

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

CCP No. 27 of 2015

In re.

Original Application No. 333 of 2008

Reserved on 25th day of February, 2016
Pronounced on 29.02.2016

**Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A**

Dinesh Prasad, aged about 44 years, S/o Sri Raj Deo Ram, R/o Village Mishrauli, Post Bhoparura, District Mau presenting residing at 8/590 Vikas Nagar, Lucknow.

.....Applicant

By Advocate : Sri Anurag Srivastava

Versus.

1. Sri Ajai Kumar Puthia, General Manager(P), Northern Railway, Baroda House, New Delhi.
2. Sri Janardan Singh, DRM (P), N.R., Hazratganj, Lucknow.
3. Sri Arun Sharma, DRM (P), Northern Railway, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri S. Verma.

O R D E R

By Ms. Jayati Chandra, Member-A

The present Contempt petition has been filed by the applicant for alleged non-compliance of the judgment and order of this Tribunal dated 15th July, 2017 passed in Original Application No. 333 of 2008. The operative portion of the order reads as under:-

"Considering all the facts and circumstances of the case, we are of the view that the applicant has already suffered a lot due to mistake of NCVT in mentioning the wrong year of passing in the certificate and underwent two years apprenticeship training instead of one year and now he has appeared in AITT in the year 2010. The O.A. is partially allowed and respondent no.3 is directed to declare the result of AITT in respect of the applicant within one month from the date of receipt of the order. The applicant shall also get the consequential benefits from the date of declaring the result of AITT, if he succeeds. No order as to costs."

2. Learned counsel for the applicant has stated that although in partial compliance of the order, the respondents-contemnors had passed the order dated 30.7.2014 by which result of AITT in

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respect of O.A. applicant has been declared. The O.A. applicant has been granted the National Apprenticeship Certificate no. 174150. However, consequential benefits i.e. offer of employment flowing from the date of declaring of result of AITT has not been given to him.

3. The contemnors-respondents stated that in compliance of order dated 15.7.2014, the applicant has been granted AITT certificate. The applicant had received his apprenticeship training for Fitter trade under Apprenticeship Act, 1961 and he is bound by the provisions of Section 22 (1) of the said Act. The said provision reads as follows:-

"It shall not be obligatory on the part of the employer to offer any employment to any apprentice who has completed the period of his apprenticeship training in his establishment, nor shall it be obligatory on the part of the apprentice to accept an employment under the employer."

4. While passing the order in O.A. no. 333 of 2008, there was no liberty was granted to the O.A. applicant for retrospective appointment, rather O.A. applicant was granted partial relief in the shape of consequential benefits from the date of declaring the result if he succeeds. There was no direction to consider and engage him as Substitute even if there is no administrative exigency for such engagement. The applicant's matter was referred to the Northern Railway Headquarters office, who opined that due to non-existence of any administrative exigency for considering the engagement of course completed Act Apprentice as Substitute, therefore, consequential benefits cannot be extended to include grant of such engagement. Para 1512 and 1513 of IREM Vol. I grant the following benefits to the Course completed Apprentice, which reads as under:-

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1512 "Substitutes" are persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant.

1513. Circumstances under which substitutes can be recruited :

(i) Ordinarily there should be no occasion to engage "substitutes" having regard to the fact that practically in all categories of railway servants leave reserve has been provided for. However, when owing to an abnormally high rate of absentees the leave reserve may become inadequate or ineffective as in the case of heavy sickness, or where the leave reserve is available but it is not possible to provide the same, say at a wayside station, and it may become absolutely necessary to engage substitutes even in vacancies of short duration.

(ii) As far as possible Substitutes should be drawn from a panel of suitable candidates selected from Group 'C' and 'D' posts and should be engaged subject to the observations made in (i) above, only in the following circumstances :

(a) Against regular vacancies of unskilled and other categories of Group 'D' staff requiring replacement for which arrangements cannot be made within the existing leave reserve.

(b) Against a chain vacancy in the lower category of Group 'D' staff arising out of the incumbent in a higher Group 'D' category being on leave, where it is not possible to fill the post from within the existing leave reserve.

(c) Against posts in categories for which no leave reserve has been provided.

(d) Against vacancies in other circumstances notified by the Railway Board from time to time.

Further, the applicant's case shall be considered for his engagement as Substitute in terms of order dated 15.7.2014 passed in O.A. no. 333 of 2008 whenever any administrative exigency for such engagement would arise.

5. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

6. As observed by the Hon'ble Supreme Court in the case of **J.S. Parihar Vs. Ganpat Duggar reported in 1996 Legal Eagle (SC) 1385** and also in the case of **Prithavi Nath Ram Vs. State of Jharkhand reported in AIR 2004 SC 4277** the Hon'ble Supreme Court has held that Court dealing with application for contempt of court cannot traverse beyond the order. It cannot test

correctness or otherwise of the order or give additional direction or delete any direction. That would be exercising review jurisdiction with an application for initiation of contempt proceedings. The same would be impermissible and indefensible.

7. Apart from this, the Hon'ble Supreme Court in the case of **Chhote Ram Vs. Urvarshi Gulati & Another 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 even 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."

8. In this case, the operative portion of the order dated 15.7.2014 passed in O.A. no. 333 of 2008 very clearly states that the O.A. is partially allowed and clear direction is to declare the result of AITT in a time bound manner. The applicant shall also get consequential benefits from the date of declaring the result of AITT. The consequential benefits have not been spelt out and the contemnors-respondents have given an undertaking that in terms of Apprenticeship Act and subsequent to declaration of his result, he shall be considered for Substitute whenever any administrative exigency for such engagement would arise. Therefore, in view of the assurance given by the contemnors-respondents, we find that the respondents/contemnors have not acted in a manner which can be construed to be a willful disobedience of the order of this Tribunal dated 15.7.2014 passed in Original Application No. 333 of 2008.

9. In view of the above, the CCP fails and is accordingly dismissed. Notices issued to the respondents are hereby discharged.

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

Navneet Kumar
 (Navneet Kumar)
 Member (J)