

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.CP(C) 10/01

Present : Hon'ble Mr. Sarweshwar Jha, Member (A)

Hon'ble Mr. Mukesh Kumar Gupta, Member (J)

Shri Tapan Kumar Mitra,
Working as Assistant Chief Cashier,
under the Deputy Chief Accounts
Officer, South Eastern Railway,
Garden Reach, Calcutta-43,
residing at 18/38, Drovv Lane,
P.O. Sarat Bose Road,
Calcutta-29.

Applicant

v.

1. Shri R.K. Thoopal,
General Manager,
South Eastern Railway,
Garden Reach,
Calcutta-43.
2. Shri D. Lakra,
Financial Advisor and Chief
Accounts Officer,
South Eastern Railway,
Garden Reach,
Calcutta-43.
3. Shri B.K. Banik,
Financial Advisor and
Chief Accounts Officer (HQ),
South Eastern Railway,
Garden Reach,
Calcutta-700 043.
4. Shri K.J.J. Rao,
Deputy Chief Accounts Officer
(Cash and Pay), (Formerly Chief
Chashier J.A.),
South Eastern Railway,
Garden Reach, Calcutta-700 043.
5. Shri H.K. Sahu,
Senior Divisional Accounts
Officer, South Eastern Railway,
Kharagur,
District-Midnapore.

Contemnmors/Respondents

For the applicant : Mr.R.N. Datta/
Mr.A.Banerjee

For the respondents : Mr.R.N. Das,
Mr.S.K.Sengupta,
Mr.S.C. Basu
Mr.S.Chowdhury

Heard on : 30.9.2004

Order on : 8.10.2004

O R D E R

Per Mukesh Kumar Gupta, Member (J)

1. Vide order dated 19.5.2000, in O.A.No.290/96, this Tribunal while allowing the applicant's aforesaid application observed as under:

"... Since he was denied promotion to the said post of Sr. Cashier Gr.I when his junior, Shri B.N.Roy was promoted to the post of Sr. Cashier Gr.I with effect from 10.10.83, therefore, it is found that at the meeting point of level I would be on the date of promotion of Shri P.K. Das, to the post of IOC in the scale of Rs.455-700/- and subsequent date of promotion of Shri P.K. Das to the post of IOC in the scale of Rs.550-750/- on 13.12.78 would be meeting point level II. Hence the question for consideration of the applicant comes into play for the purpose of promotion to the post of Divisional Cashier/IOC when Shri P.K. Das was considered on the basis of the grade seniority instead of basic seniority. It remains admitted fact in this case that the applicant was senior to Shri P.K. Das in the cadre of Cashier as well as in the cadre of Sr. Cashier Gr.II and it is found that respondents did not consider the case of the applicant vis-a-vis Shri P.K. Das who was found junior to the applicant in both the cadre of cashier as well as in the cadre of Cashier Gr.II. On the basis of the decision in Ajit Singh and others vs. the State of Punjab and others, as referred to above, we find that the applicant has legitimate grievance in respect of denial of promotion to the post of Divisional Cashier when Shri P.K. Das was promoted with effect from 1.1.84, on the basis of grade seniority. So, we are of the view that due to nonconsideration of the applicant's promotion in accordance with basic seniority does render the decision of the authority contained in letter dated 19.5.95 (Annexure 'A/12') erroneous and the said order dated 19.5.95 is liable to be quashed."

After recording the aforesaid observations and findings, the directions issued were as under:

"13. Under the facts and circumstances stated above, we set aside the order dated 19.5.95 (Annexure 'A/12') and direct the respondents to reconsider the case of promotion of the applicant in the light of judgment of the Hon'ble Apex Court in Ajit Singh II case mentioned above and grant him all consequential reliefs, as ordered in the

judgment dated 28.7.1995 in OA 387/92 and all exercises to that effect should be completed within three months from the date of communication of this order. Accordingly, the application is allowed."

2. The said order had been carried before the High Court at Calcutta in W.P. CT No.676/00 and vide order dated 4.9.2000, the order passed by this Tribunal was upheld, holding as follows:

"The learned Tribunal upon taking into consideration the facts and circumstances of the case and having regard to the decision of the Apex Court in Ajit Singh-II has rightly set aside the order dated 19.5.95 as contained in Annexure A/12 and directed the respondents to consider the case of the applicant for their promotion in the light thereof and grant consequential benefits. In view of the fact that we are satisfied that the case of the parties are covered by the aforementioned decision, we are of the opinion that neither there exists any jurisdictional error in the judgment of the Tribunal nor the petitioner herein is prejudiced thereby.

For the reasons aforementioned there is no merit in the instant application and the same is dismissed."

Subsequently the respondents vide communication dated 18.10.2000 (Annexure P6) addressed to the applicant observed as under:

"In obedience to the orders passed by the Hon'ble CAT/CALK on 19.5.2000 your case has been reviewed by the competent authority in the light of Supreme Court's judgment in Ajit Singh-II case, specifically with reference to Sri P.K. Das, P-respondent No.6 of O.A. 290/96. However, even after applying the principles mentioned in the aforesaid judgment there is no change in your seniority position with reference to Sri P.K. Das, since there was no meeting point at any of the levels from Sr. Cashier-II to ACC. As such all consequential benefits due to you have been given.


This issues with the approval of competent authority."

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3. It is contended in the present CP that the respondents have wilfully, deliberately and contemptuously violated the judgment and order passed by this Tribunal in the aforesaid O.A.

4. The respondents filed their reply and contested the applicant's claim stating that in compliance with the aforesaid direction the respondents examined the applicant's claim vis-a-vis P.K. Das and came to the conclusion that there had been no meeting point at the material point of time and, therefore, the applicant was not entitled to any benefits in terms of the judgment of the Hon'ble Apex Court in Ajit Singh II case.

5. We note that vide order dated 16.8.2001, this Tribunal noticed that the respondents have not complied with the orders of this Tribunal deliberately by not considering the applicant's claim for promotion in the light of the aforesaid judgment nor they have granted any consequential benefits. Subsequently this Tribunal once again passed order dated 25.7.2003 and noticed the respondent's contention that in compliance to the directions of this Tribunal order dazted 19.5.2000, they had passed order dated 18.10.2000 and therefore complied with the directions. The matter was adjourned with a direction to respondents to comply the said order, if not already complied with. Once again on 23.2.2004 the respondents were required to place on record the copy of the judgment in the matter of reservation for SC/ST, which issue is pending before Hon'ble Apex Court, unsettling the effect of the



judgment rendered in Ajit Singh II case. In the meantime the respondents had filed their compliance report on 18.2.2003 under the signature of Financial Adviser and Chief Accounts Officer, SE Railway, Calcutta stating that the applicant was given due weightage with Shri P.K. Das as shown in the chart detailed in the said affidavit and further stated that the respondents have obeyed the directions of this Tribunal. Besides this, unqualified apology was also tendered. It was also stated that the respondents have neither intention nor any motive to violate the directions issued by this Tribunal.


6. We heard learned counsel for the parties at length. Shri R.N. Dutta, learned counsel, appearing for the applicant vociferously contended that once an order passed by this Tribunal has attained finality as the writ petition filed by the respondents herein, against the said order dated 19.5.2000, was dismissed in WP CT 676/00 vide order dated 4.9.2000, this Tribunal cannot look into any previous decision of the Supreme Court to find out whether the order of this Tribunal was just, legal or not. For this purpose reliance was placed on 2000 SCC (L&S) 756 K.G. DERASARI AND ANOTHER v. UNION OF INDIA AND OTHERS. In the said case in para 7 it was held that the Tribunal was not entitled in a contempt proceeding to consider the legality of its earlier order which has reached finality not being assailed or annulled by a competent forum. Though in the said case the Tribunal while considering the contempt petition held that there was

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no contempt committed by the respondents but issued certain directions for drawing up of a seniority list which was not approved by the Hon'ble Supreme Court.


7. Learned counsel appearing for the respondents on the other hand strongly maintained that the directions issued by this Tribunal were to "reconsider the case of promotion of the applicant in the light of the judgment of the Hon'ble Supreme Court in Ajit Singh II case mentioned above" within the time limit prescribed therein. It is maintained by them that the said reconsideration had been done by them and order dated 18.10.2000 was passed. It was further contended that the effect of the said judgment of Ajit Singh II has been nullified by the 85th Constitution amendment, which received the assent of the President on 4.1.2002 and has been made operative with effect from 17.6.1995. By the said amendment sub-clause 4A under Article 16 was amended by the said amendment. It is further contended that the validity of the said constitutional amendment is pending before Supreme Court and no final decision has been taken in the matter.

8. Strong reliance was placed by the respondents on 2002 (10) SCC 582 SADHU SINGH AND ANOTHER V. R.S.VARMA AND ANOTHER, to contend that the controversy raised in the present case is on the interpretation of the judgment as well as action taken by the respondents cannot be gone into in a contempt petition and the proper course to resolve such an issue is not within



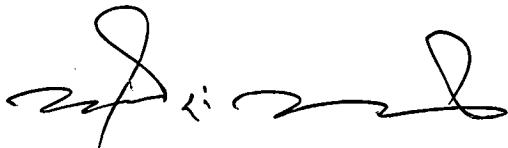
the domain of contempt proceedings. Therefore, it was contended that there was no wilful disobedience of the orders passed by this Tribunal.

9. We heard learned counsel for the parties at length and perused pleadings including the various orders passed by this Tribunal from time to time. It is no doubt true that the respondents were directed to only reconsider the case of promotion of the applicant in the light of judgment of the Hon'ble Court in Ajit Singh II case and thereafter grant him all consequential benefits. As far as the question of justification in making observation under Annexure P6, communication dated 18.10.2000 to state that "there was no meeting at any of the levels from the Senior Cashier to ACC", is concerned, we find that this Tribunal in specific in para 12 has held that at the meeting point of level I would be on the date of promotion of P.K.Das to the post of IOC, portion which has been underlined hereinabove. As such the respondents were not justified to make an observation on the said aspect. But the matter does not rest here as the specific direction issued was to reconsider the case of the applicant for promotion in the light of the judgment of Hon'ble Apex Court in Ajit Singh II case. Since it is seen that the effect of the judgment has been nullified by the Constitutional amendment namely 85th amendment, and validity of which is still pending before Hon'ble Supreme Court, we are of the considered view that recourse to Contempt Petition in such an event is not proper course to resolve the controversy. As such we are satisfied that there is no wilful disobedience of

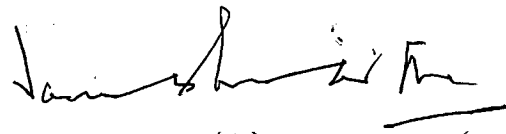


the orders of this Tribunal. We, therefore, do not find any justification to proceed with the present contempt petition and accordingly dismiss the same. Notices are discharged.

10. We may clarify that the dismissal of the resent petition shall not be construed as an expression of opinion of the issues raised in the present CP and it will be open to the petitioner to take recourse to such remedy as is available to him in law.



MEMBER (J)



MEMBER(A)

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