

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 332/332/00021/2015 in O.A. No. 228/2008

Reserved on 17.11.2015

Pronounced on 07-12-2015

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

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

Data Ram Srivastava aged about 85 years son of late Deep Narain Lal Srivastava, resident of C-35, Sector 6, Jankipuram Extension, Lucknow.

Petitioner

By Advocate: Sri M.A. Siddiqui

Versus

1. Sri Rajeev Mishra, General Manager, N.E. Railway, Gorakhpur.
2. Sri Anup Kumar, DRM, NE Railway, Ashok Marg, Lucknow.
3. Sri S.R. Singh, Senior DOM, NE Railway, Ashok Marg, Lucknow.
4. Sri P.B. Prasad, Senior DPO, NE Railway, Ashok Marg, 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 14th July, 2014 passed in O.A.No. 228/2008 through which the Tribunal passed the following orders:-

"13. The applicant is entitled to the consequential benefit of his notional pay fixation by the way of revised pension fixation and the arrears of pension so fixed. The O.A. is therefore allowed in the following terms:-

- (1) Order dated 17.10.2007 (Annexure No.A-7) is quashed.
- (2) Payment of Rs. 12,534/- admittedly withheld must be made.



- (3) The respondents are directed to issue revised order of fixation of pension and other retiral benefits as a result of notional pay fixation w.e.f. 14.10.1987.
- (4) The applicant is entitled to payment of arrears of pension from the date of his retirement.
- (5) Same may be paid along with 8% per annum simple rate of interest from the date of retirement to the actual date of payment.
- (6) The above payments are to be made within 6 months of communication of this order.

No order as to costs"

2. On behalf of the respondents, detailed reply is filed. Along with reply, respondents have annexed an order dated 29.5.2015 through which it is indicated that the respondents have complied with the order of the Tribunal and has also paid a sum of Rs. 4142/- as difference of commuted value of pension, Rs. 3300/- towards difference of DCRG, Rs. 1895/- towards difference of leave encashment, as such total amount of Rs. 9337/- has been paid and also paid interest to the tune of Rs. 20043/- from 31.7.88 till 31.5.2015. Accordingly an amount of Rs. 29380/- has been paid to the applicant and the same has been deposited in Punjab National Bank on 3.6.2015.

3. However, the said amount has been denied by the applicant and it has been indicated that the applicant is liable to be paid more amount than the amount already been paid. This Tribunal cannot calculate the amount which is to be paid to the applicant and bare perusal of the compliance report shows that the order passed by the Tribunal has been fully complied with.

4. 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."

5. 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."

6. 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.

J. Chandra.
(JAYATI CHANDRA)
MEMBER (A)

Navneet Kumar
(NAVNEET KUMAR)
MEMBER (J)

HLS/-