

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 6th day of August, 2014.

**CIVIL CONTEMPT PETITION NO. 161 of 2013
(Arising out of O.A No. 1356/2004)**

**HON'BLE MR. SHASHI PRAKASH, MEMBER- A.
HON'BLE MS. JASMINE AHMED, MEMBER- J.**

N.K. Agarwal, aged about 64 years, son of Late Prem Chand Agarwal, resident of S-3, Shivalik Luxury Apartments, 1, Curzon Road, Dehradun - 243001, Uttarakhand. Retired Director, Geological Survey of India, Dehradun - Uttarakhand.

...Applicant

V E R S U S

1. Shri R.H. Khwaja, Secretary, Department of Mines, Ministry of Mines, Government of India, 3rd Floor, A-Wing, Shastri Bhawan, New Delhi - 110001.
2. Shri A. Sundaramoorthy, Director General, Geological Survey of India, 27, Jawahar Lal Nehru Marg, Kolkata - 700016.

.....Respondent

Advocate for applicants :Shri Shyamal Narain

Advocate for the respondent :Shri R.B. Singhal, A.S.G, Govt. of India
Shri S.N. Chatterji

O R D E R

Heard learned counsel for both sides.

2. The present contempt petition has been filed for non-compliance of the direction of this Tribunal given in the order dated 18.07.2013 . In the aforesaid order, direction was given that the case of the applicant for promotion to the post of Director (Geology) in 2004 should be reconsidered in the light of the procedure / methodology approved in the case of Dev Dutt Vs. Union of India & Ors -2008 (7) Scale 403

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decided by the Apex Court and the applicant shall be entitled for all consequential benefits, if found eligible for promotion. The learned counsel for the applicant argued that though the order was issued on 18.07.2013, no action was taken by the respondents till 26.09.2013 when they moved an application for extension of time. When the application for time extension came up for orders on 22.10.2013, it was observed by the court that the time extension applicant did not seek time for compliance of the order but simply stated that they are seeking time for appropriate steps on this issue. Thereafter the matter was adjourned on one pretext or the other. However, a compliance report was submitted by the respondents on 28.02.2014 to which two weeks' time was given to the counsel for the applicant to file reply / objection.

3. Learned counsel for the applicant argued that the time extension application purportedly moved by the respondents also after the expiry of two months from the date of the order. In this regard, he further pointed out that by the order dated 25.09.2013, six month time had been given to the respondents to comply with the order but they did not take any action within that period. The first step taken by the respondents was the letter dated 10.01.2014, which was a letter communicating the remarks which had been recorded in the ACR of the applicant for the year ending 31.03.1999 and 31.03.2000. By that time the applicant had already filed the contempt petition and the order of the Tribunal accordingly had exhausted itself since two months period had expired. Learned counsel for the applicant stated that in such a situation there was no reason why they communicated above ACR to the applicant. Since it was not open for the respondents to take action according to their own sweet will in disregard of the court's order. Further more, he submitted that the letter dated

10.01.2014 was sent on the old address of the applicant where he was not residing at the time of notices were issued. Learned counsel further drew attention to para 13 of the order in the case of Dev Dutt (Supra) wherein it has been stated that communication of the adverse / below bench mark entries should be communicated within the reasonable time and has to be within the frame work of the rules applicable at that point of time. The reasonable time has to be reckoned with reference to the period when the entry was made. The counsel further stated that the delay explained in para 3 of the compliance affidavit is not based on adequate justification and therefore, non-compliance of the order of the Tribunal dated 18.07.2013 is willful and deliberate.

4. Learned counsel for respondents on the other hand drew attention to the affidavit of compliance dated 28.02.2014 and pointed out that the delay in preferring time extension application involved a very small period and was caused on account of the fact that since the matter required consultation with the DOP&T and Department of Legal Affairs , it took some time. Accordingly, the delay was neither deliberate nor willful. Once a decision was taken in the matter as per the order of the Tribunal, a letter was issued to the applicant on 10.01.2014 informing him of the entries in the ACR for the period ending 31.03.1999 and 31.03.2000 for submitting his representation and based upon that his case shall be reconsidered for promotion. The applicant was provided one months time for submitting his representation. Since no reply was forthcoming reminder was issued on 12.02.2014 but the respondents did have not receive any representation so far. Once the representation is received the respondents shall act in accordance with the direction of this Tribunal as well as the ratio laid down in the case of Dev Dutt (Supra).

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5. Heard learned counsel for both sides.
6. It is observed from the submissions made by the learned counsel for the applicant that despite the letter issued on 10.01.2014 asking the applicant to submit his representation to the entries in the ACR for the year ending 31.03.1999 and 31.03.2000 he has refused to do so on the ground that the letter / notice has been issued much beyond the time prescribed by the court in its order dated 18.07.2013. It has been argued that since at that point of time the applicant was already in contempt and the order of the Tribunal had exhausted itself the aforesaid letter issued by the respondents has no meaning and therefore, need not be responded.
7. In rebuttal the respondents have tried to explain the delay by stating that since the matter was a complex one requiring consultation with the nodal departments involved in the matter, it took some time and they moved a time extension application only after a short period from the date of the expiry of the prescribed period. The respondents intent to implement the order is suggested by the fact that they issued a letter to the applicant to submit his representation to the relevant ACR entries. While it is true the respondents ought to have taken action within time limit prescribed by the court but it appears that immediately after expiry of the period they did move time extension application. Prior to the date of filing of time extension application (26.09.2013) the Tribunal vide order dated 25.09.2013 had provided six weeks time to the respondents to file compliance affidavit but the respondents took period of four months time to initiate action and five months to file compliance affidavit. So there is an apparent delay on the part of the respondents in implementing the

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order. However, the fact that they initiated action on 10.01.2014 is an indication of the fact that they initiated steps for compliance of the order and have not been able to give effect to it because of non-submission of representation by the applicant. The fact that the respondents had initiated action in the matter though belatedly, discounts the factor of willful disobedience. In this context it will be relevant to reproduce the ruling given by the Apex Court in its order dated 07.05.2002 passed in S.L.P (Civil) No. 8067/2001 – S. K. Rahamatulla Vs. U.O.I & Ors wherein it is categorically held that “in the matter of disciplinary proceeding non-disposal of a departmental proceeding within the time granted by Tribunal or a court does not make the departmental authority functus officio....” This ratio if applied to the facts of the present case would imply that even after the expiry of period granted by the court the respondents were not rendered functus officio , if they have initiated action to implement the court's order. Taking the entire set of facts and circumstances we do not feel that there is willful disobedience on the part of the respondents of the order of the Tribunal dated 18.07.2013.

8. Another point raised by the applicant was that in Dev Dutt's case (Supra), it is stated that the adverse / below bench mark entry should be communicated within the reasonable period, which has to be reckoned from the date of the entry in the concerned ACR. In this regard it may be relevant to refer to the Dev Dutt's case itself wherein it is observed that while the order was passed in the year 2008 but it was the entries made in the year 1993 – 1994 i.e. after 14 years against which appellant was given liberty to file his representation. Therefore, the argument advanced by the learned counsel for the applicant that the communication of the entries in the ACR for the period in question have not been communicated within



reasonable time stand controverted by the example of the case of Dev Dutt (Supra) itself.

9. In view of the above we find no willful disobedience on the part of the respondents and therefore, there is no reason to continue with this contempt proceeding. Accordingly, contempt notice is discharged and the contempt proceeding is dropped. We expect that the applicant would submit his representation to the entries made in the ACR for the year ending 1999 – 2000 for re-consideration of the respondents and for taking a decision in the matter. We also hope that the respondents would dispose of the representation of the applicant in a just and fair manner after an objective and detailed assessment of the points contained therein.

Jasmine Ahmed
(MS. JASMINE AHMED)
MEMBER- J

Shashi Prakash
(SHASHI PRAKASH)
MEMBER- A

Anand/