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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

**Contempt Petition No. 163 of 2006 in
Original Application No. 209 of 2005**

Thursday day, this the 26th day of March, 2009

**Hon'ble Mr. Ashok S. Karamadi, Member (J)
Hon'ble Mr. S.N. Shukla, Member (A)**

A.K. Panda S/o Shri G.B. Panda, Superintendent of Police,
Economic Offences Wing, C.I.D., Lucknow.

By Advocate: Sri Satish Mandhyan

Petitioner

Vs.

1. Shri Satish Chandra Agrawal, I.A.S. Principal Secretary,
Department of Home, Government of U.P., Lucknow.
2. Shri J.N. Chamber, Principal Secretary (Home), Government
of Uttar Pradesh, Lucknow.

By Advocate: Sri K.P. Singh

Opposite Parties

ORDER

By Ashok S. Karamadi, Member (J)

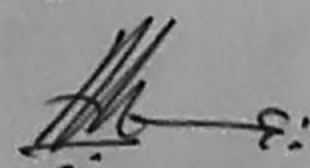
This Contempt Petition is filed against the Order dated 31.01.2006 of this Tribunal passed in O.A. No. 209 of 2005, for taking action against the respondents for disobeying the directions given by this Tribunal to consider the case of the applicant for promotion, as directed by the Hon'ble High Court, within a period of four weeks.

2. On notice, the respondents have appeared and filed the Counter Affidavit, and stated that the respondents have never violated the order passed by the Hon'ble High Court or of any other Court of law and they never think of willfully or deliberately or intentionally disobeying or flouting any of the order of this Hon'ble Court. If the Hon'ble Court is still of the view, then the respondents offered unconditional and unqualified apology and undertakes to abide by any order as this Hon'ble Court may please to pass under the circumstances. It is stated earlier the sealed cover proceedings

 2.

have already been opened and ^{the} matter of applicant's promotion is under process and necessary order will be passed after following the necessary rules and regulations. Subsequently the respondent No. 2 has filed the Counter Affidavit and stated that he took over the charge of Principal Secretary (Home) on 08.06.2007, and thereafter he was able to comply, as the case of the applicant was considered for promotion and by the order dated 14.08.2007 the promotion was given to the applicant as Deputy Inspector General of Police, as per annexure-1 to the affidavit. The respondent No. 2 further stated that even though the order is complied with, the delay for the same is not willful and deliberate but due to official procedure, however, if any lapse, omission or commission has taken place on his part, an unconditional apology is tendered. It is further stated that after passing of the order dated 14.08.2007, subsequently another amended office order dated 06.09.2007 was passed, which is produced as annexure-2 to the affidavit. Another affidavit was filed by the respondent No. 2 on 19.09.2007 clarifying the position when the sealed cover was opened, it is stated that the sealed cover was opened on 16.02.2006 as the matter was complicated so the necessary advice of the advisory department i.e. Department of Law, Department of Appointment and Personnel are essential. The process has taken some time, which is not intentional but beyond the control of the answering respondents. In the meantime there was change of Government, Secretaries and Principal Secretaries in the Home Department so it has taken some time, which is not intentional and procedural which is beyond the control of the respondents and sought for dismissal of the Contempt Petition.

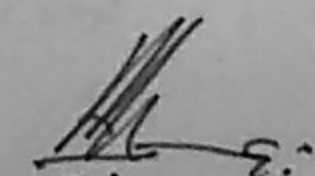
3. The petitioner files Supplementary Counter Affidavit to the affidavits filed by the respondents and stated that as the sealed cover was opened on 16.02.2006 then the deponent of the Supplementary Affidavit was not affected and there was no reason to delay inevitable of granting promotion during the regime of opposite party No. 1 as well as continuing the tenure of opposite party No. 2. The process is very simple where sealed covers are opened to only see the recommendation of the D.P.C and if it is found that D.P.C. is held a person in the zone of consideration to be fit for promotion then there is nothing else to be done except to pass



the order of promotion with effect from the others considered in the same D.P.C. were promoted. In fact no time is liable to be consumed in passing consequential order except if the officer or the Government is not interested in granting promotion for whatsoever reason and that would definitely traverse in the realm of contempt. All through it has been a case of contempt that he has been harassed but only because his erstwhile father-in-law happens to be the retired DGP of State of Orissa and it is only at his behest the applicant has been harassed to no ends hence so called the responsible officer are really responsible for this inordinate and unexplained delay in passing the consequential order after almost 1½ years of opening the sealed cover, and further stated that the respondents deliberately disobeyed the order on one pretext or the other knowingly delayed the process in taking the decision, and hence there is no justification in accepting the statements of the respondents, and prayed for the punishment to the respondents. The respondents have filed the Supplementary Counter Affidavit and denying the averments of the applicant that the respondents have harassed him in not giving attention to his matter, and all other statements are denied, and sought for the dismissal of the Contempt Petition.

4. We have heard Sri Satish Mandhyan, learned counsel for the applicant and Sri K.P. Singh, learned counsel for the respondents and perused the pleadings and materials on record.

5. The learned counsel for the applicant submits that even though the respondents have complied with the order, while doing so the respondents delayed the matter in taking the decision and the reasons given for the delay are not acceptable one. On the other hand the respondents have harassed the applicant in not giving effect to the order passed by this Tribunal, and therefore submits that the respondents have disobeyed and liable for punishment. On the other hand the learned counsel for the respondents submitted that the respondents have complied with the order, even though there is delay in implementing the order it is not due to any act on the part of the respondents, but it is due to procedural aspects in the matter to be followed in the case of the applicant, and further



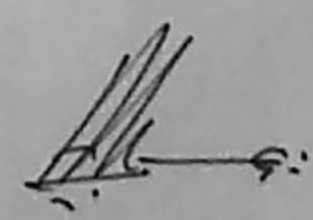
submit that the respondents have highest regard for the Court's order and pray for dismissal of the Contempt Petition. In view of the submissions made by the learned counsel on both sides, as the respondents have complied with the order, in the process there is a delay in passing the final order, whether that by itself is sufficient to punish the respondents for disobedience of the order. On having regard to the facts and circumstances of the case and in view of the fact that the respondents have come forward with the statement that they have got highest regard for the Court's order and will abide by the directions of the Courts, and further as the respondents offered unconditional and unqualified apology on their part for acceptance of the same, and to drop the proceedings. In view of the facts and circumstances of the case and having regard to the fact that in spite of the attention is drawn to the respondents for compliance of the order, have failed to act carefully to take a decision promptly on the basis of the order, failing to do has resulted in the act of negligence and carelessness about the Court's order and its implications, and therefore, even though the respondents have complied with the order but the manner in which the respondents have acted is not in accordance with the law, and with due regard to the orders of the Tribunal and the Hon'ble High Court and, therefore, the explanation given by the respondents with regard to the delay in taking the decision cannot be accepted. On the other hand under the facts and circumstances of the case it can be said that the respondents are acted deliberately in delaying the process of taking decision without any justifiable reasons, the reasons now put forward by the respondents cannot be accepted. The disobedience of the Court's order strikes at the very root of the Rule of law on which our system of governance is based. This view of ours is supported by the ruling of Hon'ble Supreme Court reported in 1999 SCC (L&S) 1357 Kapildeo Prasad Sah and others Vs. State of Bihar and others. Relevant para-9 reads as follows: -

"9. For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the court. Power to punish for contempt is to be resorted to when there is clear violation of the court's order. Since notice of contempt and punishment for contempt is of far-

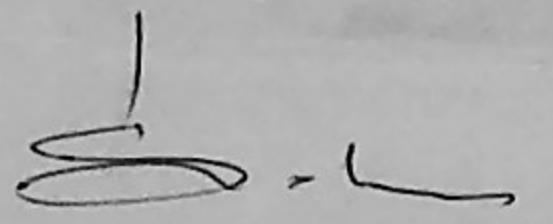


reaching consequence, these powers should be invoked only when a clear case of willful disobedience of the court's order has been made out. Whether disobedience is willful in a particular case depends on the facts and circumstances of that case. Judicial orders are to be properly understood and complied with. Even negligence and carelessness can amount to disobedience particularly when the attention of the person is drawn to the court's orders and its implications. Disobedience of the court's order strikes at the very root of the rule of law on which our system of governance is based. Power to punish for contempt is necessary for the maintenance of effective legal system. It is exercised to prevent perversion of the course of justice."

6. Having regard to the proportion of law laid down by the Hon'ble Supreme Court, which is quoted above, and in view of the facts and circumstances of the case which reveals that the respondents have no regard to the order passed by this Tribunal, and for implementing the same. It is seen from the order sheet of the contempt proceeding also which makes it clear that at the instance of the respondents the matter was adjourned, and further compelled the respondents' personal appearance in the matter. These aspects are clearly against the respondents to disbelieve their statement that they are acted bonafidely, and obeying the orders of the Courts, particular in the facts and circumstances of the case in considering the case of the applicant. Even though the order was passed on 31.01.2006, and in spite of the order dated 04.06.2007 in the contempt proceedings no proper reply was given, and further even though the sealed cover was opened on 16.02.2006 the consequential order thereof was not passed giving promotion to the applicant, and the matter was delayed and consequently the order was passed on 14.08.2007 giving promotion to the applicant, in between there is a delay of more than 1 ½ years, even though explained by the respondents, cannot be accepted under the facts and circumstances of the case and therefore we reject the contention of the respondents and hold that the respondents have acted willfully in disobeying the Court's order with utter disregard to the same in not implementing the Order, and therefore, the respondents have committed civil contempt.



7. In view of the foregoing reasons, this Contempt Petition is allowed and the respondents are punished for the act of civil contempt with fine of Rs.2000/- each, and the said fined amount shall be paid to the applicant within a period of four weeks from today.



Member (A)



Member (J)

/M.M/