

Central Administrative Tribunal, Lucknow Bench, Lucknow

CCP No. 332/00008/2014 in O.A. No. 155/2012

Reserved on 15.9.2015

Pronounced on 22-09-2015

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

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

Amanullah aged about 62 years son of Sri Jameerullah r/o
Garipeer Khan, Chowk, Lucknow.

Petitioner

By Advocate: Sri Dharmendra Awasthi

Versus

1. Sri Ashutosh Tripathi Chief Post Master General, U.P. Circle, Lucknow.
2. Sri Mohd. Shahnawaz Akhtar, presently posted as Senior Superintendent of Post Offices, Lucknow Division, Lucknow.
3. Dr. Sarita Singh, presently posted as Chief Post Master General, U.P. Circle, Lucknow.

Respondents

By Advocate: Sri Rajesh Katiyar

ORDER

By Sri Navneet Kumar, Member (J)

The present contempt petition is preferred by the applicant for non-compliance of the order dated 4th April, 2013 passed in O.A. No. 155/2012 through which the Tribunal allowed the O.A. with observation that applicant is entitled to such retiral benefits as are admissible to Group 'D' employees on regular basis.

2. Accordingly, the respondents were directed that the pension and remaining retiral benefits pending, if any including arrears, if any admissible to the applicant maybe considered and paid in accordance with the relevant rules and established practice along with an interest @ 8% per annum till the date of actual payment.

3. The copy of order was duly communicated to the respondents and respondents when failed to file reply, conditional order was passed and this Tribunal directed for personal appearance of Chief Post Master General and fixed the case for 15.9.2015. Prior to that date, respondents moved an application for

exemption of personal appearance of respondent No. 3 along with an affidavit in support of the said exemption application.

4. The respondents also filed an affidavit/ compliance report through which they have indicated about an order dated 10.9.2015 in which the competent authority has approved and sanction the pension and other retiral benefits to applicant in compliance of the Tribunal's order subject to out come/decision of the Hon'ble High Court in Writ Petition No. 1413 (SB) of 2013 pending before the Hon'ble High Court.

5. The respondents again on 15.9.2015 filed another application for exemption along with an affidavit in support of the said exemption application and the letter dated 10.9.2015 in which it is categorically indicated that the pension and other retiral benefits are sanctioned to the applicant and PPO and other benefits shall be issued in favour of the applicant very shortly. Apart from this, the respondents have also filed an application / letter dated 10.7.2015 and indicated that in terms of the said letter, the CPMG, U.P. Circle, Lucknow was required to be present before the Hon'ble Chairman, National Commission for Scheduled Caste on 15.9.2015 itself.

6. The said letter was issued prior to fixing of date by this Tribunal, as such the Chief Post Master General, U.P. Circle, Lucknow is exempted to appear in person before this Tribunal. Apart from this, it is also to be seen that whether the order of the Tribunal has been complied with or not.

7. The bare perusal of the compliance affidavit shows that order so passed by the Tribunal is duly complied with by the respondents and they have also passed the order dated 10.9.2015, as such there is no willful disobedience on the part of the respondents.

8. 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 been pleased to observe 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 ²⁹⁴ 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.”

9. The Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and others** reported in AIR 2001 SC 3468, has been pleased to observe as under:-

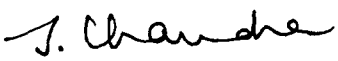
“Court directed for considering the case of the applicant for promotion . The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court.”

10. Apart from this, it is also required to be seen that whether the order passed by the Tribunal is complied with or not, and the

weapon of contempt is to be used cautiously. In the present case, the order of the Tribunal is fully complied with and the respondents passed the orders on 10.9.2015.

11. Considering the observations made by the Hon'ble Apex Court as well as on the basis of facts of the case, it appears that there is no willful disobedience on the part of the respondents and respondents have fully complied with the orders of the Tribunal .

12. As such contempt petition is dismissed. Notices issued to the respondents stands discharged.


(JAYATI CHANDRA)
MEMBER (A)


(NAVNEET KUMAR)
MEMBER (J)

HLS/-