

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

CIVIL MISC. CONTEMPT PETITION NO. 148 OF 2002

IN

ORIGINAL APPLICATION NO. 964 OF 1996
ALLAHABAD THIS THE 25th DAY OF August, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, A.M.
HON'BLE MR. A. K. BHATNAGAR, J.M.

S.M. Haider,
S/o Shri Haider Abbas,
aged about 47 years,
Resident of 159,
Ranimandi, Allahabad.

.....Applicant

(By Advocate Shri S.S. Sharma)

Versus

1. Shri R.K. Singh,
General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi.

2. Shri Mathew John,
Divisional Railway Manager,
Northern Railway,
D.R.M. Office,
Newab Yusuf Road,
Allahabad.

3. Shri Deepak Sablok,
The Divisional Superintending Engineer,
(Co-ordination), Northern Railway,
D.R.M. Office,
Allahabad.

.....Respondents

(By Advocate Shri A.K. Gaur)

ORDER

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER-A

This Contempt Petition has been filed under section 17 of Administrative Tribunals Act 1985, for wilful dis-
obedience of the order of this Tribunal dated 10.04.2002

passed in O.A. No.964/96. The following order was passed as under:-

"In the facts and circumstances of the case and aforesaid discussion, the O.A. is allowed. Since the result of the screening of Mali conducted on 03.10.1996 has already been declared on 15.11.1996, this relief becomes infructuous. The applicant is entitled for appointment as Fieldman w.e.f. 02.05.1996 the date on which the result of Fieldman was declared and the applicant is entitled for all consequential benefits. The applicant has appeared in the suppl. examination held on 14.09.1996 for the selection to the post of S.O.M.(Horti). The result, which was ordered not to be declared by this Tribunal order dated 12.09.1996, may be declared and in case the applicant is declared successful, he shall be entitled for all consequential benefits. The action will be completed by the respondents within three months from the date of communication of this order."

2. The learned counsel for the applicant submitted that vide his letter dated 29.04.2002 he delivered the copy of this Tribunal's judgment dated 10.04.2002 to the respondents for compliance of the order within three months. However, more than three months have passed but respondents have taken no action nor have they given any reply to the applicants letter dated 29.04.2003. Therefore, the respondents have committed contempt of this Tribunal for which they ought to be punished.

3. Relying upon the judgment of Ernakulam Bench of this Tribunal in the case of P. Sukumaran^b reported in 1991 ATC Vol-18 page 259, The learned counsel submitted that the Public Authorities have no choice but to comply the orders of this Tribunal, otherwise the legal system would fail. The learned counsel has contended that the applicant being fully qualified is entitled for promotion to the post of S.O.M. (Hort.) in grade of Rs.1400-2300/- in preference to his juniors who have already been promoted having much less educational qualification.

4. The learned counsel for the applicant further submitted

that as per order of this Tribunal the applicant is entitled for appointment as Fieldman with effect from 02.05.1996 with all consequential benefits. The respondents have circumvented the order of this Tribunal by promoting the applicant as Fieldmen in grade Rs.3050-4590/- w.e.f. 2.05.1996. But instead of giving the arrears of pay and allowances to applicants^{his} pay has been fixed notionally. Further the applicant has been promoted as Sub-Overseer Mistri (Horticulture) in grade of Rs.4500-7000/- with effect from 20.11.2002. By order dated 07.11.2002 interpolating the applicant's name below one Sri Ram Naresh.

5. The learned counsel for the applicant further submitted that the applicant should have been promoted as S.O.M. (Hort.) w.e.f. 24.01.1998 instead of 20.11.2002. The consequential benefits includes payment of arrears of pay which has not been paid by the respondents, therefore, it is clear-cut case of dis-obedience of the order of this Tribunal dated 10.04.2002. The learned counsel for the applicant has placed reliance on Full Bench Judgment of Jodhpur Bench of this Tribunal dated 11.02.2002 in the case of Devi Lal and Others Versus Union of India reported in ATJ 2002(1) page 485 wherein it has been held that para 228 of IREM in so far as the same denies an employee pay and allowances on the principles of 'no work no pay' even if an employee has been erroneously denied the actual work on account of the fault of the management is invalid and violative of Articles 14 and 16 of the constitution.

6. Another case for which the learned counsel for the applicant has placed reliance is Union of India and Others Versus K.V. Jenkireman and Others reported in 1993 SCC (L&S) 387 in which the Hon'ble Supreme Court has held that Rule of

'No work no pay' will be inapplicable where employee, though willing, is not allowed to work without his fault.

7. The learned counsel for the applicant also argued that the Hon'ble Supreme Court in the case of Vasant Rao Roman Versus Union of India and Others reported in 1993 SCC (L&S) 590 has held that where it is a case of non-promotion due to administrative reasons one's claim for promotion over his juniors has to be given and all the arrears of emoluments paid. The Hyderabad Bench of this Tribunal in the case of G. Nandareish Versus Smt. Karuna Pillai and others reported in (1992) 19 ATC 365 has clearly held that consequential benefits includes backwages also.

8. The learned counsel for the applicant finally submitted that there are catina of judgments in which the Tribunal as well as superiors courts have held that once the court grants consequential benefits the person is entitled for arrears of salary as well.

9. On the other hand, Shri A.K. Gaur, learned counsel for the respondents submitted that the order of this Tribunal has been fully complied with and the reliefs allowed by the Tribunal has been given. The applicant has been promoted to the post of Fieldman with effect from 02.05.1996 and also the applicant has been appointed to officiate as Sub- S.O.M. w.e.f. 20.11.2002. This Tribunal in CCA No.27/01 arising out of O.A. No.301/92 in the case of P.K. Saxena Versus GM North Eastern Railway decided on 20.08.2001 has clearly held that consequential benefits do not include payment of arrears. Further this Tribunal in the case of Laxmi Narain Versus A.P.

Sinha and another reported in 1994 ATC(48) page 610 has held, that in case of promotion from back date alleged on fact, that there was no contempt in not paying back wages because there was no direction for payment of actual monetary benefits.

10. The learned counsel for the respondents also relied upon the judgment of Hon'ble Supreme Court in the case of K.V. Jankireman (Supra) and submitted that the Hon'ble Supreme Court has held that where the authority denies the arrears of salary ^{or} part of it, it will record its reasons for doing so. The Hon'ble Supreme Court further observed in the said judgment that their Lordships were unable to agree with the Tribunal that to deny salary to an employee would be in all circumstances ~~is~~ illegal.

11. The learned counsel for the respondents placing reliance of the judgment of Hon'ble Allahabad High Court (Circuit Bench at Lucknow) in the case of B.S. Chopra and Others Versus Union of India and Others reported in (1989) 1 UPLBEC 1 (Tri) has held that while considering application for contempt, the Tribunal cannot sit in judgment on legality, aptness or correctness of orders in compliance of this Tribunal.

12. The learned counsel for the respondents finally submitted that Rule 228 of IREM clearly states that no arrears shall be paid with retrospective effect.

13. We have heard the counsel for the parties at length and perused records.

14. The main issue involved in this petition is regarding payment of arrears to the applicant as Fieldman with effect

from 02.05.1996 to 01.05.2000 and as S.O.M. (Hort.) w.e.f. 24.01.1998. Claims and counter claims have been made by both the parties. The applicant maintains that he should be given promotion as S.O.M. (Hort.) with effect from 24.01.1998 whereas the respondents maintains that in compliance of the judgment of this Tribunal the applicant has been allowed to officiate as S.O.M. (Hort.) w.e.f. 20.11.2002.

15. In para 3 of written submissions the respondents have stated that they have filed a Civil Misc. Writ petition no. 36898/02 before Hon'ble Allahabad High Court and the said promotion, appointment of the applicant is subject to final outcome of the said writ petition. Since the writ petition is still pending before Allahabad High Court, in our opinion, it will not be appropriate for us to proceed on the contempt petition. In any case the applicant has been granted the promotions as Fieldman from back date and as they are officiating as S.O.M. (Hort), it is worthwhile that the applicant waits for the outcome of the writ petition filed by the respondents before Hon'ble Allahabad High Court.

16. In our considered opinion, respondents have complied with the order in their best spirit and if there is something yet left then the respondents have gone up in the Hon'ble High Court and the matter is still subjudice. In these circumstances it cannot be said that there has been wilful dis-obedience of the order of this Tribunal. Since in our opinion there is no wilful dis-obedience on the part of respondents, no case of contempt is made out. The contempt petition is, therefore, rejected. Notices are discharged. The liberty is given to the applicant who may later on re-agitate the matter in accordance with law after the final adjudication by Hon'ble Allahabad High Court.

Arv
Member-J

Arv
Member-A