

Item No.37



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**C.P. No. 177/2019  
in  
O.A. No.1300/2017**

**This the 2<sup>nd</sup> Day of September, 2021**

(Through Video Conferencing)

**Hon'ble Mr. A.K. Bishnoi, Member (A)  
Hon'ble Mr. R.N. Singh, Member (J)**

Surender Singh,  
S/o Sh. Aflatoon,  
Retired as Motor Lorry Driver (Regular),  
From the office of Electric Division – 7,  
CPWD, R.K. Puram, New Delhi.  
R/o Vill. & PO Bhoda Kalan,  
Patti Devraj, Distt. Gurgaon (Har.)

... Petitioner

(By Advocate : Shri Yogesh Sharma)

**Versus**

1. Sh. Durga Shanker Mishra  
Secretary,  
Ministry of Urban Development,  
Govt. of India, Nirman Bhawan,  
New Delhi.
2. Sh. Vinit Kumar Jayaswal  
Director General,  
Central Public Works Department,  
Nirman Bhawan, New Delhi.
3. Dr. Naimuddin,  
Dy. Director General (P),  
North Zone, CPWD, A Wing,  
Nirman Bhawan, New Delhi.

... Respondents

(By Advocate : Shri Ashok Kumar)



## O R D E R (ORAL)

**Hon'ble Mr. R.N. Singh, Member (J) :**

The present Contempt Petition has been filed by the petitioner alleging willful defiance of the direction of this Tribunal in Order dated 27.09.2018 (Annexure C-1) in the aforesaid OA. The paragraphs 6 to 12 of the said Order dated 27.09.2018 of this Tribunal in the said OA, read as under:-

*“6. Counsel for the respondents submitted that the applicant was engaged as hand receipt basis as Motor Lorry Driver w.e.f. 1.9.1994, in pursuance to para 44 of the Hon'ble Supreme Court's order dated 10.4.2006 in the matter of **State of Karnataka vs. Uma Devi** and DOP&T's OM No.49019/1/2006-Estt. C dated 11.12.2006, and his services were regularized w.e.f. 11.12.2006 by issuing Office Order dated 27.7.2011. Since his services were regularized w.e.f. 11.12.2006, he is not eligible for the GPF & Pensionary benefits under CCS (Pension) Rules, 1972. The impugned order dated 28.3.2017 is a detailed and speaking order and there is no legal infirmity in the said order. The order dated 26.5.2015 passed in OA No.1047/2014 by CAT, Chandigarh Bench has no applicability in the case of the applicant in view of the above position.*

*6.1 Counsel further placed reliance on the judgment of the Hon'ble Apex Court in Civil Appeal Nos.7328-7329 of 2013 decided on 23.8.2013, to submit that the instant claim of the applicant is barred by delay and laches.*

*7. Heard learned counsel for the parties and perused the material placed on record.*

*8. Before adverting to the issue in the present case, it is relevant to refer to the judgment of the Chandigarh Bench of this Tribunal, relevant part of which reads as under:-*

*“2. Averment has been made in the OA that the applicants were initially appointed as Motor Lorry Driver (Muster Roll basis, Work Charge)*

Item No.37



*under the respondent No. 5 against the sanctioned posts on:-*

<i>a. Baldev Singh</i>	<i>28.12.1990</i>
<i>b. Ajay Kumar</i>	<i>15.10.1990</i>
<i>c. Jugraj Singh</i>	<i>26.11.1990</i>
<i>d. Gurmeet Singh</i>	<i>21.07.1994</i>
<i>e. Jasbir Singh</i>	<i>27.09.1993</i>
<i>f. Dalbir Singh</i>	<i>07.12.1990</i>

*Applicants were granted minimum of pay scale plus DA from their initial date of appointment. The services of the applicants were regularized by the respondents on the post of Motor Trolley Drivers w.e.f. 11.12.2006 vide orders dated 27.7.2011. (Annexure A-2 colly.). After regularizing the services of the applicants, the respondents started deducting the CPF from salary of applicants under the New Pension Scheme in terms of Government of India DOPT letter No. 49014/1/2004- Estt (C) dated 26.04.2004 (Annexure A-3). Since the applicants were appointed between 1990 to 1994, therefore, they were required to be governed under CCS (Pension) Rules, 1972 and they are entitled to subscribe to GPF under Old Pension Scheme. The applicants submitted a representation in this regard but the same has remained without any response.*

*3. It is further averred that when the applicants did not find any response to their representations, the applicants served a Legal Notice dated 01.08.2014 (Annexure A-4) upon the respondents to switch over them to the Old Pension Scheme and grant them all the benefits under Old Pension Scheme like subscription of GPF etc. In reply to this Legal Notice, the respondent No. 5 vide letter dated 16.9.2014 (Annexure A-1) has rejected the case of the applicants for switch over to the Old Pension Scheme on the ground that the services of the applicants were regularized after introduction of New Pension Scheme dated 1.1.2004 and therefore, they are not entitled to the benefit of Old Pension Scheme. Hence this OA.*

*4. In the written statement filed on behalf of the respondents, facts of the matter have not been disputed. It has further been stated, however, that since the applicants were appointed between 1990 to 1994, but regularized on the basis of fresh joining report, medical check-up, Character Certificate, Qualification, Caste and Birth Certificate, all the staff will be covered*

Item No.37



*under New Pension Scheme vide Ministry of Finance order dated 22.12.2013. Moreover, vide order of Ministry of Personnel, Public Grievances and Pension (Department of Personnel & Training) OM No. 49014/1/2004-Estt (C) dated 26.4.2004, it was decided that under the new pension scheme based on defined contributions, the length of qualifying service for the purpose of retirement benefits has lost relevance. No credit of casual service, as specified in para 5(V), shall be available to the Casual Labourers on their regularization against Group „D“ posts on or after 1.1.2004 (Annexure R-3). So, they cannot be taken in old pension scheme in reference to DOPT letter No. 49014/1/2004-Ess (C) dated 26.04.2004.*

*5. When the matter came up for consideration today, learned counsel for the applicants stated that he placed reliance on the following judgements:-*

*(i) OA No. 585/CH/2012 titled Jagmohinder Singh & Ors. Vs. UOI & Ors. decided on 18.4.2013 (Annexure A-5).*

*(ii) CWP No. 2371 of 2010 titled Harbans Lal Vs. The State of Punjab and Ors. decided on 31.08.2010 (Annexure A-6)*

*(iii) OA No. 2332/2010 titled Rameshwar Singh Vs. UOI decided on 02.12.2011 (Annexure A-7) and*

*(iv) OA No. 4147/2012 titled Birendra Singh & Anr. Vs. UOI decided on 28.5.2014 (Annexure A-8).*

*6. Learned counsel for the respondents does not object to the submissions made by the learned counsel for the applicant.*

*7. Considering the ad idem between the parties, this OA is allowed. The impugned order dated 16.9.2014 stands quashed and the respondents are directed to take into account the period of service rendered by the applicants from their dates of appointment as indicated in para 2 of this order for grant of pension and they shall be covered under the Old Pension Scheme. No costs.”*

*9. Having regard to the aforesaid and the facts of the present case, it transpires that the case of the*

Item No.37



*applicant is similar to the applicants in the said OA which was decided by Chandigarh Bench of this Tribunal. However, benefit of the said judgment has been denied to the applicant only on the ground that he is not a party in the said OA. This ground is not sustainable in view of the catena of judgments of Hon<sup>ble</sup> Supreme Court wherein it has been categorically stated that it was not necessary for every person to approach the court for relief and it was the duty of the authority to extend the benefit of a concluded decision in all similar cases without dragging every affected person to court to seek relief, would apply only in four circumstances: i) when the order is made on a petition filed in a representative capacity on behalf of all similarly situated employees; ii) where the relief granted by the court is a declaratory relief which is intended to apply to all employees in a particular category, irrespective of whether they are parties to the litigation or not; iii) where an order or rule of general application to employees is quashed without any condition or reservation that the relief is restricted to the petitioners before the court; and iv) where the court expressly directs that the relief granted should be extended to those who have not approached the court.*

*10. It is an admitted fact that the aforesaid judgment of the Chandigarh Bench of this Tribunal has since been implemented by the respondents. However, the benefit of the same has not been extended in the case of the applicant only on the ground that he is not a party in the said OA and this is not sustainable in the eyes of law. Rather in the impugned order, the respondents have not adverted on the issue of applicability of the said judgment in the case of the applicant which was the main grievance of the applicant in his aforesaid legal notice and the same was directed to be decided by the respondents by passing a speaking order, as per the directions given by this Tribunal vide order dated 9.2.2017 in OA 477/2017, which was earlier filed by the applicant.*

*11. In view of the above, the impugned order dated 28.3.2017 is quashed and the respondents are directed to re-consider the case of the applicant for grant of old pension scheme benefits in the light of the judgment of the Chandigarh Bench in OA No.1047/2014 (Baldev Singh and others vs. Union of India and others) decided on 26.5.2015, as observed above, and as implemented in the cases of Baldev Singh and others. This exercise shall be completed within a period of two months from the date of receipt of certified copy of this Order.*



*12. The OA is allowed in above terms. There shall be no order as to costs."*

2. The said Order was challenged before the Hon'ble High Court of Delhi in W.P. (C) No. 12876/2019 and the said Writ Petition was disposed of vide Order/Judgment dated 06.12.2019 (Annexure R-1). The last 4 paragraphs of the said Order/Judgment dated 06.12.2019 of the Hon'ble High Court, read as under :-

*"Learned counsel for the petitioners submits that the case of the respondents/Surender Singh would not be identical to the case decided by the Chandigarh Bench on 26.05.2015 in OA No. 1047/2014 titled **Baldev Singh & Ors. Vs. Union of India & Ors.***

*He further submits that since the order of the Tribunal has not been complied with, the respondents herein has filed a petition under the Contempt of Courts Act, 1971. Counsel for the petitioners submits that if the time to comply with the aforesaid order is extended, the petitioners would reconsider the case of the respondent/Sh. Surender Singh within a period of six weeks from today.*

*Binding the petitioners to their statement made in court, let the impugned order dated 27.09.2018 passed by the Tribunal in OA No. 1300/2017 be complied with within a period of six weeks from today.*

*A copy of the order be given dasti under signatures of the Court Master.*

*The writ petition and the application are disposed of in the above terms."*

3. Pursuant to notice from this Tribunal, a speaking order dated 14.01.2020 was passed by the Executive Engineer with the approval of the Chief Engineer under the respondents (Annexure R-2).

Item No.37



4. When the CP was heard on 02.08.2021, the said compliance order was not found correct in law as well as on facts and in view of the facts and circumstances, an opportunity was accorded to the Director General, CPWD, Nirman Bhawan, New Delhi to look into the matter and for reporting compliance within a week.

5. Pursuant to the order dated 02.08.2021, the Director General, CPWD has filed a compliance affidavit dated 30.08.2021. By way of the said compliance affidavit, the aforesaid order/judgment and/or the order dated 06.12.2019 of the Hon'ble High Court is not disputed. It is asserted in the said affidavit that the matter has been considered earlier by the respondents and in view of the liberty granted by this Tribunal in order dated 02.08.2021 has been considered again at the level of Director General, CPWD and a speaking order dated 06.08.2021 (Annexure R-5) has been passed.

6. Shri Ashok Kumar, learned counsel for the respondents has argued that the directions of this Tribunal is only for reconsideration and the matter has been considered earlier at the level of Chief Engineer, thereafter, at the level of Director General, CPWD and finally, a speaking order dated 06.08.2021 has been



passed. With the assistance of the affidavit, he also argued that the order in Baldev Singh case (supra) was passed in view of the statement given by the learned counsel for the respondents therein in the matter and not taking into account all the objections, he further adds that this Tribunal has directed only to re-consider the issue in the light of the directions of the Tribunal in the case of Baldev Singh (supra) and has not given any declaration that the applicant is entitled for the reliefs sought in the OA in view of the relevant instructions on the subject.

7. *Per contra*, learned counsel for the petitioner argued that there was no concession at the end of the respondents in the case of Baldev Singh (supra). Moreover, for compliance of the directions of the Tribunal in the present OA, the respondents have been bound by Hon'ble High Court of Delhi and therefore, the respondents were duty bound to extend the same benefit to the petitioner as accorded to the applicant in the case of Baldev Singh (supra).

8. We have perused the pleadings on record and we have also considered the submissions made by the learned counsels for the parties.



9. The issue arises as to whether once the Tribunal had directed the respondents to re-consider the issue in the light of the judgment of this Tribunal in Baldev Singh (supra) and such directions have been re-considered by the respondents and a speaking order dated 06.08.2021 has been passed whether it can be constituted that the directions of this Tribunal have been wilfully and deliberately violated. The further issue arises as to whether this Tribunal in the contempt jurisdiction can direct the respondents to pass another order or to revise order for grant of the actual reliefs sought by the applicant in the OA.

10. The aforesaid issue is no more *res integra* in view of the law laid by the Hon'ble Apex Court in **J.S. Parihar vs. Ganpat Duggar (1996) 6 SCC 291**. The paragraphs 5 & 6 of the order/judgment of the Hon'ble Supreme Court (supra), read as under :-

*"5. The question is whether an appeal against the directions issued by the learned single Judge is maintainable under Section 19 of the Act ? Section 19 of the Act envisages that :*

*"An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt –*

*(a) where the order or decision is that of a single Judge, to a bench of not less than two Judges of the Court;"*



Therefore, an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemner has been passed. In this case, the finding was that the respondents had not wilfully disobeyed the order. So, there is no order punishing the respondent for violation of the orders of the High Court. Accordingly, an appeal under Section 19 would not lie.

6. The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr. S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out, whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the Court, there arises a fresh cause of action to seek redressal in an appropriate forum. 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.”

Item No.37



11. In view of the aforesaid facts and law laid down by the Hon'ble Apex Court, we are of the considered view that the present CP deserves to be closed. Accordingly, the same is closed and notices are discharged. However, it is made clear that petitioner shall be at liberty to challenge the speaking order dated 06.08.2021, referred to herein above, in accordance with law, if so advised.

**(R.N. Singh)**  
**Member (J)**

**(A.K. Bishnoi)**  
**Member (A)**

/cc/akshaya\*/