

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

**Contempt Petition No. 40 of 2014
In**

Original Application No 497 of 2012

Order Reserved on. 4.2.2015

Order Pronounced on 24-02-2015

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

Mukul Saxena aged about 50 years son of Sri S. M. S. Saxena, resident of 121 Balaganj Railway Cooperative Society, Jal Nigam Road, Balaganj, Lucknow, Ex-Manager (Tech) National Highways Authority of India.

Applicant

By Advocate Sri S. M. S. Saxena

Versus

1. Shri C. V. Chhibber, Secretary, Ministry of Road Transport and Highways, Transport Bhawan, Parliament Street, New Delhi.
2. Sri R. P. Singh Chairman, National Highways Authority of India G-56 Sector 10, Dwarka, New Delhi.
3. Col. (Rtd) Khuswant Singh, Regional Officer, National Highways Authority of India, Gomti Nagar, 3/248 Vishal Khand, Lucknow.

Respondents

By Advocate Sri S. P. 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 dated 16th April 2014 passed in O.A. No. 497 of 2012 through which the Tribunal directed as under :

"We therefore, come to conclusion that there is merit in the claim of the applicant that he is entitled to be absorbed in NHAI in the post of ~~**~~

Accordingly, the Original Application succeeds and is allowed. We direct the respondents to hold a review selection Committee meeting to revive the decision of the Selection Committee held on 25.10.2012 and consider the case of the applicant for absorption in the post of Manager (Tech.) in NHAI afresh in the light of the observations made and the findings given hereinabove. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Under the circumstances, there shall be no order as to costs."

2. The copy of the order was served upon the respondents and subsequently, the respondents filed their compliance report through which it is indicated that the order passed by the Tribunal has been fully complied with.

3. The learned counsel for the applicant has pointed out that by means of the O.A. the applicant has prayed for issuing direction upon the respondents to absorb the applicant in National Highways Authority of India on the post of Manager (Technical) and while deciding the O.A., the Tribunal observed that the applicant is entitled to be absorbed in NHAI on the post of Manager (Technical) and respondents were directed to hold a review Selection Committee meeting to revive the decision of the Selection Committee held on 25.10.2012.

4. It is pointed out by the learned counsel for the applicant that the respondents have not complied the order of the

Tribunal. Not only this, the learned counsel for the applicant has also relied upon number of decisions such as T. R. Dhananjaya versus J. Vasudevan reported in (1995) 5 SCC 619; State of M.P. and another Versus Suresh Narayan Vijayvargiya and Others reported in 2014 (3) SCT-27; Anil Ratan Sarkar and Others Versus Hirak Ghosh and Others reported in (2002) 4 SCC 21; Anil Sharma Versus R. C. Virmani and another and Maninderjit Singh Bitta Versus Union of India and Others reported in (2012) 1 SCC (L&S) 83 and has indicated that the order passed by the Tribunal is required to be complied with in letter and spirit and non compliance of the same is ignoring the orders of the Tribunal and there is willful disobedience on the part of the respondents.

5. On behalf of the respondents, compliance report is filed and through compliance report, it is categorically indicated that as per the direction of the Tribunal, the case of the applicant was placed before the review Selection Committee meeting to review the decision of the selection committee held on 25.10.2012 and considered the case of the applicant for absorption on the post of Manager (Tech.) in NHAI afresh. It has been decided that it is not possible to absorb the applicant on the post of Manager (Technical) in the NHAI. Accordingly, the competent authority had decided to reject the request of the applicant for absorption due to policy constraints in this regard and the said orders were passed on 8.7.2014. The copy of which is filed along with the compliance report. As such, it is categorically indicated by the

respondents that the respondents have fully complied with the direction of the Tribunal and there is no willful disobedience on the part of the respondents as such the present contempt petition is liable to be dismissed and the notices issued to the respondents are liable to be discharged.

6. On behalf of the applicant, rejoinder is filed and through rejoinder mostly the averments made in the contempt petition are reiterated and the contents of the counter reply as well as supplementary counter reply are denied.

7. While deciding the O.A., the Tribunal allowed the same and directed the respondents to hold a review selection committee to revive the decision of the selection committee and consider the case of the applicant for absorption on the post of Manager (Technical) in NHAI afresh. The case of the applicant was placed before the authorities and it is indicated in the compliance report that the applicant joined as Manager (Technical) on deputation from PWD Rajasthan on 2.8.2004 and after receiving the application for absorption to the post of Manager (Technical) by the applicant in the year 2009, it was duly considered for absorption and the process got completed in 2012. The applicant's application was thereafter forwarded to the Selection Committee along with other candidates for consideration to the post of Manager (Technical) for absorption and the Committee after considering did not find him suitable for absorption in NHAI. This was done by the Committee held in the year 2012 as such, the respondent have considered the claim of the applicant for absorption in the year 2012 itself.

8. Subsequently, the Tribunal directed the respondents to hold the review Selection Committee meeting to revive the decision of the Selection Committee held on 25.10.2012 and consider the case of the applicant for absorption to the post of Manager(Technical) in NHAI afresh.

9. In pursuance there of the Selection Committee examined the case of the applicant and it is found that the person who is repatriated consequent upon completion of maximum permissible deputation tenure and vacation of stay by the Court on his continuity on deputation cannot be considered for absorption. Accordingly, his request for absorption was rejected on account of certain policy constraints.

10. It is also indicated by the respondents that the applicant was repatriated back to his parent department after completion of 7 years of permissible period of tenure in NHAI and relieved w.e.f. 21.9.2013. As such, his claim for absorption it is decided that the applicant cannot be absorbed in the NHAI.

11. The case laws cited by the learned counsel for the applicant are in regard to that the contempt court is not supposed to examine the merits of the order and the opposite parties cannot be permitted to judge the merits themselves by an order passed by court of law.

12. Apart from this, it is also indicated by the learned counsel for the applicant that the order passed by the Tribunal is required to be complied with in a letter and spirit and no

interpretation can be made in the same which will be an attempt to circumvent the same and deny the benefits to the applicant is unwarranted.

13. The bare perusal of the entire proceedings shows that the Tribunal directed for considering the case of the applicant and the respondents to hold a review selection committee meeting to revive the decision of the selection committee held on 25.10.2012 and after considering the case of the applicant, rejected the application of the applicant for absorption.

14. 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.”

15. 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.”

16. 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."

17. 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.”

18. 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."

19. 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 others 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."

20. 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."

21. 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.
22. 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 stand discharged.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)