

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

CCP No. 332/00059/2014 in O.A. No. 222/2009

Reserved on 14.03.2016

Pronounced on 28/3/16

**Hon'ble Mr. Navneet Kumar, Member (J)**  
**Hon'ble Ms. Jayati Chandra, Member (A)**

Naveen Kumar aged about 44 years, son of Shri V.P. Srivastava, resident of 549/172-Kham Bara Barha, Alambagh, Lucknow.

Petitioner

By Advocate: Sri Praveen Kumar

Versus

Sri A.K. Agarwal, Deputy Chief Electrical Engineer (W) C & W Workshop, Northern Railway, Alambagh, Lucknow

Respondents

By Advocate: Sri S. Verma.

**ORDER**

**By Sri Navneet Kumar, Member (J)**

The present contempt petition is preferred by the applicant for non-compliance of the Tribunal's order dated 10<sup>th</sup> April, 2014 passed in O.A. No. 222/2009 through which the Tribunal directed the respondents to give effect of restructuring in the case of the applicant subject to final outcome of the W.P. No. 400 (SB)/2005 and it is indicated that the said W.P. No. 400(SB)/2005 stands dismissed vide order dated 11.11.2014.

2. The learned counsel appearing on behalf of the applicant categorically indicated that the respondents have not comply the order and also not done any restructuring in respect of the applicant.

3. On behalf of the respondents compliance affidavit is filed and through which it is indicated that prior to cadre restructuring total cadre of Wireman in Electrical Department was 111 after cadre restructuring w.e.f. 01.11.2003, the sanctioned strength of Wireman in Electrical Department is as under-

Category	Percentage	Sanctioned strength	On Roll	Vacancy	Difference
MCM	08%	09	09	Nil	03 existing
Tech-I	41%	45	43	02	Existing 06 Resultant 03
Tech-II	26%	29	28	01	Existing nil Resultant 05
Tech-III	25%	28-04=24	25	+01 (excess)	04 posts surrendered Excess 01

Apart from this the respondents have also indicated the relative seniority position of senior most Technician-III as it existed on 01.11.2003 is given as under-

- (i) Sri Prem Prakash Yadav
- (ii) Sri Sachin Kumar Nigam
- (iii) Sri Harshpati
- (iv) Sri Arun Prakash Yadav
- (v) Sri Surendra Pal Singh
- (vi) Sri Naveen Kumar (applicant)
- (vii) Sri Ram Kumar
- (viii) Sri Shambhoo Prasad

Thereafter it is also indicated that the 05 persons, who were senior as Technician (Wireman)-III were promoted as Technical (Wireman)-II in their order of seniority adopting the prescribed modified selection process in the cadre of restructuring and subsequently, the other 03 wireman were promoted as Technician Grade-II. It is also indicated by respondents that every possible efforts are made by the respondents to comply the orders of the tribunal and the respondents has also filed Writ Petition challenging the order of the Tribunal passed in the present OA before the Hon'ble High Court in the W.P. No. 16(SB)2015 which is still pending for final adjudication.

3. The bare perusal of the entire proceedings available on record including the order so passed by the Tribunal shows that the respondents fully complied with the order of the Tribunal, as such there is nothing

remains to be adjudicated in the present CCP as the restructuring of the cadre as directed by the Tribunal have been done by the respondents.

4. 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 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 willful 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."**

5. 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."**

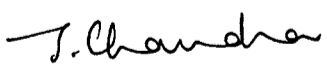
6. In the case of **Shail Raj Kishore , Secretary, Education basic, U.P. Lucknow and others 2004 (3) AWC 2444** the Hon'ble court has held as under:-

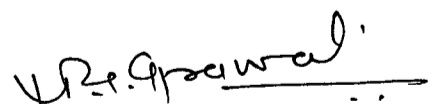
**"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into 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."**

7. 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."**

8. Considering the observations made by the Hon'ble Apex Court and after perusal of records, we are convinced that the respondents have fully complied with the order of the Tribunal, as such nothing survive to be adjudicated in the present contempt petition. Accordingly, the contempt petition is dismissed. The notices issued to the respondents stand discharged. No order as to costs.

  
(JAYATI CHANDRA)  
MEMBER (A)

  
(NAVNEET KUMAR)  
MEMBER (J)