

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

C.P. NO. 391/1997
in
O.A. NO. 1450/1991

(X)

New Delhi this the 3rd day of June, 1998.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

Sushil Kumar Jain S/O Kanta Prasad Jain,
R/O Railway Qr. No. 416-A,
Workshop Colony, Kota Junction,
Rajasthan.

... Applicant

(By Shri R. K. Relan, Advocate)

-Versus-

1. Shri V. D. Gupta,
General Manager,
Western Railway,
Churchgate, Bombay.

2. Shri L. R. Thapar,
Divisional Railway Manager,
Western Railway,
Kota Division,
Kota (Rajasthan)

... Respondents

(By Ms. B. Sunita Rao, Advocate)

O R D E R (ORAL)

Shri Justice K. M. Agarwal :

Notices were issued in this contempt petition for alleged disobedience of the directions made by the Tribunal in OA No. 1450/1991 decided on 5.12.1996, by Tom the respondents.

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2. The respondents have filed their reply. According to them, the directions have been carried out. However, the learned counsel for the applicant contended that the directions have not been properly carried out by the respondents.

3. The directions made by the Tribunal in OA No. 1450/91 were as follows :

"...We direct the respondents to consider the applicant for promotion as IOW Gr. II w.e.f. 5.11.86 and if he is found on that date not unsuitable for such promotion, to promote him with effect from that date, to recast his seniority accordingly and to consider him for promotion to the higher grade with effect from the date on which Shri Chottey Lal Tomar was promoted. The above exercise should be completed within a period of three months from the date of communication of a copy of this order."

4. Thus, the first direction was for consideration of the applicant for promotion as IOW Grade II w.e.f. 5.11.1986. the learned counsel for the applicant submitted that on their own showing, the respondents had promoted his junior Shri Chottey Lal Tomar w.e.f. 23.10.1986. However, the applicant has been given promotion w.e.f. 5.11.1986 and, therefore, according to him a clear case of contempt was made out against the respondents.

5. We are of the view that the argument of the learned counsel for applicant is misplaced. When the direction of the Tribunal specifically mentions "5.11.86" as the date from which promotion was to be

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given and if such promotion has been given, no case is made out against the respondents for contempt. If he feels that instead of 5.11.1986 the date should have been 23.10.1986, his remedy was to file a review petition.

6. The second direction was that if the applicant was found suitable for promotion as IOW Gr.II, his seniority should be recasted accordingly and thereafter a further direction was to consider him for promotion to the higher grade with effect from the date on which Shri Chottey Lal Tomar was so promoted. According to the reply, the applicant was considered for promotion to the higher grade. That by implication suggests that the seniority was recasted after finding the applicant suitable for promotion as IOW Gr.II w.e.f. 5.11.1986; otherwise he could not have been considered for further promotion to the higher grade. Now, according to the reply filed by the respondents, the applicant was successful in written test for the higher grade but unsuccessful in viva voce and, therefore, he could not be promoted. According to the learned counsel for applicant, Shri Chottey Lal Tomar was given regular promotion, though on ad hoc basis w.e.f. 13.9.1989 and accordingly, the consideration should have been for giving promotion to the applicant w.e.f. 13.9.1989, on the basis of the ACRs till 1988-89 and not on the basis of any subsequent ACRs.

Yours

7. Be that as it may, the fact remains that the applicant was also considered for promotion to the higher grade and after such consideration he was not found fit for promotion. Now if the applicant feels that ACRs subsequent to 1988-89 were taken into account by the review DPC which should not have been taken into account, his remedy is by way of filing a fresh original application. In these proceedings for contempt, no action can be taken against the respondents on the basis of the fact that subsequent ACRs for the period subsequent to 1988-89 were taken into account by the review DPC.

8. For the foregoing reasons, we are of the view that the order of the Tribunal has been fully complied with by the respondents and accordingly, the application for contempt has become infructuous. We, therefore, dismiss the contempt petition and discharge the rule nisi with liberty to the applicant to re-agitate the matter afresh, if so advised with reference to the alleged illegalities committed during the review DPC.

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(K. M. Agarwal)
Chairman

R. K. Ahuja
(R. K. Ahuja)

Member (A)

/as/