

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CPC 70 OF 2003 (OA 1125 OF 1996)

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman
Hon'ble Mr. N. D. Dayal, Member (A)

TAPAN KUMAR MITRA

VS

1. Sri N.S.Sisodia, Secretary,
M/o Defence, Deptt. of Defence
Production, Ayudh Bhawan,
South Block, New Delhi-110 001
2. Sri D.K.Dutta, Chairman & Director
General, OFB, 10A, Saheed Khudiram
Bose Road, Kolkata-1
3. Sri B.C.Biswas, General Manager,
Rifle Factory, Ichapore, 24 Pargans.
4. P.Surendran, Director/G, 10A, Saheed
Khudiram Bose Road, Kolkata-1

For the applicant : Mr. R.K.De, CC ounsel

For the respondents : Sardar Amzad Ali, Counsel
Ms. U.Bhattacharjee, Counsel

Heard on : 30.7.04 : Order on : 16.8.04

O R D E R

Per Justice B.Panigrahi, VC :

In this contempt petition, there has been a prayer for initiation of a proceeding under Contempt of Courts Act against the respondents for wilful violation of the order of the Tribunal and to punish each of them under the said Act in order to protect the majesty and dignity of justice and rule of law.

2. In the Original Application the applicants had prayed for a declaration that they were entitled to the status, rank and pay scales of Rs. 3700-5000/- and Rs. 3000-4500/- respectively and other conditions of service as were applicable to next senior post in the office of the respondents. This Tribunal after elaborate hearing of the case directed the respondents as under :-

" The respondents shall consider the aforesaid representations of the applicants treating the grounds taken in the instant OA also as part of the representation and pass appropriate orders with regard to their claims, as expeditiously as possible and in any case within a period of four months from the date of receipt of a copy of this order in accordance with law."



3. Pursuant to the said direction, it appears that the respondents have duly considered the representation of the applicants and disposed it of by passing an order dt. 9.7.03 whereby and whereunder the claim of the applicants was rejected. The applicants allege that by rejecting their claim, the respondent authorities have wilfully violated the order of the Tribunal. Hence this contempt petition.

4. On careful perusal of the order passed by this Tribunal, it has never appeared to us that the Tribunal had ever given any direction to the respondents to provide the applicants the benefits of the pay scales of Rs. 3700-5000/- and Rs. 3000-4500/- commensurate with their rank and status, as prayed. The Tribunal only directed the respondents to consider the prayer of the applicants in accordance with the rules which they have considered and have passed an elaborate order whereby they have inter alia stated as under :-

" Apex Court has held that even courts have no powers to grant such relief in the absence of material relating to other comparable employees as to the qualification, method of recruitment, degree of skill, experience involved in performance of the job, training required, responsibilities undertaken and other facilities in addition to pay scales. The applicants by quoting vaguely & selectively bits and pieces of rules and regulations are jumping to the conclusion that they are entitled for a higher status. Merely on the basis of qualification itself the claim of the applicants falls through. Prima facie the entry level in the Gr A officer cadre requires a BE/B.Tech or equivalent degree and rigorous selection process through UPSC. The reasons given in support of their claim by the applicants are ambiguous and vague and the applicants have not been able to prove their bona fide.

In view of the facts and circumstances outlined above, the representations of the applicants are rejected."

5. Mr. R.K.De, ld. counsel appearing for the petitioners has submitted that the speaking order is nothing but a ruse and/or pretext to avoid the relief to be given to these applicants though directed by the Tribunal. On a perusal of the order in question passed by the Tribunal in the OA we find nowhere such a direction to the respondents for giving such higher pay scales in Gr. A cadre was passed. What all was intended was directing the respondents for considering the case of the applicants in the light of the circulars, rules and other

guidelines issued by the Govt. in this regard. The respondents have exhaustively dealt with claim of the applicant but could not accede to the same.

6. Mr. De has relied upon two decisions of the Hon'ble Supreme Court in the cases of Niaz Mohammed & Ors etc. etc. -vs- State of Haryana & ors, 1995(1) SCSLJ 37 and A.N. Sehgal & Ors -vs- Raje Ram Sheoran & Ors, 1995(2) SLR.431 in support of his case. . After carefully going through the cited cases, we find that those decisions are not applicable to the present case and those were rendered in different context. In those cases, there was specific direction from the Court for grant of specific relief which is not the case here. In the instant case, the only direction was given by the Tribunal to consider the representation of the applicants which the respondents have done. Therefore, in such circumstances, there cannot be any case of contempt for not granting the prayer of the applicants made in their representation. In this context we are buttressed by the view expressed by the Apex Court in the case of Chhotu Ram -vs- Urvashi Gulati & Anr reported (2001) 7 SCC 530. In that case there was a direction for consideration of the case for promotion of the petitioner, but on consideration he was found to be unfit for the same. A question arose as to whether non-promotion of the petitioner therein would amount to contempt of court or not. In that context the Apex Court held as follows :-

"7. Briefly stated, the petitioner's grievance is based on the factum of non-consideration of the petitioner's case or if considered, not properly so considered on the basis that the petitioner was qualified by the cut-off date (1.1.1980). Be it noted however, that this Court as noticed above directed that in the event the petitioner is fit for promotion in September 1980, he should be given the necessary promotion with all consequential benefits.

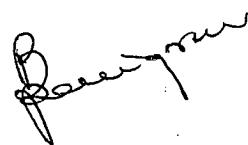
8. Mr. Mahabir Singh, learned counsel appearing for the respondents however, firstly, very strongly contended that question of there being any act or conduct contemptuous in nature in the matter under consideration cannot arise. The conduct in order to come within the purview of the statutory provisions must be wilful and deliberate and in the contextual facts, question of there being any wilful and deliberate act does not and cannot arise. There is not even a whisper even in the petition of contempt as regards wilful neglect to comply with the order of the Court. The language of the

statute being a requirement in order to bring home the charge of contempt shall have to be complied with in its observance rather than in breach and in the absence of which, the same cannot be termed to be an act of contempt and resultantly therefore the application must fail. The submission of Mr. Mahabir Singh appears to be of some significance. The proceeding in the Contempt of Courts Act being quasi-criminal in nature and the burden being in the nature of criminal prosecution, namely, to prove beyond reasonable doubt as noticed above, requirements of the statute thus have a pivotal role to play. On merits as well, Mr. Mahabir Singh contended that the petitioner is confusing the issue by treating the direction as a mandate for his promotion; whereas this Court had directed the respondents to consider the promotion by treating the petitioner to be qualified on the cut-off date as of 1.1.1980. There was no mandate as such to offer promotion to the petitioner. Incidentally, the petitioner's case was duly considered but since the latter was not found eligible and fit for promotion for reasons noticed as below, no promotion could be offered to the petitioner. Promotion was to be offered only however, upon compliance with certain eligibility criteria. This Court by reason of the order dated 8.10.1999 did not issue a mandate but issued a direction for consideration only. In the event however, the matter being not considered or in the event consideration was effected in a manner to whittle down the claim of the petitioner, initiation of the proceedings cannot but be said to be justified. But in the event, however, contextual facts depict that the consideration was effected in accordance with the normal rules, practice and procedure and upon such consideration, no promotion could be offered to the petitioner, question of there being any act of contempt would not arise..... "

1. In view of the above, we do not find any case for contempt has been made out by the applicants and hence the contempt petition is liable to be dismissed and is hereby dismissed. However, dismissal of the contempt petition will not preclude the applicants from filing appropriate application before appropriate forum challenging the speaking order, if so advised and if not otherwise barred by law.



MEMBER(A)



VICE CHAIRMAN