

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

C.C.P. No. 332/007 of 2013

In

Original Application No 510 of 1993

Order Reserved on 16.5.2016

Order Pronounced on 23/5/16

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

Abdul Aziz aged about 55 years S/o Sri Sabit Ali R/o Behsa No. 2, Near Gagan Palace Post Office, Sarojininagar Lucknow.

Applicant

By Advocate Sri Amit Verma for Sri A. Moin.

VERSUS

Shri Jagdeep Rai, Divisional Railway Manager, Northern Railway Lucknow.

Respondents.

By Advocate Sri B. B. Tripathi holding brief for Sri M. K. Singh.

ORDER

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

The present contempt petition is preferred by the applicant for non compliance of the order passed in CCP No. 51 of 2002 in O.A. No. 510 of 1993 decided on 15th December, 2011. The O.A. No. 510 of 1993 got finally decided by means of an order dated 25th April 2001 through which, the Tribunal passed the following orders:

"The respondents are directed to include the name of the applicant in the panel framed on the basis of screening held in the year 1982 if otherwise found fit and place the name of the applicant at appropriate place as Cleaner over and above his juniors and to further accord him all the consequential benefits. We also found from the contention of the applicant that he had not been paid his bonus for the years 1981, 1982 and 1983. We direct the respondents to consider the claim of the applicant for grant of bonus to him for the years stated above if the same have not already been paid. The above directions be carried out within the period of two months from the receipt of this order."

Subsequently, when the order of the Tribunal was not complied with, the applicant preferred the contempt petition vide Civil Contempt Petition No. 51 of 2002 and in the said contempt petition, an order is passed on 15th December, 2011 wherein, the Tribunal directed as under:-

"In view of the above, the respondents are directed to make the remaining compliance expeditiously in respect of placing the applicant over and above his junior Sri C. B. Lal and accord consequential benefits in accordance with the judgment of this Tribunal dated 25.4.2001 passed in O.A. No. 510/1993. The compliance shall be ensured within three months from the date of receipt of certified copy of the order."

Apart from this, the Tribunal also observed that if respondents fail to comply with the aforesaid directions, then it will be open to the applicant to file contempt petition afresh. Since the order passed by the Tribunal is not complied with, as such, the applicant filed the present contempt petition for non compliance of the orders passed by the Tribunal.

The learned counsel for the applicant categorically indicated and argued that despite service upon the respondents, the respondents have not complied the order of the Tribunal and the respondents have also not accorded any benefit in terms of the decision passed by the Tribunal.

2. On behalf of the respondents, detailed compliance affidavit is filed through which the respondents have annexed order dated 14.5.2013 in which, it is indicated that all the consequential benefits in terms of the order passed by the Tribunal which are admissible under the relevant rules have been given to the applicant and has also annexed the copy of the order dated 14.5.2013.

3. It is also indicated by the respondents that the applicant is not entitled for any arrears of pay as Loco Pilot Goods w.e.f. 2004 as per relevant rules. Not only this, it is also argued that the applicant's pay as Loco Pilot Goods was refixed under Railway Service(Revised Pay), Rules, 2008. Consequently, the applicant's pay has been fixed at par with his junior Sri Nathu Ram Shukla vide memo dated 14.5.2013 and the applicant is also promoted as IInd fireman in Grade Rs. 825-1200 at par with his junior Sri C. B. Lal w.e.f. 21.12.1989 from the date of his junior promoted as IInd fireman. Accordingly, his pay is also fixed. The respondents also communicated the detailed order passed by them.

4. The applicant filed objections to the compliance affidavit and denied the contents of the compliance affidavit and has indicated that in terms of the decision of the Hon'ble Apex Court in the case of the **Commissioner, Karnataka Housing Board vs. C. Muddaiah reported in AIR (2007) SC 3100**, the orders so passed by the Tribunal is to be complied with without any interpretations. The learned counsel for the applicant has also relied upon a decision of the coordinate Bench of this Tribunal in the case of **Ramesh Chander Vs. R. S. Gehlawat 1993 (24) ATC 759** and has indicated that the consequential benefits means all benefits which would directly flow or accrue consequent upon the happening of a certain event or doing of a certain act. Its scope can not be abridged curtailed or limited by exercise of executive discretion in a manner not warranted by law. The learned counsel for the applicant also relied upon a decision of the **Hyderabad Bench of this Tribunal in the case of G. Nanchariah Vs. Smt. Karuna Pillai 1992 (19) ATC 365** and once again emphasized about the word consequential benefits.

5. Heard the learned counsel for the parties and perused the record.

6. The Tribunal while disposing of the contempt petition No. 51 of 2002 passed in O.A. No. 510/93 on 15th December, 2011 directed the respondents for placing the applicant over and above his junior Sri C. B. Lal and accord consequential benefits in accordance with the judgment of this Tribunal passed on 25.4.2001.

7. The bare perusal of compliance affidavit shows that the respondents passed an order dated 14.5.2013 and allowed benefit to the applicant which are due and admissible under the relevant rules and the applicant who is working as Loco Pilot Goods in PB 9300-34800 G.P.4200 under SSE/Loco/Lucknow, his seniority is also revised and accordingly as per seniority, he was placed below Pratap Bahadur serial No. 47 and above Sri N. R. Shukla for grant of other consequential benefit at par with immediate junior Sri N.R. Shukla. Subsequently, the applicant is promoted as IInd firemen from his junior promoted as IInd

firemen and accordingly the pay of the applicant is also fixed. The applicant was promoted as Ist Fireman in grade Rs. 950-1500 w.e.f. 12.12.1991 at par with his junior Shri C. B. Lal in compliance of the Tribunal's order and pay is also fixed at Rs. 950/- w.e.f 12.12.1991 instead of Rs. 884/- on proforma basis. Subsequently, the applicant is promoted as Loco Pilot Goods in grade Rs. 5000-8000 w.e.f. 15.9.2004 at par with his immediate junior Shri Nathu Ram Shukla in compliance of the order passed by the competent authority for grant of consequential benefits as per the Tribunal's order and accordingly, his pay is fixed at Rs. 5000/- w.e.f. 15.9.2004 instead of Rs. 4590/- w.e.f. 1.12.2004 on proforma basis. The perusal of order passed by the respondents dated 14.5.2013, it is clear that the respondents have passed a detailed order and complied the order of the Tribunal and there is no willful disobedience on the part of the respondents.

8. We have perused the judgments so relied upon by the applicant and after perusal, it is revealed that there is no willful disobedience on the part of respondents and the applicant is given benefit which are due to him.

9. 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 willfully 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."

10. 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."

11. Further in the case of **Ashok Kumar Pandey Vs. Ashok Kumar Singh ,D.I.O.S.,Ballia and others 2003 (5) AWC 4393** Hon'ble Court has held as under:-

"The D.I.O.S. considered the report and the matter of appointment of the applicant in great detail. He observed in the previous writ petition the applicant claimed his appointment under Section 18 of the U.P. Secondary Education Service Commission Act, 1982. However, in the second writ petition, he claimed his appointment under Removal of Difficulties II Order. Both these matters were considered and it was held that the appointment is not according to the rules either under Section 18 of the U.P. Secondary Education Service Commission Act, 1982, or under Removal of Difficulties Order (Second). therefore, the appointment was disapproved. It is further contended that previous approval in compliance of the order passed in the writ petition was passed by the Sub-Divisional Magistrate, who was holding the charge of D.I.O.S. without considering the provisions of the Act.

Therefore, the direction of this Court has been complied with. If the applicant is aggrieved by the order of the D.I.O.S. deciding the matter and is of the view that the decision is not correct, he may challenge the same in the appropriate writ or in other proper proceedings. There is no ground to proceed with the contempt. The petition for contempt is accordingly dismissed."

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12. In the case of **Brahma Deo Tiwari Vs. Alok Tandon**, District Magistrate, Allahabad 2004 (1) AWC 543 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."

13. In the case of **Shail Raj Kishore , Secretary, Education Basic, U.P. Lucknow and others** 2004 (3) AWC 2444 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."

14. 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

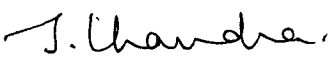
proceeded as there is no violation of any direction issued by the Court."

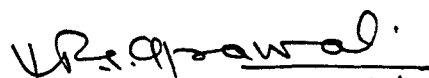
15. The learned counsel for respondents has also relied upon a decision rendered by the Hon'ble Apex Court in the case of **Anil Kumar Shahi and others Vs. Prof. Ram Sevak Yadav and others reported in (2008) 14 SCC 115** in which the Hon'ble Apex Court has been pleased to observe as under:-

"In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order."

16. The Tribunal, cannot re-appreciate the evidence and also about the correctness of the order passed earlier as such the contempt petition is liable to be discharged.

17. Considering the observations of the Hon'ble Apex Court and factual position of the case, we are of the view that the contempt petition is liable to be dismissed and is so ordered. The notices issued stands discharged.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

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