

Reserved

Central Administrative Tribunal Lucknow Bench Lucknow

CONTEMPT PETITION No. 16/2012

In

Original Application No.331/2008

This, the 23rd of August, 2013

**HON'BLE SRI D.C. LAKHA, MEMBER (A)
HON'BLE SRI NAVNEET KUMAR, MEMBER (J)**

Alok Kumar Shukla, aged about 28 years, S/o Late Satya Prakas Shukla, resident of Village Locha, P.O. Hadha, District Unnao.

Applicant

By Advocate Sri S. Lavania/Alok Trivedi

Versus

Respondents

By Advocate Sri S. P. Singh.

1. Sashi Kant Sharma, Secretary, Ministry of Defence, South Block, New Delhi.
2. Lt. Gen. Vijay Sharma AVSM, Engineer-in-Chief, Army Headquarters Kashmir House, Rajaji Marg, DHQ PO New Delhi-110011.
3. Maj. GenV.M. Tandon Chief Engineer, Headquarters, Central Command, Lucknow-2.
4. Brig. S.M. Desai, Chief Engineer Lucknow Zone, Lucknow-2.

Respondents.

By Advocate Sri S. P. Singh

(Reserved on 14.8.13.)

Order

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

The present contempt petition is preferred for non compliance of an order dated 13th May, 2000 passed in O.A. No. 331/2008 wherein, the Tribunal passed the following order:-

“O.A. is allowed with cost of Rs. 5000/- . The order dated 10th March, 2008 (Annexure A-1) is quashed and set aside. The respondents are directed to reconsider the case of the applicant for compassionate appointment in its true prospective strictly according to scheme for compassionate appointment and in the light of observations made in the body of this judgment. It is expected that respondents shall given preference in appointment in comparison to person to whom lesser marks were allotted and the case of the applicant shall not be turned down and

rejected merely on the basis of O.M. issued by the DPO&T. The case of the applicant shall be reconsidered within a period of 3 months from the date when the copy of this order is received by them.”

2. The learned counsel appearing on behalf of the applicant pointed out that the copy of the said order was duly communicated to the respondents and when no action was taken by the respondents, the present contempt petition was preferred. Apart from this, it is also pointed out by the learned counsel for the applicant that the Tribunal while deciding the O.A., directed the respondents to reconsider the case of the applicant in its true prospective strictly according to scheme for compassionate appointment and in the light of observations made in the body of this judgment. It is also argued on behalf of the applicant that the respondents were directed to give preference in appointment in comparison to person to whom lesser marks were allotted and the case of the applicant shall not be turned down and rejected merely on the basis of O.M. issued by the DOP&T. On behalf of the applicant, the paragraphs 17, 18 and 19 of the judgment were highlighted. It is also pointed out by the learned counsel for the applicant that the respondents passed the same order which was quashed by the Tribunal in O.A. No. 331/2008 and certain paras of the said order are the similar to that of an order which was passed on 10th March 2008 which was quashed by the Tribunal. Apart from this, the learned counsel for the applicant has also pointed out that the case of the applicant was considered. The learned counsel for the applicant has also relied upon a decision of Hon'ble Apex Court reported in **2009 AIR SCW 1385 in the case of B.S. N. Joshi and Sons Ltd. Vs. Ajoy Mehta and Anr.** and also pointed out that the order passed by the Tribunal has to be complied with in the spirit as it is ordered, whereas, the present compliance report filed by the respondents

and the compliance order which are annexed with the compliance reports are not in accordance with the directions issued by the Tribunal. As such, the respondents have committed contempt of the order passed by the Tribunal.

3. On behalf of the applicant the objection as well as the rejoinder to the compliance report is filed and it is also emphasized that the respondents have not considered the case of the applicant in terms of the direction issued by the Tribunal as such, the respondents may be punished for non-compliance of the order passed by the Tribunal.

4. The learned counsel appearing on behalf of the respondents filed number of compliance reports wherein, the respondents have annexed the compliance order dated 31st May 2012, 18th August, 2012 as well as, 22nd February 2013. It is pointed out by the learned counsel for the respondents that after the orders are passed by the Tribunal, the case of the applicant was duly considered and the screening committee at Command Headquarters, while taking into all aspects, considered the case of the applicant for grant of compassionate appointment along with other candidates for the years 2009-2010, 2010-2011 and 2011-2012 and due to insufficient vacancies, the name of the applicant could not find place in the merit list as the applicant could have secured 66, 66 and 66 marks respectively in the respective years. Apart from this, the learned counsel for the respondents has also pointed out that the scheme of compassionate appointment which was envisaged with the whole object of compassionate appointment is to enable the family to tide over the sudden crises and to relieve the family of the deceased from financial destitution and to help it to get over the emergency. Apart from this, it is also pointed out by the learned counsel for the respondents that the scheme does not necessarily

imply that the dependent of each and every deceased/medically boarded out/missing Government employee will be offered appointment on compassionate grounds. Not only this, the respondents has also emphasized that the quota for the purpose of compassionate appointment is only 5 % of the total vacancies. Considering all these aspects of the matter, the learned counsel appearing on behalf of the respondents pointed out that due consideration is made in the light of the guidelines of the DOP&T and various judgments of the Hon'ble Supreme Court and has also pointed out that since the appointment on compassionate grounds is not a matter of right and after a balanced and objective assessment of the totality of the circumstances of the case, finally the decision of Board of Officers at Command Headquarters was taken and the competent authority rejected the claim of the applicant and the case of the applicant was finally closed. Apart from this, the learned counsel for the respondents also relied upon the number of decisions such as the case reported in-

- (i) **(1996) 6 SCC 291- J.S. Parihar Vs. Ganpat Duggar And Others.**
- (ii) **Anil Kumar Shahi (2) and Others vs. Prof. Ram Sevak Yadav and Others-reported in (2008) 14 SCC 11.**
- (iii) **Red Rose Senior Secondary School, Lucknow Vs. Amal Kumar Verma and Others, reported in 2011 (29) LCD-577.**
- (iv) **CCP No. 29/12 in O.A. No. 131/12 Ram Bharosey Singh vs. Sri A. K. Mishra and others.**
- (v) **CCP No. 31/2011 in O.A. No. 348/2009- Arun Raj Krishna Misra Vs. Sri Shashikant Sharma and Others.**

5. Heard the learned counsel for the parties and perused the record.

6. Originally, the applicant preferred the O.A. challenging the order passed by the respondents wherein, the case of the applicant was considered and rejected for grant of compassionate appointment. The Tribunal while deciding the O.A., has observed that the applicant's father died on 15th June 2002 and the applicant applied in the month of July 2002 for grant of compassionate appointment. The respondents awarded points to the applicant and the case of the applicant was considered by the Board of Officers in their different meetings and rejected the case subsequently. While rejecting the case of the applicant, the respondents passed an order on 10th March, 2008 wherein, it was observed by the respondents that after due consideration in the light of the guidelines of the DOP&T, the case of the applicant was considered by the Board of Officers, but the case of the applicant could not be found suitable and the applicant was not found eligible as per the relevant DOP&T OMs. Accordingly, the case of the applicant was rejected. The applicant feeling aggrieved by the said order, preferred the O.A. which stands disposed of by means of an order dated 13th May 2010 and for the alleged non compliance of this order, the applicant preferred the present contempt petition.

7. As observed by the Hon'ble Apex Court, the Tribunal can only issue a direction for reconsideration, for grant of compassionate appointment. Now the question which is to be determined is that whether the Tribunal can look into the correctness of the compliance report or not. We feel that this Tribunal can not go beyond the judgment in the contempt jurisdiction. Certain factors have cropped up which can be adjudicated in an effective and meaningful manner only by a fresh O.A. The respondents while filing their compliance report have annexed three orders which are of dated 31st May 2012,

18th August 2012 as well as 22nd February, 2013 wherein they have considered the case of the applicant in terms of the directions of the Tribunal passed in the O. A. No. 331/2008.

Apart from this, the observations of the Hon'ble Apex Court in regard to the contempt matters are absolutely clear.

8. In view of the facts, the question which arise for in the instant contempt petition is that if an order passed by the Tribunal/Court, the authorities have considered the case of the applicant and came to the conclusion on the basis of reasoning given therein that the case of the applicant was further considered, whether the contempt petition filed by the applicant is maintainable or not on the ground that such action is not in accordance with the directions given by the Tribunal as per the version of the applicant. The scope of contempt is limited and the Tribunal/ courts cannot re-appreciate the evidence in the contempt proceedings. The answer to the above question lies in the following judgments passed by the Hon'ble Apex Court:-

9. 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 willfully 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

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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 wilful 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."

10. 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."

11. Further in the case of **Ashok Kumar Pandey Vs. Ashok**

Kumar Singh ,D.I.O.S.,Ballia and others 2003 (5) AWC 4393

Hon'ble Court has held as under:-

"The D.I.O.S. considered the report and the matter of appointment of the applicant in great detail. He observed in the previous writ petition the applicant claimed his appointment under Section 18 of the U.P. Secondary Education Service Commission Act, 1982. However, in the second writ petition, he claimed his appointment under Removal of Difficulties II Order. Both these matters were considered and it was held that the appointment is not according to the rules either under Section 18 of the U.P. Secondary Education Service Commission Act, 1982, or under Removal of Difficulties Order (Second). therefore, the appointment was disapproved. It is further

contended that previous approval in compliance of the order passed in the writ petition was passed by the Sub-Divisional Magistrate, who was holding the charge of D.I.O.S. without considering the provisions of the Act.

Therefore, the direction of this Court has been complied with. If the applicant is aggrieved by the order of the D.I.O.S. deciding the matter and is of the view that the decision is not correct, he may challenge the same in the appropriate writ or in other proper proceedings. There is no ground to proceed with the contempt. The petition for contempt is accordingly dismissed."

12. In the case of **Brahma Deo Tiwari Vs. Alok Tandon, District Magistrate, Allahabad** 2004 (1) AWC 543 Hon'ble Court has held as under:-

"As already noted hereinabove, this contempt petition has been filed alleging violation of the order of the writ court dated 10.12.1997 by which the writ court had directed to consider the case of the applicant with regard to his appointment. The contempt court after perusing the order dated 11.7.1997, though had disapproved the decision taken by the opposite party, had directed vide order dated 10.12.1997, to reconsider the case of the applicant after taking into consideration different aspect which are mentioned in the order itself. By the order dated 17.12.2002, the opposite party has considered all the aspects mentioned in the order dated 10.12.1997. Counsel for the applicant has urged that the order dated 17.12.2002 is neither legally nor factually correct. It may be so, but it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. The Apex Court in Lalith Mathur v. L. Maheshwara Rao, (2000) 10 SCC 285 and J. S. Parihar v. Ganpat Duggar, (1996) 6 SCC 291, has held that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt jurisdiction. No doubt the resultant order may give rise to a fresh cause of action."

13. In the case of **Shail Raj Kishore , Secretary, Education Basic, U.P. Lucknow and others** 2004 (3) AWC 2444 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

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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."

14. 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."

15. The learned counsel for respondents has also relied upon a decision rendered by 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."

16. It is also to be pointed out that in the contempt petition court cannot go into the merits of the case and cannot reappreciate the evidence once again. Hon'ble Apex Court in the case of **Suresh Chandra Poddar v. Dhaniram & Ors.** reported in **2002**

 **SCC(L&S)-214** has been pleased to observe as under :-

"This is an instance of how a Tribunal vested with the powers to punish for contempt of Court became oversensitive in using such powers. Time and again this Court has cautioned as to when and in what circumstances contempt of court jurisdiction is to be exercised. Such a power is not intended to be exercised as a matter of Course. Courts should not feel unduly touchy when they are told that the orders have not been implemented forthwith. If the court is told that the direction or the order of the Court has been complied with subsequently, albeit after receipt of notice of contempt, we expect the Courts to show judicial grace and magnanimity in dealing with the action for contempt".

17. We do not find any good reason to differ from the view already taken following the decision of the Hon'ble Apex Court in the above Contempt cases in the instant CP. Hence by applying the law laid down by Their Lordships of the Hon'ble Apex Court in the case of **Sub Inspector Rooplal and others vs. Lt. Governor through Chief Secretary Delhi and others, (2000) 1 SCC 644** in which it has been held by the Apex Court that the precedents are to be followed by the Tribunal, we cannot re-appreciate the evidence and also about the correctness of the order passed earlier as such the contempt petition is liable to be discharged.

18. As has been emphasized by the Hon'ble Apex Court from time to time that in Contempt proceedings, the Tribunal is the accuser as well as Judge of the Accusation. Therefore, it behoves the Tribunal to act with great circumspection as far as possible by making all allowances from errors of judgment. Mere allegation that false statement or an inaccurate averment has been made in the reply filed by the Authority would not suffice or is adequate enough for this Tribunal to proceed in a Contempt. In the instant case, Learned Counsel for the Applicant has failed to establish, beyond reasonable doubt, that the alleged Contemnors have intentionally, deliberately or willfully made false averment in the compliance report.

19. The Tribunal is vested with the power of contempt which needs to be exercised as already stated with lot of circumspection and the objective is not to punish the official or parties indiscriminately just because interest of individual/Applicant has not been sub-served due to certain stand taken by the Respondents/alleged contemnors. The interest of public justice rather than the interest of individual/applicant laying complaint is always paramount.

20. Considering the observations made by the Hon'ble Apex Court and the reasons given therein, if the applicant is feeling aggrieved by the decision taken by the competent authority and is of the view that the same is not in accordance with the directions given by the Tribunal, then he has remedy to challenge the same before the appropriate forum and for the said purpose remedy to him does not lie under the contempt of Court Act. Considering the observations of the Hon'ble Apex Court and factual position of the case, we are of the view that the contempt petition is liable to be dismissed and is so ordered. The notices issued stand discharged.

No order as to costs.

Mr. Agarwal
(Navneet Kumar)
Member (J)


(D. C. Lakha)
Member (A)

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