

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Contempt Petition No.14/98
in
Original Application No.419/93

Dated this _____ the 20th Day of April, 2000.

Coram : Hon'ble Shri D.S. Baweja, Member (A)
Hon'ble Shri S.L. Jain, Member (J)

Shri A.K. Gupta .. Applicant.
(By Advocate Shri S.V. Marne)

Vs.

Union of India & Ors. .. Respondents.
(By Advocate Shri R.K. Shetty)

O R D E R
(Per : Shri D.S. Baweja, Member (A))

This contempt application has been filed by the applicant alleging non implementation of the order dated 13.6.1997 in O.A. 419/1993.

2. The applicant has filed OA 419/93 seeking redressal of his grievance with regard to his seniority in Senior Time Scale. The O.A. was allowed as per order dated 13.6.1997 with the direction as under in para 10:-

"10. In the result, we allow the O.A. and direct the respondents to re-cast the seniority of the applicant in the seniority list as on 1.1.92 at appropriate place i.e. just below Shri K.K. Pati. The D.P.C. ought to have considered for the post of STS when his juniors of 1984 to 1987 batch were considered and promoted to STS and his seniority should have been fixed accordingly. The applicant is not entitled to any arrears of pay but only to seniority and notional fixation of pay in the post of STS. The Impugned orders dated 28.2.92 and 17.11.92 are hereby quashed and set aside. This order shall be complied within a period of three months from the date of receipt of this order. No order as to costs".

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3.....The respondents were allowed twice extension of time for implementation of the above referred order and the last extension was upto 25.3.98. The applicant has filed the present Contempt Application on 23.3.98 alleging that though the time for implementation of the order is getting over, the respondent has not taken any steps to implement the order. The applicant therefore contends that the respondent have committed Contempt of Court and Contempt Proceedings should be initiated against him.

4..... Notice was issued to the respondent in the Contempt Application and he has filed two written statements. The respondent has explained the reasons for delay in implementation of the order namely (a) In the similar matter in OA 23/1997 involving the applicant belonging to same year of Engineering Services Examination, the Principal Bench had taken a different view (b) Writ Petition was filed before the High Court against the order dated 13.6.1997 which has been rejected as per order dated 16.4.1999 and on the advice of Law Ministry, SLP before Hon'ble Supreme Court is being filed. As regards the compliance of the order dated 13.6.1997, the respondent states that as per bonafide understanding of the order, a review DPC has been held on 3.11.1999 to consider the applicant for promotion to Senior Time Scale when Shri K.K. Pati, junior to the applicant in batch was considered by the DPC on 30.9.1988. The review DPC has not found the applicant fit for promotion and recommendations of the review DPC have been accepted by the Competent Authority. In view of this action, the respondent pleads that the directions of the Tribunal have been complied with. Further if any unintended

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delay has been caused in implementing the direction in the order dated 13.6.1997, the respondent express unconditional apology for the same.

5. The applicant has not filed any rejoinder reply for the written statements.

6. We have heard the arguments of Shri D.V. Gangal alongwith Shri S.V. Marne for the applicant and Shri M.I. Sethna alongwith Shri R.K. Shetty for the respondents.

7. The applicant has not filed any rejoinder reply to controvert the submissions of the respondent in the written statements. However, during the arguments, the Counsel for the applicant submitted that as per the directions in para 10 of the order dated 13.6.1997, no review DPC is to be held and the name of the applicant is required to be interpreted at the appropriate place just below Shri K.K. Pati by recasting the seniority list as on 1.1.1992. The Counsel for the respondents on the other hand referring to the averments in the written statement stated that as per understanding of the order, name of the applicant ought to have been considered when juniors of 1984 to 1987 batches were considered. It is further submitted that consideration is to be done by the DPC and ~~since~~ the applicant had not been considered at that time by DPC, a review DPC is required to consider the case of the applicant for promotion. Accordingly the review DPC has been held on 3.11.1999 and based on the available ^{confidential} report of one year only, the DPC has not found the applicant fit for promotion. With this action the respondents's stand is that the order of the Tribunal has been complied with.

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8. From the rival submissions, we find that there is serious dispute between the parties with regard to interpretation of the directions in the order dated 13.6.1997. It is not scope of the Contempt application to go into interpretation of the order. In a contempt application it is to be seen whether there is any wilful disobedience. In the present case, we find that respondents have taken action as per their understanding of the order. There is some delay in implementation of the order. The reasons for delay have been explained and we are satisfied with the same. Once it is noted that there is compliance of the order and there is no wilful obedience, then no case of Contempt of Court arises. If the applicant is still aggrieved by the order passed by the respondent, then that is altogether a different issue. In such a situation, a fresh cause of action arises for which the legal remedy if so desired can be sought as per the law. Merits of the compliance of Court orders cannot be examined in the Contempt of Court proceedings. In this connection, we refer to the law laid down by the Apex Court in its two judgements in the case of J.S. Parihar vs. Ganpat Duggar & Others 1996 SCC (L&S) 1422 and V. Kanakrajan vs. G.M. S.E. Railway JT 1996 (7) SC 517.

9. In view of the law laid down by the Hon'ble Supreme Court and the facts obtaining in the present Contempt Application, we restrain to interpret the scope of the directions in the order dated 13.9.1997. We are of the review that there is no case for taking Contempt of Court proceedings. For any non

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satisfaction of the action of the respondents, gives a fresh cause of action for which remedy does not lie in an application of Contempt.

10 In the result of the above, we do not find merit in the Contempt Application and the same is dismissed accordingly. No order as to costs.

S.L. Jain
(S.L. Jain)
Member (J)

D.S. Baweja
(D.S. Baweja)
Member (A).

H.