

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

CCP 332/00036/2014 In O. A. No. 398 of 2010

Order Reserved On 31.03.2015

Order Pronounced on 28-04-2015

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

Mahendra Prakash, aged about 63, son of Late Shri Ganga Ram Resident of House No. 25 SA, Bajrang Nagar, Kanpur Road, Post Office Manas Nagar, Lucknow.

Applicant

By Advocate: Sri Praveen Kumar

Versus

1. Sri Pradeep Kumar, General Manager, Northern Railway, Baroda House, New Delhi.
2. Sri Jitendra Singh, Chief Works Manager, Northern Railway, Loco Workshop, Charbagh, Lucknow.
3. Sri Kaustubh Mani, Dy. Chief Mechanical Engineer (Diesel), Northern Railway, Loco Workshop, Charbagh, Lucknow.

Respondents

By Advocate: Sri S. Verma

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 10th April, 2014 passed in O.A.No. 398/2010, through which the Tribunal passed the following orders:-

“22. In view of the discussions made hereinabove, the original application is partly allowed. The respondents authorities are directed to take into account the totality of the circumstances and pass an order, which would be in commensurate with the misconduct committed by the applicant i.e. the act of subletting, within a period of three months from the date of receipt of copy of this order. Under the circumstances, there shall be no order as to costs.”

2. The learned counsel for applicant submits that the said order was duly communicated upon the respondents and the respondents

when not complied with the order of the Tribunal, the present contempt petition is preferred.

3. The respondents filed their reply and through reply it is indicated by the respondents that by means of order dated 19.6.2014, punishment of the applicant was reduced to compulsory retirement w.e.f. 22.4.2010, as such the order passed by the Tribunal has fully been complied with.

4. Learned counsel for applicant filed Rejoinder Reply and through Rejoinder, mostly the averments made in the contempt petition are reiterated and contents of compliance report are denied. Apart from this, it is also argued by the learned counsel for applicant that impugned order should have been passed by the President as the applicant is retired from service. Learned counsel for the applicant has also relied upon Rule 5(4) of Railway Servants (disciplinary and appeal) Rules, 1968 and has indicated that the respondents have not taken into account the provisions of the said Rules. Learned counsel for applicant has also relied upon Rule 9(5)(a) of Railway Service Pension Rules and has indicated that the same has not been taken into cognizance by the respondents.

5. In reply to the said objections raised by the learned counsel for applicant, respondents Counsel relied upon RBE No. 98/96 wherein it is indicated that in case where the penalty of dismissal/ removal/ compulsory retirement is set aside in appeal or review and the employee is reinstated in service with a reduced penalty, the reduced penalty takes effect from the date of reinstatement. The learned counsel for the respondents has also indicated that as per the order of the Tribunal, the authorities were given liberty to take into account the totality of the circumstances and pass an order which would be commensurate with the misconduct committed by the applicant. As such, instead of removal, the respondents have passed an order of compulsory retirement w.e.f. 22.4.2010.

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

7. The applicant was removed from service and has preferred an O.A. No. 398/2010 before this Tribunal and the said O.A. was finally allowed wherein the Tribunal was of the view that punishment of removal from service is shockingly the conscience of the Tribunal. Accordingly the same was set aside and the O.A. was partly allowed. The respondents authorities were directed to take into account the totality of the circumstances and pass an order which would be commensurate with the misconduct committed by the applicant. It is also to be indicated that at the time of delivery of judgment, the applicant has already been superannuated after attaining the age of superannuation. Accordingly the respondents have passed order of compulsory retirement w.e.f 22.4.2010 by means of their order dated 19.6.2014, as such it is explicitly clear that in terms of order of the Tribunal, the respondents have fully complied with the order passed by the Tribunal.

8. The 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.”

9. As observed by the Hon'ble Apex Court in the case of **Prithawi Nath Ram Vs State of Jharkhand and Others reported in AIR 2004 SC 4277**, the Hon'ble Apex Court has been pleased to observe as under:

“if any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the order cannot be urged in contempt proceedings. Right or wrong the order

has to be obeyed. Flouting an order of the Court would render the party liable for contempt. While dealing with an application for contempt the Court cannot traverse beyond the order, non -compliance of which is alleged. In other words, it cannot say what should not have been done or what should have been done. It cannot test correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction while dealing with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

10. In the case of **Bharat Cooking Coal Ltd. vs. State of Bihar** reported in 1987 (Supple.) SCC 394, the Hon'ble Apex Court has been pleased to observe as under:-

“2. After hearing learned counsel for the parties at quite some length, we were satisfied that the High Court was not justified in passing the impugned order. We accordingly by order dated 23-9-1987 vacated the aforesaid order of the High Court dated 3-1-1987 and also allowed the application made by the appellant for grant of a prohibitory order and restrained Respondent 4 Ram Nath Singh and his son Vijendra Singh and their agents and servants from lifting sludge/slurry from the lands covered by the notification under Section 9 of the Act, in terms of the registered indenture of lease dated 20-10-1984 executed by the State Government in favour of Respondent 4 and further directed that all operations carried on by them shall stop forthwith. There was a further direction made with regard to the withdrawal of the amounts deposited by Respondent 4 and his son towards the price of slurry collected by them in pursuance of the order passed by the High Court dated 15-1-1985 on furnishing bank guarantee. At the conclusion of the hearing we were inclined to the view that there was no contempt. The reasons therefor follow.

5. The expression “status quo” is undoubtedly a term of ambiguity and at times gives rise to doubt and difficulty. According to the ordinary legal connotation, the term “status quo” implies the existing state of things at any given point of time. The qualifying words “as in the High Court” clearly limit the scope and effect of the status quo order. In the present case, the High Court determined only one question, namely, that slurry was not coal or mineral. It refrained from entering into the question of right or title of the parties on the ground that it involved investigation into disputed questions of facts. Therefore, apart from the abstract question that slurry was not coal or mineral, the impugned judgment does not adjudicate upon the rights of the parties. Viewed from that angle, it is obvious that status quo as in the High Court cannot mean anything else except status quo as existing when the matter was pending in the High Court before the

judgment was delivered. Both the parties understood the scope and effect of the status quo order as meaning the state of things existing while the writ petition was still pending i.e. till the delivery of the judgment by the High Court. Respondent 4 moved the High Court in Cri MP No. 4841/86(8) without impleading the appellant herein and obtained the impugned order from the High Court dated 3-1-1987 which we have vacated. The proper course for Respondent 4 to have adopted was to have approached this Court to seek clarification, if he had any doubt as to the meaning and effect of the status quo order. We highly deprecate the conduct of Respondent 4 for having approached the High Court and obtained the impugned order by suppressing the fact that this Court had passed the status quo order. Even so, strictly speaking, no case for contempt is made out on the plain terms of the status quo order. The parties were relegated back to the position that obtained while the writ petition was pending. They were therefore subject to the order passed by the High Court dated 15-1-1985. No other conclusion is possible looking to the terms of the status quo order.”

11. Considering the observations made by the Hon'ble Apex Court as well as facts of the case, the order passed by the Tribunal has fully been complied with and respondents have passed an order on 19.6.2014, as such nothing survive to be adjudicated. Accordingly the CCP is dismissed. Notices issued to the respondents stand discharged.

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

Navneet Kumar
 (Navneet Kumar)
 Member (J)

HLS/-