

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 332/00014/2015 in O.A. No. 397/2009

Reserved on 19.11.2015

Pronounced on 07-12-2015

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

S.S. Dubey aged about 61 years son of late Sri Shadhu Sharan Dubey r/o village and Post Office Sahuwa Kol, District- Gorakhpur.

Petitioner

By Advocate: Sri Amit Verma for Sri A.Moin

Versus

1. Rajeev Mishra , General Manager, Ministry of Railways (Railway Board), North Eastern Railway, Gorakhpur.
2. O.P. Agarwal, Principal Chief Engineer, North Eastern Railway, Gorakhpur.
3. S.K. Sapra, Additional Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
4. Jitendra Kumar, Senior Divisional Engineer (Coordination), North Eastern Railway, Lucknow Division, Lucknow.

Respondents

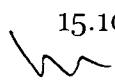
By Advocate: Sri Rajendra Singh

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 4.8.2014 passed in O.A. No. 397 of 2009 through which the Tribunal quashed the order passed by the Disciplinary Authority, Appellate Authority and revisional authority and also directed that the applicant be reinstated forthwith and it was made clear that since the applicant has not worked during the period of punishment, as such he is not entitled for any salary.

2. Against the order passed by the Tribunal, the respondents preferred a writ petition Before the Hon'ble High Court through writ petition No. 148 (SB) of 2015. During the pendency of the writ petition, the respondents filed their compliance affidavit on 15.10.2015 after serving copy to the learned counsel for applicant



and through which the respondents have categorically indicated that vide order dated 6.10.2015, the respondents quashed the orders dated 3.7.2008, 19.6.2009 and 31.8.2009 and reinstated the applicant with pay band of Rs. 4600/- and the said order will remain subject to final outcome of the writ petition No. 148(SB)/2015.

3. It is also made clear by the respondents that the applicant will not be entitled for any back wages and has also issued PPO in respect of the applicant and admissible dues were also paid.

4. However, the learned counsel for the applicant filed their reply /objection to the compliance affidavit and has indicated that the order passed by the Tribunal has not been complied with

5. The bare perusal of the pleadings available on record and compliance affidavit filed by the respondents shows that respondents quashed the orders dated 3.7.2008, 18/19.6.2009 and 17/31.8.2009 and also issued the PPO in respect of the applicant along with the same respondents have also paid the admissible dues to the applicant.

6. 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

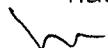
in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate 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.”

7. 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.”

8. The Hon'ble Apex Court in the case of **K.G. Derasari and another Vs. Union of India and others reported in 2002 Supreme Court Cases (L&S) 756** has been pleased to observe that Tribunal while considering the petition under Section 17 cannot issue a direction which had the effect of review of its original order. In an application of contempt the Tribunal is not entitled to consider the legality of its earlier order which has reached finality and where the same has been complied with or not.”

9. The Hon'ble Apex Court in the case **Prithawi Nath Ram Vs State of Jharkhand and Others reported in AIR 2004 SC 4277**, has been pleased to observe that:-



"Court dealing with contempt cannot traverse beyond the order."

10. 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 to the respondents stand discharged. No order as to costs.

J.Chandrase .

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

Navneet Kumar

**(NAVNEET KUMAR)
MEMBER (J)**

HLS/-