

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

C.C.P. No. 94 of 2009

In

Original Application No. 493/2004

Order Reserved on 28.10.2014.

Order Pronounced on 11-11-2014

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

Omprakash aged about 53 years S/o Sri Chhotey Lal HPO Colony, Sitapur
employed as Wireman Sitapur .

Applicant

By Advocate Sri R.S. Gupta.

Versus

Sri. C. M. Pandey SPOS Sitapur

Respondents

By Advocate Sri S. P. Singh.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non compliance of the order dated 18th March, 2009 passed in O.A. No. 493/2004 through which, the Tribunal passed the following orders:-

"In the result, the O.A. is allowed. Impugned orders are quashed and set aside. The amount already recovered pursuant to impugned orders shall be returned to the applicant within a period of three months from the date on receipt of copy of this order. No costs."

2. The copy of the order was duly communicated upon the respondents. It is also indicated by the learned counsel for the applicant that after the decision of the Tribunal, the applicant moved a Review Application No. 26 of 2009 and through which, the Tribunal corrected typographical errors in para 3 of the order. Accordingly, correction was incorporated. The respondents filed their compliance report and through compliance report, it is indicated that Writ Petition No. 1381 (SB) of 2009 is pending against the order of the Tribunal.

The respondents taken a decision and passed an orders on 19.8.2014 through

which the due sanction was accorded for refund of Rs. 1,71, 212/- recovered from the pay of the applicant as audit recovery on account of irregular fixation of his pay vide item 21 of IR-2004. However, the said refund will be subject to the outcome of the judgment of Hon'ble High Court in which Writ Petition No. 1381 (SB) of 2009. The copy of the said order was sent to the applicant as well. Learned counsel for the respondents has categorically submitted that since the amount so recovered is already refunded to the applicant as such, full compliance of the order is made and the present contempt petition is liable to be dismissed.

3. Heard the learned counsel for the parties and perused the record.
4. The present contempt petition is preferred for non compliance of the order dated 18.3.2009 passed in O.A. No. 493/2004 through which the Tribunal passed an order regarding refund of recovered amount to the applicant within a period of three months. The Writ Petition so preferred by the respondents is pending but the respondents through order dated 19.8.2014 has taken a decision and refunded the recovered amount as directed by the Tribunal. Since the respondents have already passed the orders, as such, there is no willful, disobedience of the order passed by the Tribunal.
5. In the case of **J.S. Parihar Vs. Ganpat Duggar and others reported in AIR 1997 Supreme Court 113**, and indicated that the Hon'ble Apex Court has been pleased to hold 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 ²⁹⁴ 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.”

6. 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.

7. Apart from this, Hon’ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and another** reported in **AIR 2001 SC 3468**. 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.”

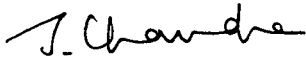
8. The Hon’ble Apex Court in the case of **Anil Kumar Shahi and others Vs. Prof. Ram Sevak Yadav and others** reported in **(2008) 14 SCC 115** in which the Hon’ble Apex Court has been pleased to observe as under:-

“In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order.”

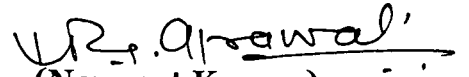
9. In view of the pronouncements of the Hon’ble Supreme Court cited above, we find that the respondents/ contemnors have not acted in a manner which

can be deemed to be a willful disobedience of the order of this Tribunal dated 18.3.2009 passed in O.A. No. 493 of 2004.

10. Considering the observations of the Hon'ble Apex Court and factual position of the case, the contempt petition is dismissed. The notices issued stand discharged. No order as to costs.



(Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)

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