

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: THIS THE 20TH DAY OF FEBRUARY, 2006

CONTEMPT APPLICATION NO.24 OF 2004

IN

ORIGINAL APPLICATION NO.1535 OF 1999

HON'BLE MR. K. B. S. RAJAN, MEMBER-J

HON'BLE MR. A. K. SINGH, MEMBER-A

Prakash Chandra Sharma,
Aged about 42 years,
Son of Shri Sheo Datt Sharma,
Resident of Mohalla Sumer Sagar,
Gorakhpur City, Gorakhpur.

.Applicant

(By Advocate Shri T. S. Pandey)

Versus

1. Shri Om Prakash,
General Manager,
North Eastern Railways,
Gorakhpur.
2. Shri P.K. Gupta,
Chief Personnel Officer,
North Eastern Railways,
Gorakhpur.
3. Smt. Vibha Kumari,
Asstt. Personnel Officer,
North Eastern Railways,
Gorakhpur.

.Respondents

(By Advocate Shri A. K. Gaur)

O R D E R

By K. B. S. RAJAN, MEMBER-J

The order which is stated to have been
deliberately disobeyed, mandated the respondents
as under:-



"For the reasons stated above, this O.A. is allowed. The order dated 15.11.1994 is quashed. The respondents are directed not to recover any amount from the applicant on the basis of the aforesaid order and if any amount has been recovered, it may be returned to the applicant within a period of four months from the date of a copy of this order is filed. It shall be open to the respondents to pass a fresh order in accordance with law if they are advised. No order as to costs."

2. In compliance, order dated 05.04.2004 has been passed revising the pay scale of the applicant with effect from 04.04.1991. Annexure-7 refers. Annexure-4 is the detail relating to amount recovered and paid alongwith difference in pay on account of re-fixation of pay scale vide order dated 05.04.2004.

3. In view of the above, so far as the direction by this Court is concerned, the same has been fully complied with. However, according to the applicant, since the refund of the amount recovered has not been fully made (in other words their being discrepancies in the calculation of due and drawn statement) the applicant has already moved a separate O.A. vide O.A. No.8/04 which is under consideration by this Tribunal in its original jurisdiction.

4. In the case of *J.S. Parihar v. Ganpat Duggar*, (1996) 6 SCC 291 the Apex Court has held that when an order is implemented which contain certain discrepancies on account of which dispute arises, the grievance has to be redressed only

under the appropriate jurisdiction and not under contempt jurisdiction. The said order is reproduced below:-

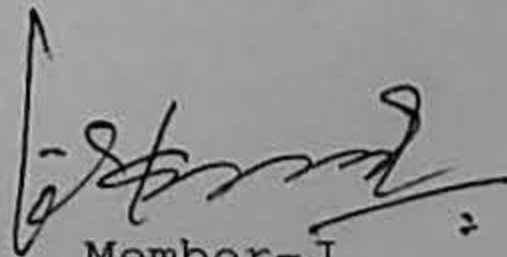
"The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act. Therefore, the Division Bench has exercised the power under Section 18 of the Rajasthan High Court Ordinance being a judgment or order of the Single Judge; the Division Bench corrected the mistake committed by the learned Single Judge. Therefore, it may not be necessary for the State to file an appeal in this Court against the judgment of the learned Single Judge when the matter was already seized of the Division Bench.

7. The appeals are accordingly dismissed. It may be open to the aggrieved party to assail the correctness of the seniority list prepared by the State Government, if it is not in conformity with the directions issued by the High Court, if they so advised, in an appropriate forum. No costs."

5. In view of the dictum of the Apex Court, we are of the considered view, that no case for contempt has been made out and accordingly, the proceedings under contempt are dropped and the notices are discharged.



Member-A



Member-J