

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW
BENCH LUCKNOW**

Contempt Petition No. 332/00035/2014

Original Application No.393/2010

Order Reserved on 7.10.2014

Order Pronounced on 27-10-2014

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

K.L. Srivastava aged about 65 years son of Sri Babu Lal Srivastava retired Senior Sub Divisional Engineer r/o 551 Gha/ 533, Nand Nagar, Natkhera Alambagh, Lucknow.

Applicant

By Advocate: Sri R.S. Gupta

Versus

1. Sri Sunil Parihar , CGMT, BSNL,UP (E), Circle, Lucknow.
2. Sri Anupam Srivastava, CMD, BSNL, Corporate Office, New Delhi.
3. Sri B.B. Singh, CCA, U.P., East Circle, Gomti Nagar, Exchange Building, Vikas Khand, Gomti Nagar, Lucknow.
4. Sri Sunil Parihar, Principal General Manager, Telecom District, Gandhi Bhawan, Lucknow.
5. Sri A.K.Rana, General Manager, Telecom District Mall Road, Kanpur.

Respondent

By Advocate : Sri S.P.Singh for R.No.3

Sri G.S.Sikarwar for R.No. 1 and 2

ORDER

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

The present Contempt petition is preferred by the applicant for non-compliance of the order dated 28.2.2014 passed in O.A. No. 393/2010, whereby the Tribunal directed the respondents to take a decision forthwith as mentioned in para 12 of their counter reply.

2. Through para 12 of the counter reply, it was submitted by the respondents that balance amount of DCRG will be paid on receipt of Post facto approval of CGMT, U.P. (E) Circle, Lucknow. Interest on commuted value of pension is not payable as per GID-5 under pension Rule 68 and interest on DCRG is also not payable as stated. Not only this, it is also mentioned in the aforesaid para that pension case of the applicant has also not been finalized due to stepping up of pay from 1.1.99 because stepping up was allowed to


the applicant with reference to his junior Sri A.B. Jauhari by the GMTD, Kanpur without taking approval of CGMT UP (E) Circle, Lucknow and GMTD, Kanpur is not competent authority to allow stepping up of pay of Group B officer as per Department of Telecom Circular dated 2.9.1994 and as such PGMTD, Lucknow was requested to obtain post facto approval of CGMT, UP (E), Circle, in this case and copy of which was sent to the applicant as well. The reminders were also sent but since the same was not considered, therefore, the same is pending for finalisation.

3. Learned counsel appearing on behalf of the respondents has filed their reply and through reply, it was categorically indicated that in pursuance of para 12 of the counter reply, CGM (T) U.P. East, Circle, Lucknow has decided that the stepping up of the applicant is not possible and accordingly an order is issued on 4.8.2014. Accordingly, the pay of the applicant was revised and submitted for pension and after receipt of the papers from the concerned office, the retiral benefits were calculated and paid to the applicant through cheque dated 19.8.2014. It is also indicated by the respondents that a sum of Rs. 7,57,466/- was due as DCRG, out of which Rs. 5,62,796/- has already been paid on 10.9.2010 and remaining amount of Rs. 1,94,670/- towards DCRG has been adjusted against the over payment of pay, leave encashment and provisional pension. While commuted value of pension of Rs. 7,61,846/- was paid on 19.8.2014 through cheque No. 555100 dated 19.8.2014 and provisional pension upto 31.7.2014 has already been paid to the applicant and the PPO has also been issued vide CCA/UP (E) /Pen. /14024 dated 22.8.2014. It is also indicated by the learned counsel for respondents that applicant not being satisfied with the said orders of the respondents, has already challenged the same in a fresh O.A. No. 439/2014 which is pending before this Tribunal.

4. On behalf of respondent No.1, reply was filed and through reply, it is indicated by the respondents that they have fully complied with the order of the Tribunal and the respondents have also given the detailed calculation through which the payment have been made to the applicant. The copy of the compliance report were duly served upon the applicant but the applicant failed to file any reply to the same and has also challenged the order dated 4.8.2014 by means of a fresh O.A.

5. As observed by the Hon'ble Apex Court in the case of **J.S. Parihar Vs. Ganpat Duggar and others reported in (1996) SCC (L&S) 1422 -**

"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."

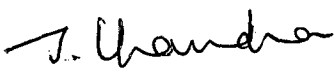



6. The Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and an others** reported in 2001(7) SCC 530, has been pleased to observe as under:-

"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."

7. In view of the pronouncements of the Hon'ble Supreme Court cited above, we find that the respondents/ contemnors have not acted in a manner which can be deemed to be a willful disobedience of the order of this Tribunal dated 28.2.2014 passed in O.A. No. 393/2010. Apart from this, the applicant has also challenged the order dated 4.8.2014 by means of fresh original application.

8. 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.


(Ms. Jayati Chandra)
Member (A)


(Navneet Kumar)
Member (J)

HLS/-