

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

CCP No. 332/00048/2015 in O.A. No.414/2009

Order Reserved on 23.2.2016

Order Pronounced on 02/3/16

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

R.D. Tiwari aged about 78 years retired SPOs Bsti, son of Sri Ratan Lal Tewari, resident of village Misri Tewari Ka Purwa, Hamlet of Umapur via Mirmau, District- Barabanki (died)

- 1/1. Manoj Kumar Tewari aged about 38 years son of R.D. Tewari resident of 129-B, Kandhari Bazar, Rakabganj, Faizabad.
- 1/2. Rajendra Kumar Tewari aged about 48 years son of R.D. Tewari.
- 1/3. Rajesh Kumar Tewari aged about 45 years son of late R.D. Tewari, resident of Misri Tewari Ka Purwa, P.O. Umapur via Miramau, Faizabad.
- 1/4. Devendra Kumar Tewari aged about 32 years son of late Sri R.D. Tewari, resident of 129-B, kandhari Bazar, Rakabganj, Faizabad.

Applicants

By Advocate: Sri R.S. Gupta

Versus

Ms. Sarita Singh Chief Post Master Genera, U.P. Circle, Lucknow.

Respondents

By Advocate: Sri Alok Trivedi

ORDER

By Hon'ble Sri Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non-compliance of order dated 18.9.2014 passed in O.A. No. 414/2009 through which the Tribunal directed the applicant to provide a complete details of his T.A. bills to the respondent No. 2 within two months and the respondent No. 2 is also directed to dispose of the same within a period of six months. In pursuance of the same, the applicant submitted the representation dated 7.11.2014 wherein he has indicated the discrepancies. The respondents through compliance affidavit indicated that representation dated 7.11.2014 is also not a fresh representation but it contains the photo copy of old representation dated 27.3.2008 which has already been decided by the

competent authority through order dated 29.1.2009. Accordingly, the respondents passed the order on 11.9.2015 indicating about the disposal of the representation.

2. Learned counsel for the applicant submits that respondents have not disposed of the representation of the applicant, as such respondents have not complied with the order of the Tribunal.

3. On behalf of the respondents, the compliance affidavit is filed and along with the compliance affidavit, the respondents have annexed the order dated 11.9.2015 through which, it is indicated that the respondents have taken a decision on the applicant's representation duly submitted in compliance of order of the Tribunal passed in O.A. No. 414/2009 on 18.9.2014. Accordingly, the learned counsel for respondents have categorically indicated that in pursuance of the order of the Tribunal, the respondents have fully complied with the order of the Tribunal as such, nothing survive to be adjudicated in the present contempt petition.

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

5. Through order dated 18.9.2014, the applicant was directed to provide complete details of his T.A. bills and the same was required to be disposed of within a period of six months. The applicant submitted a representation on 7.11.2014 through which he has indicated five points in the representation which are as follows:-

i) By SSPOs LKO in 29 TA bills from Sept 2015 to Jan 2008 amount unlawfully deducted in TA bills without any notice as detailed month or

ii) By SSPOs Faizabad in 19 TA bills from March to February 2008 Amount unlawfully deducted as shown.

iii) By SPOs Sultanpur in 3 TA bills for January 2005 Feb 2005 and March 2005 Amount deducted is Rs. 256/- 256/- & 513/- respectively.

iv) By SPOs Basti in 10 TA bills from December 2005 to Oct. 2005, Amount unlawfully deducted as detailed against each month.

v) By SPOs Gonda in 22 TA bills from January 2006 to Oct 2007

Amount unlawfully deducted as given against each month.

6. Along with the said representation, the applicant has also taken cognizance of earlier detailed representation dated 27.3.2008 as contained in Annexure No. 3 to the contempt petition. In pursuance of the same, the respondents passed as order on 11.9.2015 indicating therein that his earlier representation dated 27.3.2008 is already decided and decision is also communicated to the applicant through order dated 29.1.2009 and current representation of the applicant dated 7.11.2014 is also considered and decided by the respondents through order dated 11.9.2015. Under such circumstances, the respondents have fully complied with the order of the Tribunal.

7. 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 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** 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."

10. 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."

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 others 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."

12. 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 respondents have passed the order on 11.9.2015 in compliance of the direction of the Tribunal's order, as such nothing survive to be adjudicated in the present contempt petition. Accordingly, the contempt petition is dismissed. The notice issued stands discharged. No order as to costs.

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

HLS/-

V.P. Agarwal
(Navneet Kumar)
Member (J)