

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

CCP No. 332/00039/2014 in O.A.No.234/1995

Order Reserved On 7.5.2015

Order Pronounced on 11-05-2015

**HON'BLE MR. NAVNEET KUMAR MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Dinesh Chandra Gupta aged about 44 years son of Sri Raja Ram Gupta, resident of village and Post Hariharpur, District- Pratapgarh.

Applicant

By Advocate: Sri Sudeep Kumar

Versus

Adya Prasad Tripathi , Senior Superintendent of Post, Pratapgarh Division, Pratapgarh.

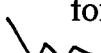
Respondents

By Advocate: Sri Deepak Shukla

ORDER

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

The present contempt petition is preferred by the applicants for non-compliance of the order dated 30th October, 2002 passed in O.A. No. 234/1995. The learned counsel for the applicant has also indicated that the private respondent of the O.A. preferred a writ petition before the Hon'ble High Court by means of Writ Petition No.1714 (SB) of 2002 and the said writ petition was disposed of with liberty to the respondents to take a fresh decision in accordance with law. Learned counsel for applicant has categorically indicated that respondents though passed an order on 8th July, 2014 but the said order is against the direction of the Tribunal as without reinstating the applicant, the respondents have passed the order dated 8.7.2014 and also no opportunity of hearing was provided to the applicant whereas the Tribunal while allowing the O.A. quashed the impugned order dated 20.10.94 and respondents were directed to reinstate the applicant forthwith on the post, in question.



2. Learned counsel for the applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **A.V. Papayya Sastri and others Vs. Govt. of A.P. and others reported in 2007 (3) AWC 2538 (SC)** and has indicated that Hon'ble Apex Court has defined the provision of doctrine of merger.

3. On behalf of the respondents, counter reply is filed and through counter reply it is indicated that since the order of the Tribunal merges with the final order of the Hon'ble High Court passed in Writ Petition No. 1714 (SB) of 2002 and the Hon'ble High Court made it clear that the respondents are at liberty to take a fresh decision in accordance with law and also observed that the impugned order of the Tribunal does not seem to suffer from any impropriety or illegality and the Tribunal has granted liberty to proceed afresh in accordance with law, as such there was no occasion to first reinstate the applicant and then pass any further order.

4. Learned counsel for respondents has relied upon a decision of the Hon'ble Apex Court in the case of **Anil Ratan Sarkar and others Vs. Hirak Ghosh and others reported in AIR 2002 Supreme Court 1405** and has also indicated that powerful weapon of contempt should be used with caution and should not be used sparingly. Apart from this, it is also indicated by the learned counsel for respondents that since the orders so passed by the respondents dated 8.7.2014 is already challenged by the applicant in O.A. No. 430/2014, as such present contempt petition is liable to be dismissed out-rightly.

5. No Rejoinder Reply is filed by the applicant.

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

7. The present contempt petition is preferred by the applicant for non-compliance of order dated 30th October, 2002 through which the Tribunal quashed the impugned order dated 20.10.94 and directed the respondents to reinstate the applicant. However, it was open for the respondents to proceed in the matter as per law. The order so passed

by the Tribunal was challenged before the Hon'ble High Court by the respondents No. 5 who was private respondents in the O.A. and the Hon'ble High Court observed that the impugned order passed by the Tribunal does not seem to suffer from any impropriety or illegality and disposed of the writ petition with liberty to the respondents to take a fresh decision in accordance with law. In pursuance thereof, the respondents passed an order dated 8.7.2014 in which the respondents indicated that on the basis of available records the services of Dinesh Chandra Gupta i.e. the applicant has already been terminated on account of not found in accordance with law, as such it is not proper to allow him to be reinstated. Accordingly, the representation of the applicant dated 5.3.2014 and 30.6.2014 are rejected.

8. It is also to be indicated that the applicant has already preferred an O.A. No. 430/2014 challenging the order dated 8th July, 2014, and the respondents have already passed an order in terms of liberty granted by the Hon'ble High Court. as such we do not find that respondents have committed any contempt.

9. 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 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. The Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and another reported in 2001 (7) SCC 530** has observed that "**the act being a powerful weapon in the hands of the law courts and the same must be exercised with due care and caution and in larger interest**". In the instant case, the order passed by the respondents has already been challenged by the applicant in O.A. No. 430/2014 and the same is still pending for final adjudication, as such we do not find any reason to proceed further in the present contempt petition. Accordingly, the contempt petition is dismissed. Notices issued to the respondents stand discharged.

J. Chandra
 (Ms. Jayati Chandra)
 Member (A)

HLS/-

Navneet Kumar
 (Navneet Kumar)
 Member (J)