

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

(THIS THE 25TH DAY OF AUGUST, 2010)

PRESENT:

HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J

HON'BLE MR. S. N. SHUKLA, MEMBER-A

CIVIL MISC. CONTEMPT APPLICATION NO. 178 OF 2006

IN

ORIGINAL APPLICATION NO. 583 OF 1997

(U/s, 19 Administrative Tribunal Act. 1985)

R.P. Srivastava son of Late T.P. Srivastava R/o 312/165E
Himmatganj, Allahabad.

.....Applicant

By Advocate: Shri A. Srivastava

Versus

Sri V.N. Mathur, General Manager, Northern Railway, New
Delhi.

..... Respondent

By Advocate: Shri K.P.Singh
Shri Anil Kumar.

ORDER

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER-J)

We have heard Mr. Ashish Srivastava, Advocate for the applicant and Mr. K.P. Singh, Advocate for the respondents assisted by Mr. Anil Kumar, Advocate at length and perused the entire record of the case and counter affidavit etc. relevant in the matter in controversy.

2. An order was passed by the Tribunal in O.A. No. 583/97 on 17.11.2004 and for the disobedience of that order instant Contempt Petition has been moved. It is relevant to peruse the direction issued by the Tribunal in the concluding paragraph of the judgment:-

"Since these events have happened during the pendency of the OA, it would meet the ends of justice, if the OA is disposed of with the direction that in case applicants no. 1 & 2 prefer a representation for redressal of such grievances of their as has not been redressed, the Competent Authority shall look into the matter and extend all consequential benefits flowing from the judgment of the Tribunal in the case afore stated and

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re-determine their seniority in Group 'B' case vis-a-vis their juniors and consider them for promotion to higher grade. The decision in this regard shall be taken expeditiously preferably within 03 months from the date of receipt of representation along with copy of this order."

Due to non-compliance of the direction of the Tribunal the applicant moved the instant application in time. After passing several orders by this Tribunal respondents filed a compliance report along with an affidavit dated 31.1.2008 and in the affidavit, it has been alleged that in pursuance of the order of the Tribunal, the applicant had already been promoted in senior scale and the order stands complied with hence no contempt is made out.

3. Learned counsel for the applicant stated that still the order of the Tribunal had not been complied with by the respondents and rather the order of the Tribunal has been circumvented by the respondents. Respondents had not complied with the order fully in accordance of the directions of the Tribunal. The seniority was restored in group-B. Undisputedly, there are two scales in group-B. Firstly, there is a scale of Rs. 7500-12,000/- and the senior scale in group-B is of Rs. 8,000/- onwards. The applicant was promoted in the scale of Rs. 7500-12,000/- in group B from group C and being the senior the applicant subsequently, ought to have been promoted in senior scale of Group - B in pay scale of Rs. 8000/- onwards. But as the juniors to the applicant was earlier promoted in group-A in senior scale hence, he was also promoted in group-A but without promoting firstly in the scale of Rs. 8,000-13,500/- and thereafter, in Group-A. That, the applicant has been put to financial loss. Intentionally the applicant was not promoted in senior scale from the date when their juniors were promoted.

4. We have heard Mr. K.P. Singh, Advocate for the respondents also regarding the compliance of the order of the Tribunal. It has been argued by learned counsel for the respondents that the juniors with whom the applicant is claiming parity were firstly, promoted on *ad hoc* basis. The *ad hoc* promotions are being made in case of emergency and exigency arises in the department from that next lower scale and as the applicant at the relevant period was not working in the senior scale from which the juniors were

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promoted on *ad hoc* basis and as the applicant was subsequently promoted whereas the juniors were already promoted on regular basis hence, applicant was also promoted subsequently, from the same date when the juniors were promoted on regular basis.

5. During the intervening period, juniors earned certain financial benefits like increment etc. and when applicant was not working in senior scale on that post when his juniors were promoted on ad-hoc, same benefits are not admissible to the applicant. But they were promoted on regular basis from the date when their juniors were promoted. There was no direction of the Tribunal to promote the applicant on ad-hoc basis retrospectively. Hence, this contention of the applicant's counsel is unjustified that the compliance of the Tribunal has not been made in letter and spirit. Whereas, the respondents complied with directions of the Tribunal in its true spirit. The contentious issues in between the parties and in our opinion these points are required to be decided by fresh O.A. It will not be justified for us to make any comments on merits of the case at this stage.

6. We have only to see, whether there is any willful disobedience of the order of the Tribunal and as the respondents counsel has represented before us that they had complied with the order of the Tribunal and according to the applicant's counsel an order of the Tribunal has not been complied with in letter and spirit. In this context learned counsel for the applicant cited various orders passed by this Tribunal during the proceedings of the contempt petition and various letters written by the Railway Board directing the respondents for complying direction of the Tribunal passed on 07.11.2004 in the O.A.

7. But, even then, we are fully convinced that for these genuine matters and issues the applicant is required to file a separate O.A.

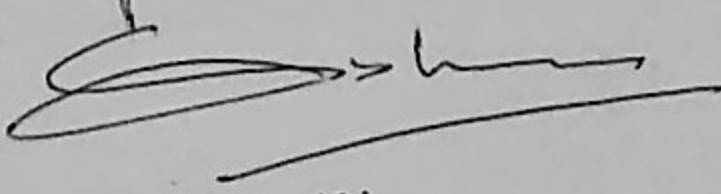
8. This is a debatable point which is required to be decided in a regular O.A. and not in this Contempt Petition. It is a matter which is to be decided by the Tribunal on regular basis that if a junior has been promoted earlier and thereafter, they were promoted and

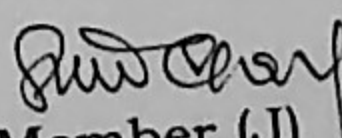
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being in that higher scale on ad hoc basis and thereafter, their juniors as per direction of the Tribunal was promoted subsequently and in the meantime the junior was promoted on *ad hoc* basis on regular basis and the applicants has also been promoted from that date of regular promotion where the applicant is entitled to promote with retrospective effect from the date when his juniors were promoted on *ad hoc* basis. This will not be justified to decide in contempt petition. The purpose to move contempt is only to ascertain whether there had been any disobedience of the order of the Tribunal and as we have been shown by the counsel for the respondents that they had already complied with the order of the Tribunal but a further direction is required to be given for compliance of the order in a particular manner as stated by the applicant's counsel. Even then this will remain unsatisfied from the order passed on contempt petition. The applicant has liberty to file a fresh O.A. There is no bar for filing fresh O.A. but so far as regarding punishment of the respondents for willful disobedience of the order of the Tribunal, no case is made out of contempt of the Court.

9. For the reasons mentioned above, having taken into account a compliance report as submitted by learned counsel for the applicant and having taken into account contention of the applicant regarding part compliance. This contempt petition is not maintainable and the same is liable to be dismissed. And the chapter shall be deemed to have been closed even for subsequent contempt. The intention of passing this order is to stall in moving a subsequent contempt also. The only remedy is by filing a separate O.A.

10. Contempt petition is dismissed. Notices are discharged.


Member (A)


Member (J)