CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Contempt Petition No.93/96 in O.A.No.1336/92

Contempt Petition No.94/96 in O.A.No. 964/92

Contempt Petition No. 95/96 in O.A.No. 963/92

C O R A M:

HON'BLE MR. S.L. JAIN, MEMBER (JUDICIAL)

HON'BLE MR. G. RAMAKRISHNAN, MEMBER (ADMINISTRATIVE)

Contempt Petition No. 93/96

1. Babban Singh son of Shri Ram Nagina

2. Chote Lal S/o Shri Mathura Yadav

3. Basant Lal Son Shri Jokhan

4. Hira Singh Son of ShriRam Nagina Singh

5. Shambhoo Paswan Son of Shri Batoran Paswan

6. Ram Ashish Son of Munnan

7. Tara Chand Son of Shri Ram Nihore

8. Indra Pal Son of Shri Jagnnath

C/o Fazal Karim, Vill. Chakia Post

G.P.O. House No. 104/341, Allahabad.

..Petitioners

By Advocate Mr. S.S. Sharma

Vs.

1. Shri M.N. Chopra,
The Divisional Railway Manager,
Northern Railway, DRM Office,
Nawab Yusuf Road,
Allahabad.

2. Shri B.K. Sinha,
Sr. Divisional Personnel Officer,
Northern Railway, DRM's Office,
Nawab Yusuf Road,
Allahabad.

..Contemners

By Advocate A.K. Gaur

..

Contempt Petition No.94/96

1. Ram Saran son of Shri Nankoo Lal
2. Daya Ram Maurya son of Shri Matapher Maurya
3. Ram Payre son of Shri Mahangoo
4. Gomti Prasad son of Shri Ram Palat Yadav
5. Hukum Singh son of Jagdeo Prasad
6. Ram Lakhan Yadav son of Shri Mehi Lal
7. Rajpat son of Shri Deosaran
8. Mahesh Kumar son of Shri Nanko
9. Hori Lal son of Shri Ram Manohar
10. Shobh Nath son of Shri Jawahar Lal
11. Dan Singh son of Mahabir Prasad
12. FAzal Karim son of Shri Mohd. Kadim
13. Mohan Lal son of Shri Sampat Lal
14. Bhaiya Lal son of Shri Hazari Lal
15. Shree Nath son of Shri Mahipat
16. Sampat son of Shri Matadin
17. Brij Lal son of Shri Sahadeo

C/o Fazal Karim, vill. Chakia Post
G.P.O. House No. 104/241, Allahabad.

..Petitioners

By Advocate Mr. S. S. Sharma

Vs.

1. Shri M.N. Chopra,
The Divisional Railway Manager,
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Allahabad.

2. Shri B.K. Sinha,
Sr. Divisional Personnel Officer,
Northern Railway, DRM's Office,
Nawab Yusuf Road,
Allahabad. . Contemners

By Advocate Mr.S.K. Gaur

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Contempt Petition No.95/96

1. Bhagirathi son of Shri Hoob Lal
2. Jang Bahadur son of Shri Rajbali
3. Gulab Chand son of lShri Ram Vishal
4. Ram Das Maurya son of lShri Ram Payre Maurya
5. Bhola Nath son of Shri Bhai Lal
6. Ramesh Chandra son of Shri Lalji Yadav
7. Shyam Lal son of Shri Ram Jag
8. Ram Sajiwan son of Shri Rajmani
9. Shyam Lal (I) son of Shri Kadedin
10. Ramai Prasad son of Shri Ram Nath
11. Avinash Kumar Tiwari s/o ShriRadhey Shyam Tiwari
12. Rajendra Kumar Srivastava s/o Shri Kripa Shanker Srivastava
13. Bhaiya Lal son of Shri Jaggu Prasad
14. Ram ADhar son of Shri Ram Lal
15. Ram Vishal son of Shri Prabhu Ram
16. Gyan; Singh son of Shri Bachau Ram
17. Mohammad Ashfaq son of Shri Mohd. Kadim.
18. Lalta Prasad son of Shri Bhadai Lal
19. Krishna Murari Singh son of Shri Shiv Shanker
20. Ram Lakhan son of Shri Mahabir
21. Jawahar Lal son of Shri Raja Ram
22. Arun deo Pandey son of Shri Keshav Pandey
23. Krishan Kumar Kushwaha son of Shri Munni Lal
24. LallooPrasad son of Shri Ram Murti
25. Ram Chandra son of Shri Sunder
26. Ram Lakhan son of Shri Beni Prasad

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27. Baij Nath son of Shri Raghu Nath

28. Radhey Kishan son of Shri Ram Nath

29. Rama Shankar son of Shri Banshdhari

30. Dharam Pal son; of Shri Masuriya Din

31. Kamal Narain son of Shri Ram Deo

Village Bhairavpur, Post Jigna

District. Allahabad. ..Petitioners

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Vs.

1. Shri M.N. Chopra

The Divisional Railway Manager,

Northern Railway, DRM Office

Nawab Yusuf Road,

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2. Shri B.K. Sinha

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Northern Railway,

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C.C.P. 93,94,95 of 1996.

These are contempt applications under Rule 4 of Central Administrative Tribunal (Contempt of Courts) Procedure Rules 1986 for willful disobedence of the order passed on 3.11.1995 by the respondents in OA No. 1336/92, 964/92 and 963/92 for punishing the respondents or for compliance of the order passed.

The following order was passed in OA No. 1336/92, 963/92 and 964/92:-

i) All the applicants shall be considered for regularisation in their own term and in case any of the juniors has been so regularised, the applicants who were senior and are considered fit for regulariation shall be considered to have been regularised from the dates of regularisation of such juniors.

ii) Meanwhile they shall be considered for re-engagement as casual waterman in preference to their juniors.

In C.C.P. No. 93/96 arising out of OA No. 1336/92, the applicants claim that they were in seniority list at No. 310, 338, 335, 332, 356, 313, 319 and 462. In CCP No, 94/95 applicants(arising out of OA 964/92) were in seniority list at

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seniority list at serial No.103, 105, 108, 54, 106, 128, 101,330, 448,114,116, 46, 110, 330, 111, 325 and 365. In CCP No. 95/96 arising out of OA No. 963/92 applicants were in the seniority list at No. 424, 309, 358, 442, 436, 273, 457, 237, 411, 451, 446, 328, 312, 326, 359,56. In everycase after the passing of the order dated 3.11.1995 the applicants served the copy of the order along with the request of the compliance of the same on 11.12.195 followed by reminder dated 26.12.1995. Inaction of the respondents lead to personal request to the respondents on 22.5.1996 but the respondents failed to comply the order passed by the Tribunal wilfully. Hence these contempt applications for the above said reliefs.

The OA was filed on the basis of letter issued for the engagement of waterman in the year 1990 bearingNo. CM-1/drinking water/90 dated 15.4.1990 and non engagment of 1992 as hot weather waterman in traffic and commercial department. In order to ensure strict compliance of the order of the Tribunal action had been initiated for examination of the case of each applicant, in this procsess some time is taken and some delay has also been caused because of processing of each and every case which is regretted, they have not delibrately willfully, intentionally violated the direction of the order dated 3.11.1995 because order of this Tribunal as well as any Court of law are sacracent and binding one. They have further alleged that if theTribunal comes to the conclusion that the respondents have willfully and deleberately disobeyed the orders, they are tendering appology and they appologise for the same.

CCP 93, 94, 95 of 1996

The criteria adopted for screening held in 1989 and result declared on 3.2.1990 was that all casual labourers of traffic and commercial department who had worked prior to 1.8.1978 were to be given preference over all others and all casual labourers who were engaged on and after 1.4.1978 must have completed 120 days traffic and commercial department as on 1.5.1988 and they must be having at least 235 verified days of working as on 1.5.1988 in the same department,to verify the total days of working of all the casual labour/ hot whether staff, Joint team of Traffic Inspector/Personnel Inspector/Welfare Inspector was formed,on the basis of original working days a list of eligible staff was issued vide No. E/Screening/88/TNC dated 23.12.1988, objections received, were decided and a final list was issued on 25.7.1989. The number of working days taken in account were as on 1.5.1988 hence letter issued by the divisional commercial manager as on 13.4.1990 has no relevence to the said panel dated 3.2.1990. After receipt of the order in the OA's a Committee of two Inspectors Chief Personnel Inspector/Commercial Inspector was constituted, they had submitted report and from the said report it is found that who had completed 337 days is the last man on the panel. Scheme of engagement or re-engagement of hot whether staff having been discontinued since 1992. However engagment/re-engagement as casual waterman is re-introduced; the cases of the applicants will be considered as per their term subject to fulfilment of terms along with seniority as per rules on the subject. Many more seniors to the applicants are waiting

for engagement/re-engagement and screening as well. Shri Ganga Prasad Bangla, Peon was substitute and not casual labour. The substitutes are appointed against the regular post with regular pay scale of the post on the date of appointment. The substitute and the Casual labour cannot be equated. On 24.8.1998 Shri K.R. Bhuria, Senior Division Personel Officer, Northern Eailway, Allahabad has filed a supplimentary counter affidavit and has stated that on 28.5.1998 after hearing the parties, the Tribunal directed the Railway Administration to indicate the compliance by filing a supplimentary affidavit in equiting that no person, junior to the applicants have been engaged. He further stated that in view Railway Boards letter No. 220-E/190/XII-D/E-IV dated 4.11.1997 (P.S. No. 11476/97) and letter No. ( ) 11/97/CL/NE/41/SLP dated 23.12.1997 it is provided that regularisation of casual labour in the department in which they w-ere working is based on their senirity which is arrived at on the basis of number of working days. Whenever a casual labour is shifted from one department or from one seniority unit to another department or another seniority unit, at the time of screening and regularisation in that department depends on their date of service in that department, below the casual labour/ substitute working in the department maintaining seniority amongst the casual labour who have been shifted of the same formal department (Unit) to the later department(Unit). At the same time such casual labour also does not loose their claim for their regularisation in the formal department(Unit) and are considered their for regularisation. If any body junior to them

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becomes eligible for regularisation, shifting of casual labour from one department to the another department is the jurisdiction of another department. The said principle is being applied. No junior to the applicants in traffic and commercial department have been screened engaged in Group 'C'.

In response to supplimentary rejoindesr affidavit, supplimentary C.A. is filed and the ground mentioned is challenged along with a fact that the directions issued on 4.11.1997 and 23.10.1997 cannot be applied to the case of the applicants, reitarating the facts stated in the OA.

The applicants have relied the seniority list issued by the respondents, the panel prepared after screeing and submitted that the respondents have willfully disobeyed the order of the Tribunal.

The learned counsel for the respondents relied on (1996) Supreme Court cases 102 V.Kanak Rajan V/s General Manager, South Eastern Railway and others and argued that in a case of direction to consider the applicants for promotion, if authorities refuses to promote him on the ground of unsuitability as per rules, in such circumstances direction by the High Court to refuse to entertain contempt aplication and granting liberty to challenge by separate proceedings was found proper. The consequential orders passed by the authorities was upheld by the Apex Court of the land.

He further relied on the judgement of Apex Court of the land in J.S. Parihar V/s Ganpath Duggar and argued that seniority list proposed is not liable to review in the interest of proceedings to find out whether it is in confirmity with the

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directions issued by the earlier bench; once there is an order passed by the Government on the basis of their directions issued by the Court, there arises a fresh cause of action to seek re-dressal in an appropriate forum, it cannot be considered to be the willful disobedience of the order.

He further relied on (1994) 6 Supreme Court cases 332 Niaz Mohammad and others V/s State of Hariyana and others and argued that Civil Contempt is not like the Execution Proceeding under Civil Procedure Code , disobedence must be willful and intentional in order to constitute civil contempt, which is to be decided having regard to the particular facts and circumstances and if disobedience is found to be under compelling circumstances contemner not liable to be punished for the same.

He relied on (1993) 3 Supreme Court cases 182 S.Sarkar and others V/s R.D. Kriston Chairman, Railway Board, Railway Bhawan, New Delhi and others which lays down that the Tribunal can clarify and the order can be directed to implemented in the cases.

He further relied on AIR 1991 Supreme Court 311 M.L.Sachdesva V/s Union of India and others which lays down that the Secretary to the Government cannot plead ignorance of the Court's direction, knowledge is imputed and consequencne of failure of compliance is to be given by imposing punishment in view of unqualified apology was accepted.

He further relied on AIR 1991 Supreme Court 346 Jiwani Kumari Parekh Vs Satya Pratap Chakravorty Managing Director and Chief Executive of West Bengal, Development Corporation Ltd. and argued that before a party can be committed for contempt there must be a willful or deliberate disobedience of the orders of the Court.

In view of the authorities relied by the learned counsel for the respondents in case of Niaz Mohammad and others and Jivani Kumari Parekh, the Tribunsl has to come to a finding that the acts of the respondents is willful or deliberate disobedience of the orders of the Court and after reaching to the said finding, the course open to the Tribunal is to examine whether it is under the compelling circumstances and if so as held in Niaz Mohammad and Others, the contemner may not be liable to be punished for contempt; before a contemner is held guilty in view of V.Kanak Rajan's case, J.S. Parihar's case referred above a fresh direction cannot be issued but in proper circumstances, the implementation of the order passed as has been held in Sachdeva's case can be ordered and unqualified apology can be accepted.

Keeping in view when respondents have adopted a particular mode of regularisation, in absence of specific direction for a particular mode, we find that no contempt is made out.

In the result, applications deserves to be dismissed and are dismissed with the observsation that if the applicants are aggrieved by the said orders, they can agitate the said matter by filing OA. The notices issued to the respondents are discharged.

(G.RAMAKRISHNAN)
MEMBER(A)

(S.L.JAIN)
MEMBER(J)

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Date : 1-11-99

Coram : Hon'ble Mr.S.Dayal, Member(A)
Hon'ble Mr.Rafiq Uddin, Member(J)

The judgement prepared & signed by Hon'ble Mr.S.L.Jain,JM and Hon'ble Mr.G.Ramakrishnan,AM pronounced by us today as authorised by Hon'ble Vice Chairman vide order dated 22-10-99.

Member(J)

Member(A)