

(Signature)

**Central Administrative Tribunal
Principal Bench, New Delhi.**

CP-53/2005 in
OA-732/2004

New Delhi this the 17th day of March, 2005.

Hon'ble Sh. V.K. Majotra, Vice-Chairman(A)
Hon'ble Sh. Shanker Raju, Member(J)

Amrit Lal,
Income Tax Officer,
Income Tax Office,
Ayakar Bhawan,
Muzaffur Nagar,
Meerut.

..... Petitioner

(through Sh. Narender Kaushik, Advocate)

Versus

1. Sh. K.M. Chandershekher,
Secretary,
Ministry of Finance,
Central Secretariat,
North Block,
New Delhi.
2. Smt. Shobha,
Majumdar, IRS
Chairman,
Central Board of Direct Taxes,
Central Secretariat,
North Block,
New Delhi.
3. Sh. B.M. Jindal, IRS
Chief Commissioner of Income Tax,
CCA Ayakar Bhawan,
Vaishali, Ghaziabad,
(UP).

..... Respondents

(through Sh. V.P. Uppal, Advocate)

Order (Oral)
Hon'ble Shri Shanker Raju, Member(J)

This CP is directed against an order dated 5.8.2004 passed in OA-732/2004.

2. It is trite law that in contempt petition the Court is precluded from giving directions to create substantive right or to grant substantive relief. It



is equally settled that if the respondents have executed the order in a bona fide manner no contempt is made out. It is also settled that a contempt is always between the Court and the contemnors. We fortify these conclusions on the following decisions:

- i) J. Prasad Paul and Another v. Tarak Nath Ganguly, 2002 (5) SCC 352.

- ii) Brahma Prakash v. State of U.P. AIR 1954 S.C. 10

3. In OA-732/2004 applicant has assailed relegation of seniority to one D.C. Mishra. By an interim order promotion was withheld and seven posts were directed to be left vacant. As it was found that before relegating seniority to the disadvantage of applicant prior opportunity was afforded by order dated 28.2.2003, whereby seniority of D.C. Mishra was revised and respondents were directed to afford a reasonable opportunity to show cause to applicant in revision of seniority in the cadre of ITI as well as ITO till process is completed no promotion would take place. In compliance thereof respondents have issued a show cause notice dated 8.10.2004 inviting objection on seniority list which was responded by applicant and thereafter on personal hearing orally rejection was communicated which was refused in writing on 8.10.2004 and accordingly promotions have taken place on 15.2.2005. This has been objected by the applicant's counsel on the ground that filing false affidavit amounts to contempt and for this a decision of the Apex Court in Reported in 2004 (9) SCC 670 has been relied upon. In the above conspectus it is stated that whereas not only relegation of seniority of D.C. Mishra but also A.K. Mishra and Gupta the order operates on them also, yet they had been promoted and this fact has been deliberately withheld. Learned counsel further states that in pursuance of the decision of the ~~Tribunal~~ in J.S. Singhal v. Union of India decided on 17.12.2004 the



promotions have been made on 15.2.2005, whereas the effect of OA-732/2004 was not brought to the notice of the Tribunal.

4. On the other hand, respondents' counsel vehemently opposed the contentions and stated that since filed PT-17/2005 where he has challenged the promotion order issued. A specific admission in paragraph 4.17 shows that the orders were orally conveyed on 18.1.2005 itself to applicant and for delay in passing the orders in writing the respondents have tendered unconditional apology.

5. On careful consideration of the rival contentions of the parties and on perusal of record, we do not find any misrepresentation or any false averment by the respondents, as the directions are substantially complied with and the consequence in form of promotion order dated 15.2.2005 having been assailed in separate ⁱⁿ proceeding this contempt has no relevance and is to be dropped. Accordingly, CP is dismissed. Notices are discharged.

S. Raju
 (Shanker Raju)
 Member (J)

V.K. Majotra
 (V.K. Majotra) 12.3.05
 Vice-Chairman (A)

/vv/