

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 1<sup>st</sup> DAY OF July 1996

Contempt Application No. 51 of 1996

In

Original Application No. 304 of 1992

D.N. Singh Yadav aged about 42 years  
Son of Sri Deo Raj Yadav, Guard Passenger  
Mogal Sarai Division, Eastern Railway, r/o  
village and Post Deoria, District Gazipur

..... Applicant

Versus

1. G.K. Khare, Cha-irman Railway Board,  
Rail Bhawan, Parliament Street, New Delhi
2. Ramesh Chandra, Divisional Railway Manager  
Eastern Railway, Mogal Sarai
3. Akhilesh Kumar Sinha, Senior Divisional  
Personal Officer Eastern Railway  
Mogal Sarai

JUSTICE B.C. SAKSENA, V.C.  
HON. MR. D.S. BAWERA, A.M.

..... Oppt parties

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

We have heard the learned counsel for the applicant.  
The applicant alleges that the oppt parties 1 to 3 have deliberately and knowingly disobeyed and flouted the orders passed by the Division Bench on 30.4.96 in O.A. No.304/92 connected with OA 962/94, O.A. 696/94. The leading case being O.A 304/92 Akhil Bharatiya Soshit Karmachari Sangh through its Secretary, N.E. Railway, Gorakhpur.

2. The applicant D.N. Singh Yadav alongwith one R.S. Singh had filed O.A. 962/94 seeking the relief of writ of certiorari

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to quash the seniority list dated 30.3.1988, 30.8.1991, 31.12.1991 and the selection order dated 24.3.1991. He had also sought a writ of mandamus for a direction to command the respondents for not promoting the SC/ST community guards beyond the prescribed percentage of 22 ½% in terms of the judgment of ~~this~~ XX Bench in OA 647/86 V.P.S. Chaurhan Vs. Union of India and Ors.

3. In a decision rendered on 30.4.96 all the 4 OAs, O.A. 304/92, 527/94, 696/94 and 962/94 and contempt application nos 95/94 and 138/94 had been dismissed and rejected. The view taken was that since the proposition of law laid down by the Hon'ble Supreme Court in R.K. Sabarwal's case by which decision in Vir Pal Singh Chauhan's case was upheld was ~~now~~ only applicable w.e.f. 10.2.95 and thus the legality or propriety of any action done prior to that cannot be questioned. On this reasoning the OAs had been dismissed. Surprisingly enough even the OAs had been dismissed this contempt petition has been filed.

4. The learned counsel for the applicant was unable to indicate how the contempt petition would be maintainable since no positive directions for compliance can be said to have been given by the Division Bench which decided the aforesaid OAs including OA No. 962/94 which had been filed by the present applicant. A contempt petition would lie if any positive directions in favour of the applicant had been given and they are not complied.

5. The only plea taken is that after the decision the learned counsel had sent a letter on 20.5.96 to the

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authorities requesting ~~them~~ to follow the order of this Tribunal as also the Hon'ble Supreme Court but instead of following the same respondents 2 and 3 have again issued an illegal promotion order of SC/ST Community Guards on higher grades of mail express guards by an order dated 4.6.96. The order dated 4.6.96 has been filed as Annexure 5. It is not an order of promotion but indicates a list of candidates who have been required to appear at a suitability test scheduled to be held on 7.6.96 and a supplementary test on 10.6.96. In a contempt petition the only question that can be canvassed <sup>is</sup> whether or not there has been wilful disobedience to comply with the directions given by the Tribunal in the OAs. Since the OAs had been dismissed, it is difficult to appreciate the submission that there has been disobedience on the part of the respondents.

6. The learned counsel for the applicant laid great stress on the following observations occurring in para 36 of the order passed by the Tribunal after referring to the decision in V.P.S. Chauhan and R.K. Sabarwal's cases it was observed:

" It is important to note that Virpal Singh Chauhan's case is also a case of Railway guards. The same question which have been raised in the OAs before us, were operating in the case of Virpal Singh Chauhan's case and thus the law laid down by their Lordships is binding on all of us." Immediately following the said observation the other observation is " since, the guide lines which have been laid down in the decision of R.K. Sabarwal's case are applicable w.e.f. 10.2.95, the legality and propriety of any action done prior to that, cannot be questioned. "

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In this view of the matter the OAs have been dismissed. The act of contempt which is now alleged, <sup>is</sup> no doubt subsequent to 10.2.95 but it cannot be said to be in violation of any directions. A principle of law enunciated in a judgment of course <sup>has</sup> to be followed by the concerned parties but in the facts of the present case the position that emerges is that the challenge to the seniority list by the applicant having failed, it is difficult to appreciate his perception that there would still be violation of the judgment if the authorities act on the basis of the seniority list challenge to which has already failed. May be on other grounds.

7. In view of the discussion hereinabove, the contempt petition in our opinion is wholly misconceived and is accordingly dismissed summarily.

*S. R. Nayak*  
MEMBER (A)

*B. Saksena*  
VICE CHAIRMAN

Dated: 1.1.1996

Uv/