

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 332/00015/2015

Reserved on 28.10.2015

Pronounced on 17-11-2015

Hon'ble Mr. Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Smt. Damyanti Devi aged about 67 years widow of late Sri Daya Shankar resident of SS-II, D1/938, LDA Colony, Kanpur Road, Lucknow.

By Advocate: Sri Praveen Kumar

Petitioner

Versus

1. Shri Rajeev Mishra, General Manager, North Eastern Railway, Gorakhpur.
2. Shri Anoop Kumar, Divisional Railway Manager, North Eastern Railway, Ashok Marg, Lucknow.

By Advocate: Sri Rajendra Singh

Respondents

ORDER

By Sri Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non-compliance of the Tribunal's order dated 9th September, 2014 passed in O.A. No. 208/2009.

2. Learned counsel for respondents filed compliance affidavit and through compliance affidavit, it is indicated that in pursuance of the order of the Tribunal, the revised PPO has been issued and the applicant has been paid the difference of gratuity and leave encashment and the same has been credited in the Saving Bank account of the applicant on 17.3.2015. Apart from this, it is also indicated by the respondents that the interest has also been paid on the arrears of pension and amount to the tune of Rs. 22,879.64 has been credited in the Saving Bank account of the applicant. By means of order passed by the Tribunal, the Tribunal directed the respondents to grant notional promotion on the post of Clerk since 1.9.1987 and accordingly, re-fix the pay and pension of the applicant and it is also indicated that since the applicant has

already died during the pendency of the OA., as such, pay the arrears of pay and allowances as well as arrears of pension /family pension along with interest @ 8% per annum till the date of actual payment.

3. After perusal of the compliance affidavit, it shows that respondents have issued the PPO on 9.3.2015. Not only this, the respondents have also granted the proforma promotion on Group C in the pay scale of Rs. 950-1500/- w.e.f. 1.9.1987 which continued till his retirement i.e. 30.6.1995. Not only this, the respondents in their compliance affidavit pointed out that the applicant has been paid the difference of gratuity and leave encashment amounting to Rs. 2556/- and Rs. 720/- respectively and he has also been paid interest @ 8% per annum on the arrears of pension and amount to the tune of Rs. 22879.64/- has been credited in the Saving Bank account of the applicant.

4. Considering the submissions made by the learned counsel for parties, it appears that the respondents have fully complied with the orders of the Tribunal.

5. 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 ²⁹⁴ 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."

6. 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."

7. In the case of **Shail Raj Kishore , Secretary, Education basic, U.P. Lucknow and others** 2004 (3) AWC 2444 the 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."

8. 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 anothers reported in AIR 2001 SC 3468**. 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.”

9. Considering the observations made by the Hon'ble Apex Court and facts of the case, we do not find that respondents have committed any contempt of order passed by the Tribunal and the order passed by the Tribunal has fully been complied with as such nothing survive to be adjudicated in the present contempt petition. Accordingly, the contempt petition is dismissed. The notices issued stand discharged. No order as to costs.

J. Chandra.

**(JAYATI CHANDRA)
MEMBER (A)**

Navneet Kumar
**(NAVNEET KUMAR)
MEMBER (J)**

HLS/-