

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 332/00026/2015 in O.A.No. 100/2009

Reserved on 2.9.2015

Pronounced on 10-09-2015

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Vinod Kumar Srivastava aged about 54 years son of late Shambhoo Dayal Srivastava resident of village Haibat Mau, Police Station Mohanlal Ganj, Rae Bareilly Road, Lucknow presently posted as Motor Driver Grade I, Karshak Vitran, Electricity Division, Northern Railway, Lucknow.

Petitioner

By Advocate: Sri Ganesh Gupta

Versus

1. Sri Anil Kumar Lahoti, Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
2. Sri Janardan Singh, Senior Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
3. Sri Mukesh Kumar, Assistant Personnel Officer, Divisional Railway, Northern Railway, Hazratganj, Lucknow

Respondents

By Advocate: Sri D.K.Mishra

ORDER

By Sri Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non-compliance of the order dated 6th August, 2014 passed in O.A. No. 100/2009 through which the Tribunal passed the following orders:-

"8. In view of the above, the O.A. succeeds. The impugned order dated 27.11.2009 (Annexure-24) and the seniority list dated 8/09.09.2008 in so far as it relates to the applicant is quashed. The respondents are directed to assign the correct seniority to the applicant and grant promotion on the post of Motor Vehicle Driver Grade II in the scale of Rs. 4000-6000 from the date when his immediate juniors have been considered and promoted on the said post. This exercise shall be completed within a period of four months from the

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date of receipt of a certified copy of this order. No order as to costs.”

2. While allowing the O.A., this Tribunal directed the respondents to assign the correct seniority to the applicant and grant promotion on the post of Motor Vehicle Driver Grade II in the scale of Rs. 4000-6000/- from the date when his immediate juniors have been considered and promoted.

3. Learned counsel for respondents filed their compliance affidavit and through which it is indicated that seniority of the applicant is revised and he has been assigned seniority in the Motor Vehicle Driver Grade III scale Rs. 3050-4590 dated 8/9.9.2008 and at present the applicant is working as Motor Vehicle Driver Grade I P.B. -I, 5200-20200/- Grade Pay Rs. 2800/- w.e.f. 3.1.2012 who was promoted as Motor Vehicle Driver Grade I w.e.f. 3.1.2011 on proforma basis at par with Junior Sri Sanjay Kumar Dwivedi. Learned counsel for respondents has also annexed an order dated 26th March, 2015 through which it is indicated that revised seniority position of the applicant is above Sri Rakesh Kumar and below to Sri Dinesh C. Srivastava and date of promotion as Motor Vehicle Driver Grade II, Grade Pay Rs. 2400/- is 7.6.2005. It is also indicated by the respondents that the date of promotion of Motor Vehicle Driver Grade II in respect of Sanjay Kumar Drivedi is also 7.6.2005 who is junior to the applicant. Learned counsel for respondents also categorically indicated that in pursuance of the said order, the respondents have fully complied with the Tribunal's order and nothing requires further to be adjudicated in the present contempt petition.

4. The bare perusal of the entire material available on record shows that the order passed by the Tribunal have been fully complied with.

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**

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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 **Brahma Deo Tiwari Vs. Alok Tandon, District Magistrate, Allahabad 2004 (1) AWC 543** the 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.”

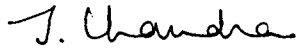
8. Apart from this, the learned counsel for the respondents relied upon on the decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and anothers reported in AIR 2001 SC 3468**. The Hon'ble Apex Court has observed as under:-

“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 as well as on the basis of facts of the case, it appears that there is no willful disobedience on the part of the respondents and respondents have fully complied with the orders of the Tribunal and issued the detailed order dated 26.3.2015 in compliance of the



Tribunal's order. As such contempt petition is dismissed. Notices issued to the respondents stands discharged.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-