

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

CONTEMPT PETITION NO. 23/2003  
IN  
ORIGINAL APPLICATION NO.247/2001

THIS THE 9<sup>TH</sup> FEBRUARY, 2004

CORAM: HON'BLE SHRI A.K. AGARWAL. VICE CHAIRMAN  
HON'BLE SHRI S.G. DESHMUKH. MEMBER (J)

S.P. Saxena & 10 Ors. .. Petitioners

By Advocate Shri G.S. Walia.

Versus

Shri K.K. Agarwal,  
General Manager or  
his successor in office,  
Mumbai Division, Western Railway,  
Headquarters office,  
Churchgate, Mumbai 400 020. .. Proposed

*Mr. V.S. Resurkar Sr. Counsel with Mr. V.D. Vadharke Adv. for Contemners.*

*Respondent / Alleged Contemner*

O R D E R

Hon'ble Shri A.K. Agarwal, Vice Chairman.

This contempt petition has been filed by the petitioners Shri S.P. Saxena & others alleging non implementation of the Tribunal's order dated 06.5.2002. By this order, the Tribunal had directed that the petitioners who are working as Motorman at Bombay Division of Western Railway are entitled to the first upgradation to the scale of Rs.6500-10500 on completion of 12 years of service and aRs.7450-11500 on completion of 24 years of service subject to fulfilment of other conditions as laid down in the ACP Scheme.

2. The Union of India had filed a writ petition in the High Court of Judicature at Bombay challenging the orders of the Tribunal. The High Court upholding the verdict of the Tribunal dismissed the writ petition vide its order dated 10.9.2003.

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*Corrected  
on her order  
dt 13/2/04*

*by  
13/2/04  
BA*

3. This contempt petition was filed on 16.01.2003. Since the respondents had gone to the High Court against the order of the Tribunal, it was not unusual to wait for the verdict of the High Court before implementing the orders of the Tribunal.

4. The learned counsel for proposed contemnors has cited a judgment of Supreme Court in Union of India Vs. SC/ST Welfare Association wherein it has been held that contempt need not be pursued when the party had bonafide doubt in implementation of the court order. In view of this we do not find any fault on the part of the proposed contemnors to wait till the decision of the High Court.

5. The respondents filed additional reply on 17.12.2003 giving details of the benefits given to the petitioners in implementation of the Tribunal's order. In response to this, the petitioners have filed another affidavit highlighting shortcomings in the action taken by the respondents for the implementation of the Tribunal's order.

6. We have heard both the counsel on the action taken for each petitioners. In the case of Shri R.S. Pardesi who is a direct recruit of Motorman, it is contended that his promotion as Senior Motorman on 01.6.1992 should be excluded since it is not a regular channel of promotion. Hon'ble High Court also confirmed

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the decision of the Tribunal that the grade given as a result of upgradation in the same category of Motorman cannot be counted towards upgradation under ACP Scheme. In the order of the Tribunal it is very clear that first upgradation will be to the scale of Rs.6500-10500 and second upgradation to the scale of Rs.7450--11500. Shri R.S. Pardesi who became a regular Motorman with effect from 11.7.1975 has completed 24 years of service and is entitled to the second upgradation to the scale of Rs.7450-11500.

7. In the case of Shri R.K. Bhattacharya, it is contended that his earlier promotion before he became Motorman should be ignored, since he joined as trainee motorman through direct recruitment and not by promotion from Telecommunication Inspector, as there is no such channel of promotion. There is no other record in front of us to confirm that the individual joined as motorman through direct recruitment and was given no weightage for his earlier service in the Railway. However, he joined as trainee motorman on 15.4.1987 and became regular motorman with effect from 28.5.1988. He is eligible for only one upgradation because the clock for computing the period for ACPS will start only from 28.5.1988.

8. In the case of Shri R.K. Bhattacharya, Sethumadhavan, Harish Kumar, P.P. Jha and R.S. Rao, it


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has been admitted in the affidavit that petitioners have got requisite benefit of ACPS.

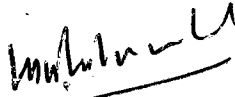
9. In the case of Shri S.P. Saxena, he has been granted upgradation in the scale of Rs.6000-9800. As per the order of the Tribunal, the first upgradation is to be given in the scale of Rs.6500-10500.


10. In the case of Shri A.R. Bangale, it has been pointed out that in the compliance report submitted on 22.10.2003 they have used the words 'second financial upgradation' when the pay scale granted is Rs.6500-10500. Keeping in view the length of service, he is entitled to only first financial upgradation in the pay scale of Rs.6500-10500. Since the grade given by extending the benefit of ACPS is the correct one, we will not like to interfere and leave it to the respondents to correct such errors.

11. After going through the compliance report submitted by the proposed contemner as well as the affidavit filed by the applicant in its reply, we are of the view that a substantial portion of the order of the Tribunal dated 06.5.2002 has been complied with. Only in the cases of two applicants R.S. Pardesi and S.P. Saxena, the compliance has not been found fully in order.



12. Since major portion of the Tribunal's order has been complied with, we drop the contempt proceedings and discharge the contemner. However, it would be open to the two applicants mentioned in the above para to approach the Tribunal again in case further action to do justice with them is not taken by the contemnors within next three months.

  
(S.G. DESHMUKH)  
MEMBER (J)

  
(A.K. AGARWAL)  
VICE CHAIRMAN

Gajan