

*Central Administrative Tribunal, Lucknow Bench, Lucknow*

**CCP No. 43/2012 in O.A.No. 604/2001**

**Reserved on 11.9.2014**

**Pronounced on 17/9/2014**

**Hon'ble Sri Navneet Kumar, Member (J)**  
**Hon'ble Smt. Jayati Chandra, Member (A)**

Jawahir aged about 50 years son of Ram Garib, Gang Man, Gang No. 12, PWI-I Office, Manauarbagh, Charbagh, Lucknow r/o village Naru Chakarawa, Post and P/s Bhore, District- Gopalganj (Bihar).

Applicant

By Advocate:- Sri S.C.Sitapuri

Versus

1. Jagdeep Rai, DRM, Northern Railway, Hazratganj, Lucknow.
2. Sarad Srivastava, PWI, Office of PWI-I (NR), Manauarbagh, Charbagh, Lucknow.

Respondents

By Advocate: Sri Rajendra Singh

**ORDER**

**By Hon'ble Sri Navneet Kumar, Member (J)**

The present Contempt Petition is preferred by the applicant for non-compliance of the order dated 22.2.2007 passed by the Tribunal in O.A. No. 604/2001, by virtue of which the Tribunal passed the following orders:-

On the basis of the above, we hold that the order of removal of the applicant from service dated 15.11.97 passed by respondent No.4 is not maintainable in law and is accordingly quashed and set aside with the consequential relief in favour of the applicant. The applicant will be reinstated on his post immediately w.e.f. the date of his removal from service i.e. 15.11.1997.

(ii) Respondents are also directed to regularize the period of absence of the applicant during the period of his treatment as per medical certificate of Tushar Kanti Ganguly by sanction of Medical/earned leave, due to him. He shall be paid salary and other allowances for the period covered by such leave.

(iii) The applicant will also be entitled to reimbursement of medical expenses incurred on his treatment for the entire period of his treatment.

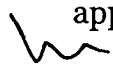
(iv) Since the order of respondent No. 4 dated 19.11.1997 has been struck down as per reasons stated above, the applicant will be deemed to be in service w.e.f. 15.11.1997 and will be entitled to all consequential benefits, on such reinstatement.

2. The order was duly communicated to the respondents and the respondents have also preferred the writ petition 665(SB) of 2010 before the Hon'ble High Court and the said writ petition was dismissed by means of order dated 2.7.2007. Subsequently, the applicant preferred the contempt petition No.1516 of 2011 before the Hon'ble High Court and the Hon'ble High Court passed an order on 7.9.2012 indicating therein that "After hearing learned counsel for both the parties, it appears that the substantial compliance of the order has been carried out. However, for the grievances, if any, the petitioner is at liberty to raise the same before the Central Administrative Tribunal, who has passed the original order, within a period of two months, if advised so. But presently, no contempt exists. Hence the contempt petition is dismissed with the aforesaid liberty."

3. After the decision of the Hon'ble High Court in contempt petition No. 1516 of 2011, the applicant preferred the present contempt petition and submits that the order of the Tribunal has not been fully complied with as such the respondents be punished accordingly.

4. On behalf of the respondents, the reply/compliance report is filed and submitted that the full compliance has been made and nothing survive to be adjudicated in the present contempt petition.

5. On behalf of the respondents, Rejoinder reply as well as Supple. Rejoinder reply is filed and through which it is indicated by the applicant that the salary from 28.7.1992 to 14.11.1997 is not paid to the applicant and during that period the applicant was admitted in the



Ranchi Mental Hospital, Ranchi and the respondents have also not paid the medical claim of Rs. 40,000/- to the applicant whereas original bill and vouchers were given to the opposite parties. On behalf of the applicant it is also indicated that the applicant was not paid bonus from 1996 to 1997 as well.

6. Heard the learned counsel for parties and perused the records.

7. It is indicated by the learned counsel for respondents through reply that in pursuance of the direction of the Tribunal, the applicant has been reinstated in service on 30.4.2008 with effect from the date of his removal i.e. 15.11.1997 and consequently, a sum of Rs. 7,24,522/- as full salary and allowance from 15.11.1997 to 30.4.2008 is paid to the applicant and w.e.f. 1.5.2008, he is drawing his regular salary. Apart from this, it is also submitted by the respondents that the period from 28.7.1992 to 24.8.1992 is treated as leave without pay on the basis of Railway Medical certificate. Since the applicant remained absent from duty from 25.8.1992 to 19.1.1993, as such, the said period was also treated to be as leave without pay. Not only this, the respondents have also indicated that the period from 17.8.1997 to 14.11.1997 is treated to be leave without pay. However, the period from 25.8.1992 to 19.1.1993 and 17.8.1997 to 14.11.1997 are not covered by the judgment but the same has also been regularized as the leave was due to the applicant as per leave Rules in accordance with the general directions and spirit of the Tribunal's order.

8. As regards the period of absence of the applicant during the period of his treatment as per medical certificate has been regularized by sanctioning Medical/ Earned leave due to the applicant and the applicant has been paid salary and other allowances for the period covered by such leave during the month of August, 2011 and a sum of Rs. 1036/- is already paid to the applicant. It is also indicted by the respondents that as per the certain paragraph of the judgment, the applicant remained under treatment of Dr. Ganguli from 20<sup>th</sup> January,

1993 to 16.8.1997, hence the said period has been regularized as leave without pay as no leave was due to him and from the period 9.8.1997 to 11.8.1997, the leave has been regularized as leave on average pay and further period from 12.8.1997 to 15.8.1997, the leave has been regularized as commuted leave and on 16.8.1997 it has been regularized as leave on half pay.

9. As regards, the reimbursement of medical expenses is concerned, it is indicated by the respondents that the applicant is required to submit his original bills for such medical expenses duly certified by the attending doctor after filling the prescribed proforma in accordance with Medical Manual but despite reminders, the same has not been submitted by the applicant and until or unless, the same is submitted the claim of medical reimbursement cannot be processed in terms of Medical Manual.

10. However, the respondents have categorically mentioned that the applicant has been reinstated in service w.e.f. 15.11.1997 after treating his removal order being nullity and a sum of Rs. 7,24,522/- has been paid to the applicant. The respondents have also annexed the service records of the applicant and chart of leave account of the applicant from 15.2.1978 to 1.1.1998.

11. The para 622 of the Medical Manual reads as under:-

“622. Forms for preferring claims:- The railway employee claiming reimbursement for expenses occurred on account of medical attendance and treatment in a government recognized hospital should claim in a prescribed form accompanied by the necessary documents indicated in the forms.”

12. The learned counsel for the respondents also relied upon the case of **J.S. Parihar Vs. Ganpat Duggar and others 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 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 <sup>294</sup> 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."

13. 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."

14. In the case of **Brahma Deo Tiwari Vs. Alok Tandon,**

**District Magistrate, Allahabad 2004 (1) AWC 543** the 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."

15. In the case of **Anil Kumar Shahi (2) Vs. Prof. Ram Sevak Yadav** (2008) 14 Supreme Court cases 115, the Hon'ble Apex Court held as under:-

"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 of an authority to whom direction is given, therefore, mere error of judgment with regard to the legal position does not constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the court order."

16. Apart from this, Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and others** reported in AIR 2001 SC 3468. has observed as under:-

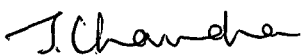
"Court directed for considering the case of the applicant for promotion. The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court."


17. 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.”**

18. 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 22.2.2007 passed in O.A. No. 604/2001.

19. 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)

HLS/-