

*Central Administrative Tribunal, Lucknow Bench, Lucknow*

**CCP No. 332/00020/2014 in O.A.No. 131/2011**

**Reserved on 25.9.2014**

**Pronounced on 27-10-2014**

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

M.C.Joshi aged about 73 years son of lat Sri N.D. Joshi, r/o 548/309, Mohani Sadan, Surya Nagar, Manak Nagar, Lucknow

Applicant

By Advocate:- Sri S.K. Baneerji

Versus

1. Sri V.K.Gupta, the General Manager, Northern Railway, Head quarter Office, Baroda Hosue, New Delhi-110001.
2. Sri Jagdeep Rai, the Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Madam Chetna Kumar, the Finance Adviser and Chief Accounts Officer, Northern Railway, Head Quarter Office, Baroda House, New Delhi-110001.

Respondents

By Advocate: Sri S.Verma

### **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 1<sup>st</sup> May, 2013 passed in O.A.No. 131/2011, through which the Tribunal directed as under:-

“13. In view of the above, the O.A. is partly allowed. The respondents are directed to fix his pay at the rate of Rs. 9700/- w.e.f. December, 1998 and then issue revised PPO in the light of the discussions made herein above in this order. The respondents are also directed to further fix the pay of the applicant as per VI th Pay Commission report in accordance with rules and also to work out and pay the entire arrears of pay/ retiral benefits, if any along with interest at the rate of 9% per annum on delayed payment w.e.f. 25.3.2011 (the date of filing this O.A.) till the date of actual payment.. The entire exercise may be completed positively within 3 months from the date of this order. No order as to costs. “

2. After the order of the Tribunal, the copy of the order was duly communicated to the respondents and the respondents also filed a writ petition No. 742 (SB) of 2014, in which no interim stay was

granted by the Hon'ble High Court. This Tribunal, by means of order dated 24.7.2014 directed the respondents to file compliance report within a period of 2 weeks. In pursuance of the said directions, the respondents have filed compliance report and through compliance report, it is indicted by the learned counsel for respondents that in pursuance of the order of the Tribunal, an order dated 13.8.2014 has been passed in which the pay of the applicant is fixed at Rs.9475/- w.e.f. 1.12.1997 and RS. 9700/- w.e.f. 1.12.1998. Apart from this, his settlement dues is also directed to be revised, accordingly, including revision of pension by issuing revised PPO and further revise pension as per VI CPC and payment is directed to be arranged along with arrears of pay and pensionary benefits along with 9% interest w.e.f. 25.3.2011 till the date of actual payment but the said order will remain subject to any order passed in the pending writ petition No. 742 (SB) of 2014. Learned counsel for the respondents has also submitted copy of revised Pension Payment Advice which was issued on 20<sup>th</sup> August, 2014 and provided that the benefit of 6<sup>th</sup> CPC was also extended to the applicant by means of order dated 20<sup>th</sup> August, 2014.

3. The learned counsel appearing on behalf of the applicant has categorically indicated that there was no direction of the Hon'ble High Court to make payment in regard to taking a decision subject to final out come of the writ petition and the respondents on their own came to the conclusion that the decision so taken by them shall remain subject to final out come of the writ petition. Learned counsel for applicant has also relied upon a decision of the Hon'ble High Court passed in writ petition No. 1940 (SB) of 2009 and has indicated that since this writ petition is dismissed, as such the respondents is under obligation to comply with the orders of the Tribunal.

4. In reply to this, the learned counsel for respondents has indicated that the writ petition No. 1940 (SB) of 2009 was filed by the respondents challenging the order dated 2<sup>nd</sup> September, 2008 passed

in O.A. No.456/2007 whereas the present CCP is filed challenging the order of the Tribunal passed in O.A.No. 131/2011 on 1<sup>st</sup> May, 2013, as such, this issue is entirely different with the issue raised in the present CCP.

5. Learned counsel for applicant has also relied upon a decision of the Hon'ble Apex Court in the case of **Director of Education ,Uttranchal and others Vs. Ved Prakash Joshi and others reported in(2005) 6 Supreme Court cases 98** and has indicated that "*Right or wrong, the order has to be obeyed and the court exercising contempt jurisdiction cannot take upon itself power to decide the original proceedings in a manner not dealt with by the court passing the judgment or order.*" The learned counsel for applicant also relied upon on another decision of the Hon'ble Apex Court in the case of **Maninderjit Singh Bitta Vs. Union of India and others reported in (2012) 4 Supreme Court Cases, 568.**

6. The learned counsel for respondents has categorically indicated that the order passed by the Tribunal is fully complied with by means of order dated 13.8.2014 subject to final outcome of the writ petition filed by the respondents and in pursuance thereof the pay of the applicant as well as revised PPO has also been issued. Learned counsel for respondents has also relied upon a decision of the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and an others reported in AIR 2001 SC 3468** as well as in the case of **J.S. Parihar Vs. Ganpat Duggar and others AIR 1997 Supreme Court 113.**

7. In the case of **J.S. Parihar Vs. Ganpat Duggar and others(supra)**, the Hon'ble 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.”

8. 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.”

9. 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."

10. 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 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."

11. 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 an others (supra)**, 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."

12. Hon'ble Apex Court in the case of **Commissioner, Karnataka Housing Board Vs. C. Muddaiah** reported in **(2007) 7 Supreme Court Cases 689** pointed out that the "once

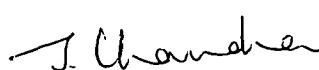
*direction is issued by a competent court, it has to be obeyed and implemented without any reservation."*

13. 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:

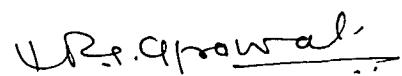
**"if any party concerned is aggrieved by the order which in its opinion is wrong or against rules or its implementation is neither practicable nor feasible, it should always either approach to the Court that passed the order or invoke jurisdiction of the Appellate Court. Rightness or wrongness of the 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."**

14. 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 1.5.2013 passed in O.A. No. 131/2011.

15. 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.

  
**(Ms. Jayati Chandra)**

**Member (A)**

  
**(Navneet Kumar)**  
**Member (J)**

HLS/-