

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

C.A.P.A. No. 104 of 2006
[Arising out of O.A. 437 of 06]

Date of order : 17th November, 2011

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Bidisha Banerjee, Member [J]

J.P. Mandal, S/o Late D.P. Mandal, O.S [H.S.G – I], O/O the Chief Post Master General, Bihar Circle, Patna.

.....Petitioner

By Advocate : Shri M.P. Dixit.

Vs.

Shri Kamaleshwar Prasad, the Chief Post Master General, Bihar Circle, Patna.

.....Respondent.

By Advocate : Shri S.K. Tiwary.

O R D E R

Naresh Gupta, M [A]:

This CCPA has been filed for alleged violation of the order of this Tribunal dated 3rd August, 2006 in OA 437 of 2006 [Annexure A/3 of CCPA] whereby the Chief Post Master General [CPMG], Bihar Circle, Patna was directed to ensure compliance of the orders dated 25.11.2005 and 28.04.2006 of the then CPMG, Bihar Circle, Patna, [Annexure A/1 & A/2 in CCPA] according to which the petitioner, J.P. Mandal was ordered to be placed in the gradation list issued on 01.07.1981 [in which his name had earlier been missed] at Sl.No. 34 below Shri Nand Kishore Singh and above Shri Bikrama Rai in permanent UDC cadre, with consequential benefits flowing therefrom, and a direction was given to the concerned section staff to revise his pay accordingly. It is stated that in as much as the order of the Tribunal dated 03.08.2006 was not complied with, a detailed representation was submitted by the petitioner [in this CCPA] to the CPMG, Bihar circle, Patna on 15.10.2006 [Annexure A/5 of this CCPA]. However, the petitioner received a letter dated 17.10.2006 issued by the CPMG, Bihar Circle, Patna [Annexure A/6 in CCPA], intimating him that the order dated 25.11.2005 [Annexure A/1 of CCPA] had been cancelled. It is contended that such action is illegal, arbitrary, without jurisdiction and contemptuous, and that the alleged contemnors have violated the order

passed by this Tribunal on 03.08.2006 [Annexure A/3 of CCPA]. There was no reference in this order [letter] about the order of this Tribunal in OA No. 437 of 2006.

2. In the supplementary petition, it is stated that a Review Application in No. 25 of 2007 filed by the respondents before the Tribunal was dismissed on 09.08.2007 and thereafter, the writ filed by them in the Hon'ble High Court, Patna in CWJC No. 16847 of 2007 was also dismissed on 17.02.2010 [Annexure P 2 of supplementary petition]. The petitioner had obtained information under the Right to Information Act, 2005 vide letter of the CPMG, Bihar Circle, Patna dated 14.09.2010 [Annexure P 3 of Supplementary petition] according to which there was noting in the connected file of the department during the period 25.02.2005 in regard to the case of the petitioner [J.P. Mandal] culminating apparently in the order of the CPMG of 25.11.2005 [Annexure A/1 of CCPA] due to which the cause of action originated. [It is unnecessary to reproduce the above noting in the relevant file.]

3. It is contended by the petitioner that he had been served a letter of the CPMG, Bihar Circle, Patna dated 08.09.2010 whereunder the date of promotion of the petitioner has been shown with effect from 30.01.1987 instead of 01.08.1982 and hence, according to the petitioner, it is a clear case of contempt and willful disobedience [Annexure P/4 of supplementary petition].

4. The petitioner has further contended in the supplementary petition that the respondents had passed an order as contained in Annexure P/1 [minutes of the DPC dated 05.10.2006], and again they have passed the order dated 08.09.2010 [letter of CPMG addressed to Assistant Director [Accts], C.O, Patna] with copy to petitioner [Annexure P/4 of supplementary petition], which is contrary to the orders of the competent authority in the note file of the department communicated to the petitioner [vide Annexure P/3 of supplementary petition] on his request under the RTI, Act.

5. In the additional supplementary petition, the petitioner has submitted that the authorities have subsequently granted the benefit of Lower Selection Grade [LSG] with effect from 30.01.1987 instead of 01.08.1982, HSG – II with effect from 01.02.1990 instead of 31.10.1982 and HSG – I with effect from 29.11.2001 instead of 01.11.1982, and that two persons, namely, Shri Hari Manjhi and Shri Arun Prasad No. II, both ST, who were at Sl. N. 59 and 70 in the gradation list dated 01.07.1981 [Annexure P/5 of

additional supplementary petition] were granted the benefit of promotion much before the petitioner although they were junior to him.

6. On the other hand, the respondents have in the show cause dated 22.09.2010 submitted that vide order dated 14.07.2010 [letter from CPMG, Bihar Circle, Patna] to the Assistant Director [S&R], O/o the CPMG, Bihar Circle, Patna Annexure R/1 in the said show cause], the order of this Tribunal in OA No. 437 of 2006 had been complied with. [In this letter, there is a reference to the letter of the Directorate dated 09.07.2010 said to have been enclosed with the letter of the CPMG in Annexure R/1, but this has not been filed by the respondents as an enclosure]. Subsequently, the respondents have filed, on 04.02.2011, a compliance report submitting that the order of this Tribunal in the aforesaid OA had been complied with and all consequential benefits given to the petitioner with payment of Rs. 2,18,565/- by cheque [Annexure R/1 in compliance report] as the arrears towards difference in pay and allowances consequent on allowing him the various grades with effect from earlier dates, viz., LSG from 30.01.1987, HSG – II from 01.02.1990 and HSG – I from 29.11.2001 to 30.01.2011.

7. Heard the learned counsel for the petitioner and the respondents on 04.11.2011 and perused the entire record. It is seen that pursuant to the orders of this Tribunal dated 03.08.2006 in OA 437 of 2006, a Committee comprising Senior Officers [DPC] examined the case of the petitioner in its sitting on 05.10.2006. In the minutes of the meeting of the DPC [Annexure P/1 of supplementary petition], it is recorded that Shri J.P. Mandal a S/T candidate entered the Department as Postal Assistant on 1.3.1975 in Muzaffarpur Dn. He passed confirmation examination in PA cadre on 24.08.1976 and was enrolled in APS. He passed the UDC examination vide DGP&T, New Delhi letter dated 20.1.1982. His name was inserted in the Master Copy of Circle Gradation list of the year 1987 [corrected up to 01.07.1987] at Sl. 62-A below Shri Jai Narayan [Sl. No. 62] and above Shri B.N. Ojha [Sl. No. 63]. A DPC was held on 13.06.1988 and he was promoted to the cadre of LSG with effect from 17.6.1988 on regular basis [vide CPMG Bihar Circle, Patna memo No. Staff-32/LSG/II dated 7.3.1995], on the basis of the instruction of the Directorate in which there was a condition that UDC in the respective circle office with 10 years regular service in the grade is required, which was subsequently modified to 05 years service in the grade for promotion to the LSG cadre

vide Directorate letter No. 6-6/85-SPB-II dated 25.7.1986. After conferment of LSG cadre on 17.6.88, shri J.P. Mandal did not make any representation to the office either through APS or directly as revealed from his personal file, regarding ambiguity in the date of promotion mentioning the name of his juniors promoted to LSG cadre. Two persons [S/Shri Hari Manjhi and Arjun Prasad] belonging to ST Community were senior to Shri J.P. Mandal and were enjoying the promotion in HSG – II , HSG –I cadre against the ST points. After vacation of point in the 40 point roster Shri J.P. Mandal was also given promotion in due course on the recommendation of the Departmental Promotion Committee. Shri Hari Manjhi [ST] entered in the department in the year 1967 and passed UDC exam in 1978 whereas Sri Arjun Prasad [ST] entered in the department in the year 1968 and passed UDC exam in 1981 and obviously they were senior to Sri J.P. Mandal as the latter entered in the department in the year 1975 and passed UDC exam in 1982. Sri J.P. Mandal did not raise his point of alleged irregular promotion in LSG, HSG – II and HSG – I cadre till his seniors in ST quota named above were occupying the higher post by virtue of reservation of points in roster register. Since the case of non-entry of name of Shri J.P. Mandal in the Gradation list was already examined earlier by the office and it was decided in the year 1988 as mentioned above, no further examination on the issue was required, and as such this office memo No. Staff-32/Seniority/JPM/2004 dated 25.11.2005 [Annexure A/1 of CCPA] lost its identity in view of earlier decision and it required to be cancelled or recalled by the competent authority [according to the minutes of the DPC]. In view of the above facts and circumstances, the Committee observed that whatsoever benefit of promotion had been given to Sri J.P. Mandal starting from LSG to HSG – I was correct and as per recommendation of the DPC and found no irregularity in the case of promotion as well as fixation of seniority of Sri J.P. Mandal in the establishment of this office. His representation was accordingly disposed of.

8. In the letter of the CPMG in No. Staff -32/Seniority/J.P. Mandal/2004 dated 08.09.2010 [filed with the compliance report submitted on 04.02.2011], it is indicated that there was a ~~lack of~~^{back log} vacancy for ST in LSG cadre and as such the petitioner was entitled for the benefit of the said cadre on completion of five years' service in the UDC i.e., with effect from 30.01.1987, and likewise he was entitled to get the benefit of HSG – II cadre with effect from 01.02.1990 on completion of 3 years of regular service in LSG

cadre, the pay and allowances of the petitioner were re-fixed accordingly and the arrears computed [Rs. 2,18,565/-] and paid by the cheque dated 03.02.2011.

9. At the outset, it may be stated that in a contempt proceeding, the jurisdiction of this Tribunal is limited. Section 2(b) of the Contempt of Courts Act defines Civil Contempt to mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a court of wilful breaches of an undertaking given to a court. The only question is whether the contemnor is guilty of willful disobedience. In *Niaz Mohammad & Ors. v. 'State of Haryana & Ors.*, the law is stated in the following terms:

10. *"But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemner should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemner is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional."*

11. In the case of *Rakhal Ch. Dey and Ors. vs Dr. Surendra Nath Sarma and Ors.* where the averment in the contempt petition was that the contemners had paid less wages than what is provided under the rules, the Hon'ble Gauhati High Court (judgment dated 20 February, 2004) held as follows (para 11 & 12):

"11. Contempt jurisdiction is of a special nature and should be sparingly used, it cannot be invoked unless there is real prejudice which can be regarded as substantial interference with the due course of justice. The court will not exercise it upon a mere question of propriety nor as a cloak to invite a decision on an important disputed and collateral question of fact as to whether the petitioners were entitled to any time scale of pay as their wages. It is highly necessary in all questions of that nature where the powers of the court have to be exercised in a summary manner, that the court in dealing with the alleged contempt should not proceed otherwise than with great caution and deliberation.

A statistical approach in a contempt proceeding is neither proper nor judicial. A contempt proceeding is judicially punitive in nature and not remedial, even though the effect of proceeding in cases of willful disobedience of the Judgment or orders may compel compliance of the same. It is not sufficient in such cases for the purpose of initiating a proceeding of contempt simply because one committed an error in the Judgment or order passed by him in exercise of authority vested in him. The error must be willful and deliberate.

12. In the instant case, the direction as contained in the order dated 7.4.1999 has been carried out howsoever erroneous that could be. The petitioners have sought to put up their case that the wages paid to them are not commensurating to their entitlement and this court having provided to pay the wages in accordance with law, this court-on interpretation of the said law in this contempt proceeding should pass appropriate orders. I am afraid such a course of action/approach is not permissible in a contempt proceeding. In this proceeding it is only to be judge as to whether there is any willful or deliberate violation of the aforesaid order dated 7.4.1999. The Respondents have well explained the exercise they undertook and completed pursuant to the aforesaid order dated 7.4.1999. There is no willful or deliberate violation on the part of the Respondents against the said order dated 7.4.1999. By keeping the contempt proceeding hanging over the head of the contemners they cannot be forced to act in a particular manner to the likings of the petitioners or as the petitioner may think that they are entitled to some more wages. This court in the aforesaid order dated 7.4.1999 never issued any direction to grant any time scale of pay to the petitioners. Only direction was to consider their case as per law. The argument made on behalf of the petitioners is that the law should be interpreted in the contempt proceeding as regards the entitlement of the actual wages by the petitioners. For that purpose, the contempt proceeding cannot be converted into a writ proceeding.”

12. In the instant CCPA, the respondent had proceeded to comply with the order of this Tribunal in OA 437/2006 and the case was placed before the DPC to consider the case of the petitioner but found that the question of seniority and placement in the Gradation List had been decided already in 1988 and as such the office memo of 25.11.2005 [based on which this Tribunal had issued orders which were upheld by the

Hon'ble High Court] lost its identity and could not be acted upon [Annexure P/1 of supplementary petition]. It also encountered another hurdle in that there was a condition contained in the instructions of the Directorate that an employee should have put in 5 years of service in UDC cadre for promotion to the LSG cadre. On this basis, the office of CPMG found that inasmuch as the petitioner had worked as UDC from 29.01.1982, he could get the benefit of promotion to LSG cadre only with effect from 30.01.1987 [on completion of 5 years] and to HSG-II cadre with effect from 01.02.1990 [on completion of 3 years of regular service in LSG cadre] and accordingly directed the Assistant Director [Accounts], CO, Patna to take action accordingly following which the pay and allowances of the petitioner were re-fixed as already indicated and the arrears arising from the difference [amounting to Rs. 2,18,565] paid to him by cheque.

13. It is well settled that when there is a genuine difficulty, there cannot be contempt of court. [(1) Calcutta High Court in Sri Subir Banerjee & Ors. vs. Sri Sunil Kumar Dasgupta (judgment dated 15 May, 1998); (2) Supreme Court in Mohd. Iqbal Khanday v Abdul Majid Rather].

14. It is also trite that partial compliance of an order can be considered as a reason for holding that that there was no intentional and willful violation. In Ramesh Kumar Singh vs. State Of Bihar & Ors in Hon'ble Patna High Court [order dated 10 March, 2011], in which a contempt application had been filed alleging violation of order dated 5.8.2004 passed by the Court in C.W.J.C. No. 13774 of 2003, a show cause had been filed showing compliance of the Court's order which was disputed by the counsel appearing for the petitioner that the same is partial compliance, it was held:

“In the facts and circumstances of this case, we are of the opinion that if the petitioner is aggrieved by the order passed by the respondents, he can avail the remedy open to him under the law before the appropriate forum. With the aforesaid observation, the contempt proceeding is closed.”

15. It is beyond our purview in a contempt proceeding to go into the merits of the claim in regard to re-fixation of seniority of the petitioner and the consequential entitlement of benefits. This will legitimately be the subject matter of a separate proceeding in a fresh OA if filed by the petitioner. We have recorded the rival

submissions only for the limited purpose of examining the question whether disobedience of the order of this Tribunal (which was upheld by the Hon'ble Patna High Court), if any, was willful. We find, in the facts and circumstances of the case, that there is no contumacious conduct or willful disobedience of the order of this Tribunal and accordingly the contempt petition is ordered to be closed without, however, awarding any costs.



[Bidisha Banerjee] Member [J]



[Naresh Gupta] Member [A]

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