

Item No. 36



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

**C.P. No. 181/2021
in
O.A. No. 644/2021**

This the 30th day of September, 2021

(Through Video Conferencing)

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

Vijay Rajmohan
Postal Address:
D-3, Type-5, Tower-17,
East Kidwai Nagar
New Delhi-110023.

... Petitioner

(through Advocate: Sh. P. V. Yogeswara)

Versus

1. Shri Deepak Khandekar
Secretary to Government of India
Department of Personnel & Training
North Block, New Delhi-110001.
2. Shri Sanjay Aggarwal
Secretary
Department of Agriculture, Cooperation and
Farmers Welfare
Krishi Bhawan, New Delhi-110001.
3. Shri Suresh N. Patel
Central Vigilance Commissioner
Central Vigilance Commission
Satarkta Bhavan, Block-A
GPO Complex, INA
New Delhi-110023.

... Respondents

(through Advocate: Sh. Y.P. Singh & Sh. Ravinder Agarwal)

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

The present contempt petition has been filed by the petitioner alleging willful defiance of directions of this Tribunal in Order/Judgment dated 25.03.2021 in the aforesaid OA. The Order/Judgment of this Tribunal reads as under:-

“The applicant is working as Director (Trade) in the Ministry of Agriculture and Farmers Welfare. On account of pendency of a criminal case against him, he was not being issued the Vigilance Clearance and that, in turn, impacted his promotion. On 17.12.2018, the applicant made a representation to the respondents, stating that the CBI Court at Chennai acquitted him in CC No. 3/2018, vide its judgment dated 13.12.2018, and requested the respondents to take the same into account and do the needful. This was followed by various representations, the latest one being dated 11.03.2021. The grievance of the applicant is that no action has been taken thereon so far.

2. Today, we heard Mrs. Rashmi Chopra, learned counsel for the applicant and Mr. Y.P. Singh & Shri Hanu Bhaskar, learned counsel for respondents.

3. Obviously because a criminal case was pending against the applicant, certain benefits could not be extended to him. The applicant has enclosed a copy of the judgment dated 13.12.2018, rendered by the Trial Court, through which he was acquitted in the criminal case. That needs to be taken into account by the respondents and if any benefit was denied to him on account of the pendency of the criminal case, the same needs to be extended to him.

4. We, therefore, dispose of the O.A., directing the respondents No.1 to 3 to pass orders on the representation dated 11.03.2021 submitted by the applicant, within a period of three weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.”

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2. Pursuant to the notice from this Tribunal, the respondents have filed reply/status report/compliance affidavit. In the status report/compliance affidavit, the respondents have asserted that pursuant to the directions of this Tribunal in the aforesaid Order/Judgment, the claim of the petitioner has been considered and taking into account all the material facts, the respondents have passed orders dated 11.08.2021 (Annexure-CR-1) & 23.08.2021(Annexure-CR-2).

3. We have heard the learned counsels for the parties. It is not in dispute that the respondents have considered the directions of this Tribunal as well as all material facts on record and passed appropriate orders dated 11.08.2021 (Annexure-CR-1) & 23.08.2021(Annexure-CR-2).

4. Learned counsel for the petitioner submits that the directions of this Tribunal have not been complied with in true letter and spirit by passing aforesaid orders dated 11.08.2021 and 23.08.2021. Now the issue arises as to whether once the order has been passed in furtherance/compliance of directions of this Tribunal, it is open for this Tribunal in the contempt jurisdiction to give any further directions and/or to examine the correctness of

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the order passed by the respondents in compliance of directions of this Tribunal.



5. The issue is no more *res-integra* in view of the law laid down by the Hon'ble Apex Court in the matter of **J. S. Parihar Vs. Ganpat Duggar & Ors.** reported in **(1996) 6 SCC 291**. The relevant paragraphs read as under:-

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"3. The State had filed appeal against these directions. A preliminary objection was taken on the maintainability of the appeal and also arguments were advanced. The Division Bench while holding the appeal as not maintainable under Section 19 of the Act, held that the appeal would be maintainable as a Letter Patent Appeal as the directions issued by the learned single Judge would be a judgment within the meaning of Clause (18) of the Rajasthan High Court Ordinance. Accordingly the Division Bench set aside the directions issued by the learned single Judge. Thus these appeals by special leave.

4. 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 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.

5. The question then is : whether the Division Bench was right in setting aside the directions 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 taken

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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, afresh directions 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.”

6. In view of the law laid down by the Hon’ble Apex Court in the matter of **J. S. Parihar Vs. Ganpat Duggar & Ors.** (supra), we are of the considered view that the present CP deserves to be closed. Accordingly, CP is closed. Notices are discharged. However, it is made clear that the petitioner

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shall be at liberty to challenge the aforesaid orders dated
11.08.2021 and 23.08.2021, if so advised in accordance
with the law.



(R.N. Singh)
Member (J)

(A. K. Bishnoi)
Member (A)

/Pinky/jugal/