

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 36/2013 in O.A.No. 366/2011

This the th 18 day of December, 2013

Hon'ble Sri Sudhir Kumar, Member (A)

Hon'ble Sri Navneet Kumar, Member (J)

Lal Bahadur Chaudhary aged about 52 years son of Sri Shiv Prasad Chaudhary, resident of village Isapur, Post Chamiyani, District- Unnao

Applicant

By Advocate:-Sri R.C. Saxena

Versus

1. Sri H.K. Jaggi, Secretary, Railway Board, New Delhi.
2. V.K.Gupta, General Manager, Northern Railway, Baroda House, New Delhi.
3. Jagdeep Rai, Divisional Railway Manager, Northern Railway, Lucknow.
4. Sri T.K. Pandey, Senior Divisional Engineer (Quardination), Northern Railway, Lucknow.

Respondents

By Advocate: Sri S. Verma

(Reserved on 28.10.2013)

ORDER

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

The present Contempt Petition is preferred by the applicant for non-compliance of the order passed by the Tribunal in O.A. No. 366/2011, by virtue of which the Tribunal passed the following orders:-

“5. In view of the above, the impugned order dated 30.6.2011 (Annexure-1) issued by the respondent No. 4 is set aside and the respondents are directed to consider the case of the applicant for his permanent absorption in Northern Railway within three months from the date of receipt of a certified copy of this order in accordance with law and past precedents with all consequential benefits as per rules. No order as to costs.”



The copy of the said order was duly communicated to the respondents and when the order was not complied with, the applicant preferred the present contempt petition.

2. Learned counsel appearing on behalf of the applicant pointed out that the respondents despite knowing the consequences has not complied with the orders of the Tribunal. Not only this, it is also submitted that similarly placed three persons namely, Farooq Ahmad, A.K.Saxena and Vinod Kumar Saxena who had preferred separate Original Applications before the Principle Bench of the Tribunal were considered by the respondents regarding their permanent absorption in Northern Railway in accordance with law. Accordingly, the Tribunal also directed to consider the case of the applicant in accordance with law and past precedents. It is also pointed out on behalf of the applicant he was initially appointed as Lekhpal and posted under Sub Divisional Officer, Maharajganj, District- Raibareilly and subsequently the services of the applicant was confirmed on the post of Lekhpal vide order dated 13.7.1988 and thereafter, he had applied for appointment to the post of Survey Clerk in the office of Railway Personnel Office on deputation basis. After due process, the applicant was posted in Lucknow Division against the vacancy caused by one Saryu Prasad, Kanoongo Clerk and in pursuance thereof, the General Manager, H.Q., Baroda House, New Delhi issued a letter dated 7.12.1990 to the Divisional Railway Manager, Northern Railway, Lucknow stating therein that the approval of CE/C is accorded to the appointment of the applicant as Lekhpal on deputation from State Govt. ,U.P. to DRM office, lucknow as per usual terms and conditions and the Divisional Railway Manager, Lucknow, thereafter issued a letter dated 11.1.1991, directing the applicant to report for appointment as Lekhpal Clerk. The period of the applicant was subsequently extended upto 1997 and during this period in 1994, the applicant was promoted to Land Record inspector w.e.f. 30.4.1993 vide District Magistrate letter dated

30.4.2003 and accordingly the pay of the applicant was fixed in the grade of Rs. 1350-2200/- as per fixation made by the DRM, Northern Railway, Lucknow in December, 2000. The applicant submitted an application for his permanent absorption stating therein that since he is working continuously from the date of his initial appointment in the Northern Railway and the same was duly forwarded by the Divisional Railway Manager, Northern Railway Lucknow and when his application was not considered, he made several representations and has also relied upon the decision of the Principal Bench in O.A. No. 1877/1993, 1943/1993 and 2478/1993, where a direction was issued to the respondents to consider the case of the aforesaid applicants of the above O.A. regarding their permanent absorption in Northern Railway in accordance with law and past precedents. It is also pointed out by the learned counsel for the applicant that the judgment passed by the Principal Bench in the above OAs were complied with. But during this period, the applicant received an order dated 30.6.2011 whereby the case of the applicant was rejected and he preferred the O.A. before this Tribunal which was dismissed on 12.9.2011 with the following orders:-

“In response to specific query made by this Tribunal, learned counsel for the applicant fairly concedes that the applicant has already been relieved from the Railways on 23.8.2011. This fact has not been indicated anywhere, which amounts to misleading and misrepresentation. Otherwise also this O.A. has become infructuous. Therefore, on these grounds, the O.A. is dismissed. No order as to costs.”


3. The applicant filed writ petition before the Hon'ble High Court and the Hon'ble High Court has passed the following orders in the writ petition:-

“In view of the aforesaid, we set aside the impugned order dated 12.9.2011 and remit the matter to the Central Administrative Tribunal for a fresh

consideration on merit with direction to dispose it of at an early date. The operation of repatriation order dated 30.6.2011 (Annexure No. 33) shall remain in abeyance till the dispose of the O.A. on merit by the Tribunal.”

4. The bare perusal of the order is absolutely clear that the order of rejecting the claim of the applicant was considered and the impugned order dated 30.6.2011 was set aside and the respondents were directed to consider the case of the applicant for permanent absorption in Northern Railway within three months from the date of receipt of certified copy of the order in accordance with law and past precedents. It is also pointed out by the learned counsel for the applicant that the respondents while deciding the case of the applicant has not considered the case of the applicant in the light of direction issued by the Tribunal. Apart from this, it is also pointed out by the learned counsel for the applicant that instead of Secretary, Railway Board, much junior officer has filed the compliance report as such he do not wish to file any reply to the said compliance report since the compliance report has not been filed by the Secretary, Railway Board as ordered by the Tribunal.


5. Learned counsel appearing on behalf of the respondents filed their compliance report and through compliance report, it is pointed out by the respondents that by means of order dated 8.10.2013, the Railway Board has passed an order and it is observed in the said order that the applicant may be repatriated to his parent Government i.e. Sub Divisional Magistrate, Maharajganj, U.P. It is also pointed out by the learned counsel for the respondents that the Tribunal vide order dated 9.9.2013 has only directed the respondents to file the compliance report, failing which the respondent No.1 shall appear in court on the next date. It is also pointed out by the learned counsel for respondents that prior to the next date fixed, copy of the compliance report was duly



served upon the learned counsel for the applicant, as such, the respondent No.1 i.e. Secretary, Railway board was not required to appear before the Tribunal. The respondents also submitted that nowhere in the order, it is said that only respondent No.1 will file compliance report. Only it is the direction to the respondents to file compliance report. Apart from this, learned counsel appearing on behalf of the respondents also relied upon the decision of Hon'ble Apex Court in the case of ***J.S. Parihar Vs. Ganpat Duggar and Chhotu Ram Vs. Urvashi Gulati***. The respondents also pointed out that while deciding the case of the applicant, the authorities duly considered all aspects of the matter and thereafter taken a decision to repatriate the applicant.

6. Heard the learned counsel for parties and perused the pleadings on record carefully.

7. The bare perusal of the order passed by the Tribunal shows that while deciding the O.A., the Tribunal quashed the order dated 30th June, 2011 and directed the respondents to consider the case of the applicant for his permanent absorption in Northern Railway within 3 months from the date of receipt of certified copy of the order. Apart from this, it is also observed by the Tribunal that the said consideration be made in accordance with law and past precedents. After the decision of the Tribunal, the applicant served the copy of the order upon the respondents for compliance of the same. The respondents after considering the directions issued by the Tribunal passed an order on 8th October, 2013 wherein it is pointed out by the respondents that the applicant was an employee of U.P. Govt., was appointed on deputation basis from the said State Govt. to the DRM office, Northern Railway, Lucknow as Lekhpal for a period of 3 years as per usual terms and conditions and in pursuance thereof, he joined the said post of Lekhpal on 8.10.1991. The respondents have also considered the cases of absorption of Farooq Ahmad, A.K. Saxena and




Vinod Kumar Saxena in pursuance of the earlier orders of the Tribunal and the Ministry thereafter, declared vide its policy dated 6.4.1998 that previous cases of absorption of similarly situated deputationists should not be construed as precedent. Accordingly, the case of the applicant was rejected and it has been decided that the applicant may be repatriated back to his parent Govt./ Department.

8. The scope of contempt is limited and the Tribunal /Courts cannot re-appreciate the evidence in the contempt proceedings.

9. Courts are precluded from reopening the issue to see whether the order is right or wrong in Contempt Petition. Once there is an order passed by the Government on the basis of directions issued by the Court, there is fresh cause of action to seek redressal in an appropriate forum. Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of judicial system as also of the courts and tribunals entrusted with the task of administering delivery of justice. The majesty of judicial Institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective.

10. As was mentioned by **Justice Williams in Miller vs. Knox (1838) 6 Scott, 1 : 4 Bing. N.C. 574, page 589**, the contempt of Court is so manifold in its aspects that it is difficult to lay down any exact definition of the offence. It is defined or described to be a disobedience to the Court, an opposing or a despising of the authority, justice, or dignity thereof.

11. In the case of In **Re-Johnson (1887) 20 QBD 68, at page No.74**, it was mentioned that the main question in considering a case of contempt always is as to whether or not there has been an interference or a tendency to interfere with the administration of justice by any of the actions of the respondents/alleged contemnors.




12. There cannot be anything of greater consequence than to keep the streams of justice clear and pure, so that parties may proceed with safety both to themselves and their characters.

13. In a contempt petition case, the appreciation of the facts leading to a decision by the Bench as to whether an act is a contumacious act in itself or not, is an important factor to be seen. However, it is trite law that in a contempt petition case, the task of the contempt petitioner is only that of an informant, to point out the alleged contumacious act stated to have been committed by the respondent(s)/alleged contemner(s), and the role of the contempt petitioner who brings the alleged contumacious conduct of the respondent(s)/alleged contemner(s) to the notice of the Court/Tribunal, which is that of only an informant, comes to an end as soon as notices have been issued in exercise of contempt jurisdiction, and the contempt petitioner does not thereafter have the status of a litigant, as has been held and observed by the Hon'ble Apex Court in the case of Supreme Court Bar Association vs. Union of India: (1998) 4 SCC 409 (para 41): AIR 1998 SC 1895, and also in the cases of Jaipur Municipal Corporation vs. C.L. Mishra: (2005) 8 SCC 423 (para 9): (2005) 9 JT 195; B.K. Savithri vs. B.V.S. Anand: (2005) 10 SCC 207 (para 5): 2005 SCC Cri 1502, and K. Gopalan Nair vs. K. Balakrishnan Nair: (2005) 12 SCC 350 (para 3).

14. Proceedings for contempt are matters entirely between the court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted and if the Court thinks that it was so, then the court in its discretion takes action to vindicate its authority.

15. In view of the facts, the question which arises for consideration in the instant contempt petition is that if, in compliance of an order



passed by the Tribunal/Court, the authorities have considered the case of the applicant and came to the conclusion on the basis of reasoning given therein that the applicant be repatriated back of any decision is taken, whether the contempt petition filed by the applicant is maintainable or not on the ground that such action is not in accordance with the directions given by the Tribunal as per the version of the applicant. The answer to the above question lies in the following judgments passed by the Hon'ble Apex Court or by the Hon'ble High 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.”



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."


Further in the case of **Ashok Kumar Pandey Vs. Ashok Kumar Singh D.I.O.S., Ballia and others 2003 (5) AWC 4393** this 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."

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

In the case of **Shail Raj Kishore , Secretary, Education**

Basic, U.P. Lucknow and others 2004 (3) AWC 2444 this 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."

16. 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."

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:-


“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 of an authority to whom direction is given, therefore, mere error of judgment with regard to the legal position does not constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the court order.”

“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.”

17. Considering the observations made by the Hon'ble Apex Court and the reasons given therein, if the applicant is feeling aggrieved by the decision taken by the competent authority and is of the view that the same is not in accordance with the directions given by the Tribunal, then he has remedy to challenge the same before the appropriate forum and for the said purpose remedy to him does not lie under the contempt of Court Act.

18. Considering the observations of the Hon'ble Apex Court and factual position of the case, the contempt petition is dismissed. The notices issued stand discharged. No order as to costs.


(Navneet Kumar)
Member (J)


(Sudhir Kumar)
Member (A)

HLS/-