

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

CCP No. 33/2009 in Original Application No.113/2007

This, the 29th day of October, 2012

HON'BLE MR. JUSTICE ALOK KUMAR SINGH, MEMBER (J)
HON'BLE SHRI S.P. SINGH, MEMBER (A)

Ram Pal Singh aged about 71 years son of late Sri Baru Singh, resident of 39, Bhim Nagar, near Janta Girls Inter College, Alambagh, Lucknow.

Applicant.

By Advocate: Sri Surendran P.

Versus

1. Col. Kamlesh Chandra , Chief Post Master General, U.P. Circle, Lucknow.
2. Sri Sachin Kishore, Director of Postal Services, Lucknow Region, Lucknow.
3. Smt. Preeti Agrawal, Senior Superintendent of Post Offices, Lucknow.

Respondents.

By Advocate: Sri S.P.Singh

(Reserved on 16.10.2012)

ORDER

By Hon'ble Shri Justice Alok Kumar Singh, Member (J)

This contempt petition has been filed in respect of alleged non-compliance of order dated 1.12.2008 passed by this Tribunal in O.A.No. 113/2007. The relevant portion of the order is as under:-

"In view of the above circumstances, the O.A. is disposed of with a direction to the respondents to communicate the adverse entries of the applicant within a period of one month from the date of receipt of copy of this order and on being communicated the applicant may make representation against such entry within one month thereafter, and the said representation of the applicant should be decided within one month thereafter. If his entry is upgraded review DPC may be held to consider his suitability for promotion from the date

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of his juniors Sri Umrao Singh and Karan Singh in the cadre of HSG II and HSG I by the DPC within two months thereafter and with this observation, O.A. is disposed of. No order as to costs."

2. From the counter /compliance affidavit sworn by Sushri Priti Agrawal, the then APMG (staff) in the office of Chief Post Master General, U.P. Circle, Lucknow – R-3, it transpires that in furtherance of the above order, the adverse entries of the applicant could not be communicated within the stipulated period because of the fact that the applicant had retired from service on 30.11.95 and according to the relevant rules placed at Annexure CR-1, preservation period of the ACRs is 5 years after retirement. That means that the said period came to an end some where in the year 2000. It has been further averred that however vide letter dated 13.1.2009, on the basis of available record, the five punishment orders have been communicated. The first punishment order is of the year 1989 pertaining to recovery. The rest of the four punishment orders are of "censure" given in 1992, 1993, 28.11.95 and 29.11.1995. But as can be seen from the last paragraph of the order of this Tribunal extracted above the direction was for communication of (un-communicated) adverse entries inviting representation if any and deciding the same and if entries are upgraded then to consider his suitability for promotion. The position would be further clear from the following paragraph.

3. As mentioned in the judgment of the Tribunal, the case of the applicant was considered by the review DPC held on 27.11.2006. It is also mentioned in para 11 of the judgment of this Tribunal that in para 16 of C.A. filed in the O.A., it has been mentioned that the case of promotion is found fit not only on the basis of punishment awarded but also the CR entries made by the immediate authorities and the DPC did not find the case fit for

promotion on the basis of unsatisfactory service record. Then in para 12, it is mentioned that admittedly at no point of time, the respondents have informed and communicated adverse /unsatisfactory remarks in ACRs which disentitle the applicant or make him ineligible for promotion and no opportunity was given to him to give his reply. Therefore, in view of the preposition of law laid down in the case of ***Dev Dutt Vs. Union of India and others (2008) AIR SCW 3486***, it was directed that the respondents shall communicate the adverse entries of the applicant.

4. In the back drop of the above findings of this Tribunal contained in the judgment/order of O.A. No. 113/2007, the so called compliance affidavit/ reply filed on behalf of the respondents in this contempt petition does not appear to be satisfactory firstly because the respondents have now come up with a new version contradictory to their own earlier version. Their new version is that the ACRs are destroyed after five years of the retirement. This means that in the case of the applicant, ACRs were destroyed in or around the year 2000. Therefore, the direction of this Tribunal to communicate adverse/unsatisfactory remarks in ACR could not be complied with. If this was the position, then what was the occasion for making a specific plea in para 16 of the C.A. filed earlier in the O.A. that the case of promotion is found fit not only on the basis of punishment awarded but also the CR entries. The only inference which a man of common prudence would draw from this specific plea would be that the CR entries of the applicant were also available and considered in the review DPC held in the year 2006. Immediately, thereafter, the O.A. was filed in the year 2007. A copy of O.M. dated 21011/6/2001-Estt (A) dated 14th May, 2001 which has been brought on record which provides that ACRs shall be preserved beyond the period of five years of retirement if the case of an employee is pending in a Court. As such, there was no

✓ occasion to destroy the ACRs. Thus, it appears to be a misconceived after thought of the respondents which is not worth relying being contradictory, hazy and unclear. No specific date, month or year has been indicated when those ACRs were allegedly destroyed. The pleadings contained in para 16 of the C.A. were verified from the record of O.A. No.113/2007 after summoning it from the office. As already said, if the ACRs were really destroyed in the year 2000, then there was no question of the same being taken into consideration by the Review DPC held in the year 2006. The respondents cannot be permitted to approbate and reprobate or to sail in two boats. One of their version is definitely false. In the present CCP, in the compliance/ counter affidavit, an unsuccessful attempt has also been made to explain this situation by saying that though the ACRs were not available but a special report prepared by the Divisional Head (Annexure CR-5) was placed before the Review DPC and after considering the same, the applicant was not found fit. A photo copy of the alleged Special Report has also been placed on record as paper No. 43-19/C enclosed with the CA. But it makes a mention about only same five punishments and not even one ACR. Therefore, even this statement is also false and misleading.

5. A separate compliance affidavit has also been filed by Col. Kamlesh Chandra, the then Chief Post Master General, U.P. Circle, Lucknow R-1, reiterating almost same contentions as mentioned in the aforesaid compliance affidavit of Sushree Priti Agrawal, R-3. Therefore, to some extent the observations made above apply to the remaining respondents including R-1.

6. An objection has been filed by the applicant saying that it was unfair on the part of the respondents to declare the applicant unfit for promotion to HSG II cadre w.e.f. 5.7.1989 in the review DPC held on 28.11.2006 because the DPC deliberately reviewed

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the irrelevant service record pertaining to above punishments given in 1990-91 to 1994-95 instead of relevant ACRs of the year 1983-84 to 1987-88 when the promotion became due. In support of this contention, copy of the relevant so called synopsis of C.Rs which was considered by the review DPC has also been annexed as Annexure No.1 to this objection, which has been jointly signed by the DPC members. It's authenticity has not been challenged. This paper substantiates the contention of the applicant.

7. In the above affidavit filed by respondent No.1 i.e. Col. Kamlesh Chandra, the then Chief Post Master General, U.P.Circle, Lucknow, it has also been said that it is a misconceived conception of the applicant that he was declared unfit for promotion deliberately reviewing service record of the year 1990-91 to 1994-95 in place of service record of 1983-84 to 1987-88. In para 3 of this affidavit, it has been further said that some entries are available in service book of the retired official which reflect that service record was not satisfactory during 1983-87 also. In this regard, mention has been made in the affidavit regarding an entry of suspension in November, 1983 and its revocation in December, 1983, serving of a charge sheet in 1986 and punishment of recovery of Rs.4000/- in October, 1987 and another charge sheet issued in March 1988 and punishment of 'Censure' given in December, 1988. But there is no explanation as to whether or not relevant ACRs from the year 1983-84 to 87-88 were required to be looked into and if yes, then why in their place said punishment orders of later years were considered. However, the above entries of service record pertaining to the year 1983,86 and 88 are neither mentioned in the above so called synopsis of C.Rs (Annexure -1 to the objection filed by the applicant) nor the same were therefore, considered nor it has been specifically averred by the respondents.



Therefore, there is no significance of the above averment which therefore appears to be misleading.

8. Coming back to the point raised on behalf of the applicant, It is worthwhile to mention that from the perusal of the above so called synopsis of CRs (Annexure -1 to the objection filed by the applicant) it becomes clear that in fact it was only a synopsis of five punishments awarded to the applicant between 1991-95. There was no synopsis of Annual Confidential remarks for the above period or for the relevant period when the promotion of the applicant became due. Therefore, it has been wrongly claimed that ACRs were looked into. Thus, the pleadings and replies filed from the side of the respondents are hazy, unclear, misleading and contradictory.

9. A supplementary CA has also been filed by Col. Kamlesh Chandra , the then Chief Post Master General, U.P. Circle, Lucknow , but nothing satisfactory could be said about the above points.

10. The applicant is a senior citizen and is already towards the end of his life as he is about 71 years of age as mentioned in the array of parties of this petition. The conduct and the manner in which the order dated 1.12.2008 passed by this Tribunal has been frustrated and made ineffective by the respondents deserves to be and is accordingly condemned. It appears to be a case of contempt nearing borderline. But, we are refraining ourselves from punishing the contemnors for willful contempt of court at this stage. It would also not serve any purpose as far as grievance of applicant is concerned. In the contempt jurisdiction, we also cannot go behind the judgment/order in question. We have however, made certain observations in the body of this order raising certain points which require detailed and proper adjudication so that the grievance of the applicant may be properly redressed in an effective manner in accordance with law. This cannot be done in the present contempt

proceedings which has a limited scope. Nevertheless, *prima facie* we find that it is a case bordering contempt of court where the respondents have frustrated and made ineffective the final judicial order of this Tribunal given in O.A. No. 113/2007.

11. In view of the above, therefore, the contempt petition is struck of and notices stand discharged with the above observations. However, the applicant is given liberty to file a fresh O.A. in the light of the aforesaid facts and circumstances, if he is so advised.

S.P.Singh
29.10.12

(S.P.Singh)
Member (A)

Alok Kumar Singh
29.10.12
(Justice Alok Kumar Singh)
Member (J)

HLS/-