

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

Civil Contempt petition No.75/2009

In

Original Application No.580/2006

This the 27th day of March 2012

Hon'ble Mr. Justice Alok Kumar Singh, Member (J)
Hon'ble Mr. S.P. Singh, Member (A)

1. Pradeep Shukla, aged about 42 years, son of Shri Vishnu Chandra Shukla, presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Charbagh, Lucknow.
2. Suneel Kumar Singh, aged about 44 years, son of Shri Mahendra Kumar Singh presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Banaras.
3. Ravindra Nath Chaturvedi, aged about 41 years, son of Shri S.N. Chaturvedi, presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Banaras.
4. Kamta Prasad Sharma, aged about 51 years, son of late Ram Nohore, presently posted as Junior Engineer-II (Works), under the Senior Section Engineer (Works), Northern Railway, Banaras.

...Applicants.

By Advocate: Sri Shachindra Pratap Singh.

Versus.

1. Shri S.S. Khurana, Secretary, Ministry of Railways, Government of India, New Delhi.
2. Shri V.N. Tripathi, Ex-officio, Secretary to the Govt. of India, Ministry of Railways, New Delhi.

Ab

.... Respondents.

By Advocate: Sri Arvind Kumar.

(Reserved on 19.03.2012)

ORDER

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

The applicants/petitioners are Diploma Holders in Civil Engineering. They had filed O.A.No.580/2006 against the order of competent authority refusing to grant the benefit of revised pay scale of Rs.5000-8000 w.e.f. 01.01.1996, the date when the revised pay scales became effective after the recommendations of the 5th Pay Commission were accepted by the Central Government.

2. This O.A. has been decided in their favour finally on 10.09.2008, by this Tribunal with a direction that the claim of the applicants for parity with MCM, in that revised pay scales w.e.f. 01.01.1996 may be placed before the Anomaly Committee and on the basis of their recommendation, the respondents shall take an appropriate decision preferably within 6 months from the date of receipt of the representation and a copy of this order. In the last, it has been also observed that needless to say that this matter brooks no delay as the recommendations of the next Pay Commission are now under implementation.

3. We have heard both the learned counsel at length and perused the entire material on record.

4. After the aforesaid order of this Tribunal, instead of complying with the order expeditiously keeping in view that this Tribunal had directed the respondents that there should be no delay as the recommendations of the next Pay Commission are now under implementation, the

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respondents moved an application alongwith an affidavit dated 03.03.2009 (M.P.No.477/2009), seeking 6 months extension for making compliance.

5. This Tribunal however vide its order dated 26.03.2009 (Annexure-3) granted three months time w.e.f. the date of said order. But, still the compliance could not be made. Therefore, this C.C.P. was filed on 20.08.2009.

6. From the side of the respondents initially a compliance report dated 17.05.2010 was filed alongwith an affidavit sworn by the then Divisional Railway Manager, Northern Railway, Lucknow saying that in compliance of the order dated 10.09.2008 of this Tribunal the Railway Board vide its order dated 13.10.2008 referred the matter to the Ministry of Finance for being placed before Anomaly Committee. After about five months the Ministry of Finance vide their letter dated 02.04.2009 sought certain clarifications and the Railway Board submitted those informations vide letter dated 28.04.2009. The Ministry of Finance again desired certain more clarification vide letter dated 15.05.2009, which were further clarified by the Railway Board vide letter dated 21.05.2009 followed by another O.M./letter dated 25.06.2009, the Railway Board apprised the Ministry of Finance that the applicants claim pay scale of Rs.5000-8000 at par with MCM on the ground that recruitment qualification of Mistries post is Diploma in Engineering the and Mistries supervise M.C.M. But the 5th Pay Commission took minimum recruitment qualification as one amongst parameters for determining pay scale of the category and minimum recruitment qualification for Mistries posts is Intermediate (Science)

and further MCM are not supervised by Mistries but by Junior Engineers (erstwhile Chargmen) as clearly stipulated in the Railway Ministry's letter dated 28.04.2009. Therefore it was informed that in view of such factual position they do not find any merit in the applicant's claim for grant of above pay scale w.e.f. 01.01.1996. It was further said in the compliance report of respondent that Ministry of Finance vide its letter dated 09.07.2009 has examined the case of applicants in the light of the above judgment dated 10.09.2008 and earlier DOPT was requested to advise for placing the case of applicants before Anomaly Committee. The DOPT vide O.M. dated 12.01.2009 followed by O.M. dated 4.2.2009 has advised that the case of applicants cannot be placed before the Anomaly Committee constituted for 6th Pay Commission because, mandate of the previous Pay Commission ceased after constitution for Anomaly Committee for 6th Pay Commission. The Ministry of Finance also found that financial implication of Rs.237 crores would be involved for 9841 posts in question. It was also found that the minimum qualification for the post of SOM is 10+2 with Science and Math's and not Diploma holders in Engineering. Similarly, MCM post is not feeder post of SOM and MCM post are held by Technician Grade-I on personal basis. The work of MCMs is supervised by J.E.-II not by SOM. Therefore, in the opinion of the Finance Ministry there was no merit for upgrading the pay scale of Mistries of Rs.4500-7000 to Rs.5000-8000 w.e.f. 01.01.1996. This decision was taken by the Ministry of Finance on 09.07.2009 upon which the Railway Board also took their decision on 20.07.2009 and communicated it accordingly. It has also been

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averred in the affidavit that there was no deliberate delay in making compliance of the order of this Tribunal, as would be evident from the correspondence involved between the Railway Board and the Ministry of Finance. It has been further averred that the perusal of the final decision taken on 20.07.2009 would show that the case of the applicants has been rightly considered by passing a speaking and reasoned order. The matter took some time due to administrative reason and involvement of different ministries such as Ministry of Finance, Ministry of Railways and DOPT. In the last however, an unconditional apology for delay has also been tendered. Similarly, an unconditional apology has also been tendered in case the Hon'ble Tribunal is of the opinion that there has been any omission and commission.

7. From the side of the petitioners a detailed objection has been filed against the above compliance report saying that since inception of this case the respondents adopted delaying tactics and they have deliberately lingered on the matter to defeat the purpose of the judgment. Later on, a supplementary affidavit was also filed on 19.4.2001 on behalf of the applicants highlighting certain contradictions between the above letter dated 20.07.2009 and the averments made by the respondents in their supplementary reply filed in O.A.No.580/2006.

8. Initially, S.S. Khurana, Secretary, Ministry of Railways, was the sole respondent. But the aforesaid initial compliance report was however filed by Sri J.S. Sondhi, the then Divisional Railway Manager, Northern Railway, Lucknow. He was though one of the respondents in the O.A. But, he is not a party in this contempt petition and there was no authorization in his

favour: Afterwards, Sri V.N. Tripathi, Ex-officio, Secretary to the Govt. of India, Ministry of Railways, New Delhi was impleaded as Respondent No.2.

9. On his behalf a Supplementary Counter/Compliance report has been filed alongwith an affidavit again sworn by Sri J.S. Sondhi, the then Divisional Railway Manager, Northern Railway, Lucknow. This time however there was an authorisation in favour of Sri Sondhi as averred in opening paragraph of the affidavit. Besides, reiterating the contentions made earlier in the initial compliance report, it has been averred in this affidavit that the Government of India had constituted the Anomaly Committee vide O.M. dated 06.02.1998 to settle the anomalies arising out of 5th Pay Commission Recommendations. The exact date on which this Anomaly Committee was disbanded is not available. But, this Anomaly Committee last met on 5.1.2001 as informed by DOPT vide letter dated 8.6.2010 (Annexure-3). On 12.01.2009, the Government of India has constituted the next Anomaly Committee to settle the anomalies arising out by the 6th Pay Commission (Annexure-4). Therefore, in any case the 5th Pay Commission Anomaly Committee was not in existence when the direction of this Tribunal was given in its judgment dated 10.09.2008. The Hon'ble Tribunal then extended time for compliance by three months vide order dated 26.3.2009. When the time was extended, then also the relevant Anomaly Committee was not in existence. Instead, the next Anomaly Committee had come into existence. Nevertheless, prompt correspondence was made by the Railway Board to the Ministry of Finance starting from letter dated 13.10.2008 onwards. The points of consideration which

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were made by the Ministry of Finance and their observations have already been mentioned in the aforesaid earlier affidavit of Sri Sondhi. The applicants were informed on 11.09.2009 (Annexure-1 to this Affidavit). It has been further averred that thus, the case of the applicants has been taken up for formal decision by the Ministry of Finance, which would have been the case even if the Anomaly committee were to recommend such a consideration. Therefore it is claimed that thus, the matter has been addressed substantially and in the right unrest. The direction of this Tribunal have been considered by the highest decision making Forum i.e. Ministry of Finance. In the last however an unconditional apology has been tendered for delay and also for omission and commission, if any, found.

10. From the side of the petitioners, it has been also submitted that it was on the undertaking of the learned counsel for the respondents appearing in the O.A., that this Tribunal had directed for this matter being placed before the relevant Anomaly Committee as would be evident from the perusal of para-14 and 15 of the judgment. We have perused these paragraphs. In fact it will be wrong to say that it was an undertaking by the counsel for respondents. In para-14 it is mentioned that during the course of arguments the counsel for respondents submitted that there was an Anomaly Committee, which looks into in the cases of anomalies and the claim of the applicants could be at the best called an anomaly, it might to be placed before the Anomaly Committee. This submission was therefore definitely a positive suggestion which was made by the learned counsel for the respondents without ascertaining

as to whether or not the Anomaly Committee pertaining to Vth Pay Commission is in existence. The case of **Noorali Babul Thanewala vs. K.M.M. Shetty & Others (1990) 1 SCC-259**, which deals with violation of an undertaking and which has been cited on behalf of the applicant, is therefore not applicable here. Nevertheless, as said above the learned counsel for the respondents should have been definitely careful before making such a positive suggestion lest it amounts to misleading the Court/Tribunal. It has come on record that the previous anomaly committee held its last meting on 5.1.2001/5.2.2001. It has also come that on 12.01.2009 the new Anomaly Committee to 6th Pay Commission had come into existence. So if the relevant Anomaly Committee pertaining to the 5th Pay Commission was not in existence, learned counsel for respondents should not have made such submission during final arguments of the O.A. which were heard on 2.09.2008 and thereafter the judgment was delivered on 10.09.2008 in this O.A. In the absence of such submission this Tribunal may have decided the O.A. in some other manner.

11. Similarly, the act of seeking further extension of three months time for compliance, without disclosing that the Anomaly Committee pertaining to the 5th Pay Commission has already ceased to exist, is also depreciated.

12. Nevertheless, the redeeming factor is that in the facts and circumstances of this case the direction of this Tribunal (regarding consideration of the anomaly of the applicants) has been considered by the highest decision making Forum of the Central Government i.e. Ministry of Finance, which would have been the case even if,

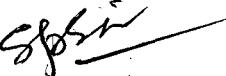
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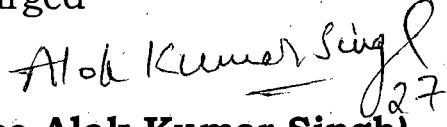
Anomaly Committee was to recommend such a consideration. Some delay was there but, it does not appear to be deliberate as the correspondence on record shows which involved the Ministry of Finance, Ministry of Railways, Railway Board and DOPT. Besides, an apology has also been tendered for delay. But from the side of the petitioners, it was vehemently emphasized that the respondents should be punished for committing willful contempt. There were indeed some lapses and carelessness on the part of the respondents and their counsel as specifically discussed above in paras 10 and 11. They should be careful in future. But, from the entire facts and circumstances it does not appear that there was any deliberate and willful disobedience of this Tribunal's order. In the absence of that we refrain ourselves from taking any action in the light of the observation made in the following case law cited from the side of the respondents:-

(i). (2003) 11 SCC-1 *Ashok Paper Kamgar Union Vs. Dharam Godha & Others.*

(ii). 1994 SCC (6) 332 - *Niaz Mohammed Vs. State of Haryana.*

13. Finally, therefore, in view of the above, this C.C.P. is struck off and notices stand discharged


(S.P. Singh)
Member (A)


27.3.12
(Justice Alok Kumar Singh)
Member (J)