

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 88/2009 in O.A. No. 106/2009

Reserved on 14.03.2016

Pronounced on 28/3/16

Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Shambhoo Prasad, aged about 49 years, s/o Shri Algu Prasad, residents of -C/o Deputy Chief Electrical Engineer (W) C&W Workshop, Northern Railway, Alambagh, Lucknow.

Petitioner

By Advocate: Sri Praveen Kumar

Versus

Sri Jagram Singh, Deputy Chief Electrical Engineer (W) C&W Workshop, Northern Railway, Alambagh, Lucknow.

Respondents

By Advocate: Sri B.B. Tripathi.

ORDER

By Sri Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non-compliance of the Tribunal's order dated 17th March, 2009 passed in O.A. No. 106/2009 wherein the Tribunal directed the respondents to give effect of restructuring in the case of applicant and the same may be done subject to final outcome of the W.P No. 400(SB)/2005. The learned counsel for the applicant also indicated that the respondents were supposed to give effect but they have not considering the case of the applicant as directed by the Tribunal.

2. The learned counsel for respondents filed their compliance affidavit and as well as they have filed supplementary compliance affidavit in terms of the Tribunal order dated 11.08.2015 and 28.08.2015 through which it is indicated that the respondents have passed a detailed order in respect of

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certain Group-'C' and 'D' cadre w.e.f. 01.11.2003 and also it is indicated about the pre-restructuring percentage and the corresponding sanctioned strength. Not only this the respondents have also indicated that against three vacancies of Technician Grade-II, the applicant was working as Technician Grade-III and promoted in the year 2007 after following due and prescribed process and procedure i.e. after holding Trade Test etc. Not only this the respondents have categorically indicated that the WP No. 400(SB)/2005 is dismissed on 11.11.2014 and respondents have fully complied the orders of the Tribunal and the department has done restructuring of cadre as directed by the Tribunal.

3. The bare perusal of the entire proceedings available on record including the order so passed by the Tribunal shows that the respondents in pursuance of direction of the Tribunal, have considered the claims of the applicant as directed by the Tribunal and completed the process of the restructuring and there is nothing left uncomplied with on the part of the respondents in pursuance of orders of the Tribunal passed in the O.A.

4. In terms of the decision rendered by the Hon'ble Apex Court in the case of **J.S. Parihar Vs. Ganpat Duggar and others AIR 1997 Supreme Court 113**, the Apex Court has held as under:-

"The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a

fresh cause of action to seek redressal in an appropriate forum. The preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions. But that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. But that cannot be considered to be the willful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."

5. In the case of **Lalit Mathur Vs. L. Maheswara Rao (2000) 10 SCC 285**, the Hon'ble Supreme Court held as under:-

"The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

6. In the case of **Shail Raj Kishore , Secretary, Education basic, U.P. Lucknow and others 2004 (3) AWC 2444** the Hon'ble court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

7. Apart from this, the learned counsel for the respondents relied upon on the decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and others reported in AIR 2001 SC 3468**. The Hon'ble Apex Court has observed as under:-

"Court directed for considering the case of the applicant for promotion . The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was

considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court."

8. Considering the observations made by the Hon'ble Apex Court and after perusal of records, we are satisfied that the order passed by the Tribunal has been fully complied with and the respondents have completed the process of restructuring as directed by the Tribunal, as such nothing survive to be adjudicated in the present contempt petition. Accordingly, the contempt petition is dismissed. The notices issued to the respondents stand discharged. No order as to costs.

J.Chandra

**(JAYATI CHANDRA)
MEMBER (A)**

Navneet Kumar

**(NAVNEET KUMAR)
MEMBER (J)**