dates from which the applicant would be eligible for proforma promotion as ASW/SW on the basis of revised seniority with reference to his junior; (ii) grant of annual increments notionally thereon; (iii) payment of arrears only from the date he actually shouldered higher responsibility; (iv) refixation of his pay on the above basis; and (v) his retiral benefits should be refixed on the basis of above pay fixation and the differential amount be paid. The respondents have complied with the orders of the Tribunal in the light of their perception of the facts of the case. In a contempt petition we cannot review the merits of the implementation done by the

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respondents, particularly when it is shown by the respondents that their interpretation cannot be construed as unreasonable.

7. With regard to delay in implementation, the respondents have tendered an unconditional apology and explained certain difficulties in coordinating between various officers. We accept the apology tendered with the warning to the respondents that this should not be repeated in future. We, however, note that the reply had been signed not by the alleged contemnors but by a junior official and the alleged contemnors have also not authorised him to act on their behalf. As the replies have come on record and have been taken notice of, we do not want to delay the disposal of the C.P. on this technical ground. However, we close this C.P. with the observation that this type of affidavit is defective and deserves to be ignored. We call upon the Railway administration to note that such type of compliance will be viewed seriously with consequences to the noticed contemnors. Such replies will be ignored and will be treated at the time of hearing as cases of non-compliance. The C.P. is dismissed. Rule nisi discharged.

*A. Vedavalli*  
(Dr. A. Vedavalli)  
Member (J)

*N. Sahu*  
(N. Sahu)  
Member (Admin)

rkv.