

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

C.C.P. no. 64/2003

(O.A. no. 232/94)

Lucknow this the 13th day of August, 2004.

HON. SHRI S.P. ARYA, MEMBER(A)

HON. SHRI M.L. SAHNI, MEMBER(J)

1. Abdul Kareem Khan aged about 51 years, son of late Azimullah Khan working as Ticket Collector North Eastern Railway, Basti.
2. Jameel Ahmad, aged about 53 years, son of late Tahir Ali, Ticket Collector, N.E. Railway Gonda.
3. Jagdish Prasad aged about 54 years son of late Ram Das Ex Fireman II, Diesel Lobby, Gonda.
4. Habibullah aged about 53 years, son of late Abdulah, Fitter Carriage & Wagon Depot, North Eastern Railway Gorakhpur.
5. Mohd. Nissar aged about 45 years son of Shah Mohammad, Diesel Assistant, Diesel Lobby, North Eastern Railway Gonda.

Applicants.

By Advocate Shri A. Moin.

versus

1. Shri V.K. Dutta, D.R.M. N.E. Railway, Lucknow.
2. Sri Shailendra Kumar, D.R.M. (P) N.E. Railway, Lucknow.

Respondents.

By Advocate Shri Arvind Kumar.

O R D E R

BY M.L. SAHNI, MEMBER(J)

This C.C.P. in O. A. no. 232/94 is pending under consideration since 4.8.03 and it is ~~stated~~ that ~~the~~ in view of the non-compliance of the order dated 11.11.02, the respondents are ^Aliable to be proceeded against for ~~having~~ deliberately and wilfully disobeying the Tribunal's order whereby the respondents were directed to promote the applicants to the next higher scale of Rs 9504500 adjusting personal pay in accordance with rules and then fixing their pay in the higher scale accordingly.

2. The respondents, in their reply have submitted that they have filed a writ petition No. 507(S/B) of 2003 against the order/judgment dated 11.11.02 and their application for interim relief is pending which, however, could not be listed due to paucity of time so far. They accordingly, prayed that the contempt proceedings against the respondents be kept in abeyance till disposal of the writ petition in view of the settled law. The respondents have accordingly placed reliance on certain judgments of the Hon'ble Supreme Court reported as Modern Food Insutries(India) Ltd. vs. Sachidanand Das (1995 Supp(4) SCC, 465 and State of J&K vs. Mohd. yaqoob Khan (1992)4 SCC,167) and the full Bench decision in Criminal appeal No. 841/01 R.A. Avadhesh vs. Lalji Yadav decided on 20.8.01. It is also submitted that in view of the decision taken by this Tribunal in similar matters, ~~reliance upon~~ ^{following} the law as laid down by this ^{Apex Court} Tribunal, the proceedings be either kept in abeyance or dismissed with liberty to applicant to file fresh petition if the respondents fail to succeed in the writ petition or their prayer for interim relief is rejected.

3. We have heard the learned counsel for the parties and have thoughtfully considered the rival contentions.

4. The learned counsel for the applicant has placed reliance on a recent judgment passed in Ghaziabad Development Authority vs. Balbir Singh (2004(5)SCC, 65, wherein their lordships have clarified that unless there is stay obtained from a higher forum, the mere fact of filing an appeal/revision will not entitle the authority to not ^{to} comply with the order of the Forum. It is further observed that even though the authority may have filed an appeal/revision, if no stay is obtained or if stay is refused, the order must be complied with..

4. The respondents have relied upon the decsision of this Bench in C.C.P. 29/2003 in O.A 4/2002 and several

other matters and submitted that this Tribunal now cannot take a contrary view which has already been taken in such matters. Referring to the Constitution bench decision of the Hon'ble Supreme Court in Union of India vs. Raghuvir Singh and S.I. Roop Lal vs. Lt. Governor they have contended that statement of law as declared by a Division Bench is binding on the Division Bench of the same court or of the Bench of lesser number of Judges and that coordinate Bench of a court cannot pronounce the judgment contrary to the law already declared by another Bench.

5. We have examined the legal position as could be applied to such a situation and we feel that there is a conflict of decisions of different Benches of the Hon'ble Supreme Court on the point in issue before us. Normally, a Tribunal has to reconcile the conflict because ~~is that~~ there should be no ^{inconsistency} ~~conflict~~ between the views by different Benches of the Supreme Court. If there are two decisions of the Full Bench of the Supreme Court, then some High Courts have taken the view that the decision which is later in point of time has to be followed while there is another view contrary to it that if there is a conflict between the two decisions of Co-ordinate Benches, the decision which appears to be "better in point of law" should be followed. The settled position as recognized is that the latter view is justified because of the ~~two Benches are of the full strength~~ ^{fact that} the Bench deciding subsequently should itself have followed the earlier decision ² if it did not do so, its decision should not acquire greater weight than the decision of the earlier Bench which had chosen to ignore or not to follow, or to which its attention was not drawn. It is further stated that if conflicting decisions are rendered by Benches

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of unequal strength, then the decision of the larger Bench of the Supreme Court has to be followed even though the decision of the smaller Bench may be later in point of time. But if the earlier decision of larger Bench of the Supreme Court has been expressly considered and explained in a latter case by some other Bench, then the view of the smaller Bench shall have to be followed.

6. The orders passed earlier by this Bench of the Tribunal in similar matters is mainly founded on the law as laid down in Modern Food Industries (supra) and Suresh Chandra Poddar vs. Dhani Ram (2002) 1, SCC, 766. The decision being relied upon by the applicants in the present case is the latest in point ^{of time} i.e. the case of Ghaziabad Development Authority (supra) decided on 17.3.04. This case has been decided by the Bench of two Hon'ble Judges and similarly the judgment passed in Modern Food Industries (supra) is also passed by the ^{the} Bench of two Hon'ble Judges. A chronology of cases as listed of the cited cases in the case of Ghaziabad Development Authority (supra) no where refers to this judgment of Modern Food Industries (supra) and hence while deciding the case in Ghaziabad Development Authority (supra) the judgment in the case of Modern Food Industries (supra) was neither referred to nor it was brought to the notice of the Hon'ble Judges and therefore as per the proposition of law stated above, the earlier judgment has to be followed on the basis of which this Bench has already taken the view that when a writ petition challenging ^{the} the order of the Tribunal, contempt of which is being alleged, to have been committed, then the proper course is that the proceedings in the contempt petition be adjourned sine die, with liberty to the applicants to get it restored if the writ of the respondents ultimately fails in Hon'ble High Court, ^{urging} insisting upon the respondents to

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obtain the stay against the operation of the Order of the Tribunal, shall be contrary to the spirit of the law as laid down in the case of Modern Food Industries (supra), which, as stated earlier, is preferred to be followed in the circumstances as are prevailing in the present case. Furthermore, the decision in the Modern Food Industries (supra) is passed by relying on Mohd. Yaqub Khan (supra) which is a decision by a Bench of 3 Hon'ble Judges and was passed on August, 26, 1992. In Modern Food Industries (supra) their lordships have held that the order, disobedience of which is complained against and stay of its operation is pending, it would be appropriate for the High Court to take up for consideration the prayer for stay either earlier or simultaneously with the complaint for contempt. Their lordships while directing further proceedings in the contempt matter to be stayed, they further observed that it would be appropriate for the High Court to take up and dispose of the application for stay without reference to the development in the interregnum, namely that the respondents had to obey the order of the learned Single Judge under pain of proceedings of the contempt.

7. In the other judgment relied upon by this Bench of the Tribunal in C.C.P. 29/03 in O.A. 4/02 i.e. S.C. Poddar (supra), reference has been made to the Constitution Bench judgment in the case of L. Chandra Kumar vs. Union of India (1997) 3, SCC, 261 and it was held that not granting stay by the Hon'ble High Court in the writ petition cannot be a ground to set up proceedings against a person in contempt because the very order in question is yet to become final.

8. Having, therefore, considered the above legal position, applicable to the facts of the present case, we feel satisfied that there is no reason for this Bench to hold a different view than what has been taken in

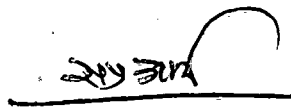
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in earlier ⁱⁿ similar matters by placing reliance on the decision taken in Modern Food Industries (supra), Hence reiterating our earlier view that once a writ has been filed and though no stay has been granted by the Hon'ble superior court, it shall not be expedient to proceed with contempt petition till the disposal of the said writ petition. Accordingly, we direct that the present C.C.P. be adjourned sine die with liberty to the applicants to get it revived as and when so required.


(M.L.SAHNI)

Member (J)

s.a.


(S.P.ARYA)

Member (A)