



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

**CP No. 32/2021
O.A. No. 1738/2020**

This the 17th day of March, 2021

**Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Ms. Aradhana Johri, Member (A)**

Shri Vinod Kumar
S/o Shri Babu Lal
Age about 35 year,
R/o House No. 19A, Tilak Ram,
Colony, Loni Border
Ghaziabad (U.P.)

... Petitioner

(By Advocate: Shri Manjeet Singh Reen)

VERSUS

Ministry of Railways & others: through

1. Shri Sushant Kumar Mishra
Secretary
Ministry of Railway
Rail Bhawan
Railway Board
New Delhi.
2. Shri A.K. Puthia
General Manager
Northern Railway
Baroda House
New Delhi.
3. Shri S.C. Jain
Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.

...Respondents

(By Advocate: (Shri S.M. Arif with Ms. Shabnam Parween)

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

The present CP has been filed by the petitioner alleging wilful defiance of the directions of this Tribunal in Order/Judgment dated 06.11.2020 in the aforesaid OA. The operative portion of Order dated 06.11.2020, under reference, reads as under:-

"9) In view of the aforesaid, without going into the merit, the present OA is disposed of with a direction to the competent authority under the respondents to consider the representations of the applicant dated 03.02.2019 (annexure A-4) and 16.09.2019 (annexure A-8) keeping in view their own letters/circulars and dispose of the same by passing an appropriate order as expeditiously⁷ as possible and in any case, within 6 weeks from the date of receipt of a copy of this Order.

10.) The OA is disposed of in the aforesaid terms. However, in the facts and circumstances, there shall be no order as to costs.

Pending MA, if any, also stands disposed of."

2. Pursuant to notice by this Tribunal, the respondents have filed the compliance affidavit enclosing therewith an order dated 11.03.2021 (Annexure R-1). The last paragraph of the said order reads as under:-

"I have carefully examined the relevant records placed before me in file and decided that in view of position explained above by way of issuance of RBE 150/2018, RBE 151/2018 and RBE 39/2019 in consonance with various judgments of Hon'ble Supreme Court and High Courts as well as withdrawal of LARSGESS Scheme w.e.f.27.10.17 the appointment under LARSGESS Scheme w.e.f. 27.10.17 the appointment under LARSGESS Scheme of the applicant at this stage is not acceptable. The said representations are disposed of accordingly."

3. Learned counsel for the respondents have argued that the directions of this Tribunal have fully been complied with inasmuch as the respondents have considered the directions of this Tribunal inasmuch as the relevant RBEs issued by the Railway Board and the judgments of Hon'ble Supreme Court and Hon'ble High Court while passing the order dated 11.03.2021.



4. *Per contra*, Shri Reen, learned counsel for petitioner have argued that in the aforesaid judgment of this Tribunal, the respondents were directed to keep into account the directions of Hon'ble Apex Court dated 26.03.2019, also however, the said directions of the Hon'ble Apex Court have not been taken into account by the respondents while passing the order dated 11.03.2021. Thus, he argued that the compliance order dated 11.03.2021 passed by the respondents is not in conformity with the directions of this Tribunal.

5. Once the directions of this Tribunal have been considered by the respondents and one order has been passed, the issue arises as to whether the compliance order is in conformity with the direction of this Tribunal or not.

6. We may record here that the OA itself was disposed of without going into the merit of the claim of the applicant. Further, the Hon'ble Apex Court in **J.S. Parihar v. Ganpat Duggar and others** [(1996) 6 SCC 291], which reads as under:-

"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, learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision take 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 willfully 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 willful violation of the order. After re-exercising the judicial review in contempt proceedings, afresh 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. We have considered the submissions made by the learned counsels for the parties, perused the pleadings on record and in view of the law laid down by the Hon'ble Apex Court in **J.S. Parihar** (Supra), we are of the considered view that no further directions will be given in the present proceedings. We are satisfied that there is substantial compliance of directions of this Tribunal in the aforesaid OA. Accordingly, the CP is closed. Notices are discharged. However, the petitioner shall be at liberty to challenge the order dated 11.03.2021 passed by the respondents in accordance with law, if so advised.

(Aradhana Johri)
Member (A)

(R.N. Singh)
Member (J)

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