

Reserved

**Central Administrative Tribunal Lucknow Bench Lucknow**

**Execution Application No. 2712/12**

**IN**

**Original Application No. 511/2010**

**This, the 5<sup>th</sup> of April, 2013**

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

Kinder Lal, aged about 33 years, adopted son of Late Shri Samle, resident of Gram & Post- Gautra, District- Hardoi.

**Applicant**

**By Advocate Sri Praveen Kumar.**

**Versus**

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad.

**Respondents**

**By Advocate Sri B. B. Tripathi.**

**(Reserved on 2.4.13.)**

**Order**

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

The present execution application has been preferred by the applicant for non-compliance of the order dated 21.09.2012 passed in O.A. No. 511/10.

2. The present O.A. was finally disposed of by means of an order dated 21.9.2012 whereby, the Tribunal passed the following orders:-

“Accordingly, the O.A. is allowed. The impugned order dated 30.9.2010 is hereby quashed. The respondents are directed to consider the case of the applicant for appointment on compassionate ground as per rules. The said exercise be completed within a period of six months and the decision so taken be communicated to the applicant.”

3. The learned counsel for the applicant has categorically pointed out that the order of the Tribunal was communicated to the respondents and the respondents have passed an order on 7.11.12. But this order is not the full compliance of the direction issued by the Tribunal, as

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such, the respondents have committed contempt of this Tribunal. As such, a suitable action may be taken against the respondents for non compliance of the order passed by this Tribunal.

4. The learned counsel appearing on behalf of the respondents filed their compliance report and in the compliance report, it is pointed out that the respondents vide order dated 7.11.12 has duly complied with the orders of the Tribunal and the Tribunal while deciding the O.A. directed the respondents to consider the case of the applicant for appointment on compassionate ground as per rules and as per rule position, the case of the applicant was considered and it was found that the applicant is not adopted son of the ex- employee and only on the basis of the Will, he is claiming appointment on compassionate ground whereas, the printed serial No. 11141/96 provide for compassionate appointment of the near relative. As such, the respondents have duly complied with the orders of the Tribunal and nothing survives to be adjudicated in the present execution application and the execution application is liable to be dismissed.

5. The learned appearing on behalf of the applicant filed their reply to the compliance report and once again pointed out that the order passed by the Tribunal is not comply with in totality and the printed serial No. 11141/96 was not taken at the time of hearing of the O.A., as such, the same cannot be taken at this stage.

6. Heard the counsel for the parties and perused the record.

7. The present O.A. was finally disposed off by means of an order dated 21.9.12 by this Tribunal and this Tribunal

while deciding the O.A. directed the respondents to consider the case of the applicant for grant of compassionate appointment as per rules and the said exercise was to be completed within a period of six months and the decision so taken to be communicated to the applicant. The respondents vide order dated 7.11.12 considered the case of the applicant in compliance of the order passed by the Tribunal and finally came to the conclusion that since the applicant is neither son of the deceased employee nor is adopted child. As such, he cannot be considered for compassionate appointment in the light of the instructions contained in printed serial No. 11141/96 the near relative can be considered for compassionate appointment. As such, it appears that substantial compliance has also been made and the respondents have fully complied with the orders passed by the Tribunal.

8. The Hon'ble Supreme Court in the case of J. S. Parihar Vs. Ganpat Duggar and Others reported in 1996 SCC (L&S) 1422, the Hon'ble Apex Court has been pleased to observe as under:-

“ 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 actions for the aggrieved party to avail of the opportunity of judicial review. However, 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 Single Judge could not be given to redraw the seniority list as in doing so the Single 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.”

9. Considering the averments made by the Hon'ble Apex Court and the order dated 7.11.12 passed by the DPO,

Muradabad, it is clear that the respondents have fully complied with the order of the Tribunal. It is also to be pointed out that the directions of the Tribunal was to consider the case of the applicant for appointment on compassionate ground and the respondents considered case of the applicant and passed the orders on 7.11.12. As such, nothing survives to be adjudicated in the present execution application.

10. Accordingly, the execution application is dismissed.

No order as to costs.

Navneet Kumar  
(Navneet Kumar)  
Member (J)

Vidya