

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

C.P.NO.25/99 in OA.NO.521/97

Dated this the 6th day of April 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Smt.Lata Vasant Dabhade

... Applicant

By Advocate Shri N.K.Iyer

V/S.

1. K Prasad,
The Secretary,
Ministry of Defence,
DHQ, PO New Delhi.

2. Col.M.I.Husain,
The Commandant
Ordnance Depot,
Talegaon Dabhade,
Dist. Pune.

... 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 compliance of the order dated 25.3.1998 in OA.NO.521/97.

2. The applicant has filed OA.NO.521/97 challenging non grant of compassionate appointment to her. The OA. was decided as per the order dated 25.3.1998 giving the following directions in para 9 :-

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"9. I therefore direct the respondents to re-consider the case of the applicant for grant of compassionate appointment against the next available vacancy. Action be taken within three months from the date of communication of this order. There will be no orders as to costs."

3. The applicant has submitted that the respondents had asked for extension in time for implementation of the order twice based on the Misc. Applications filed by the respondents. The time was extended last upto 28.2.1999. Since the respondents failed to implement the order even after extension of time allowed, he is forced to file the present contempt application on 6.5.1999. The applicant submits that due to non implementation of order, the respondents have committed contempt of court and therefore the respondents deserve to be punished as per the law.

4. Notices were issued to the respondents and the respondents have filed first written statement on 29.9.1999. Thereafter, additional written statement has been filed on 26.11.1999. The respondents have also filed Misc. Application through which number of documents dealing with the consideration of the case of the applicant for compassionate appointment have been brought on record.

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

6. We have heard the arguments of Shri N.K.Iyer, learned counsel for the applicant and Shri R.K.Shetty, learned counsel for the respondents.

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7. From the directions given in para 9 of the order dated 25.3.1998 and extracted above, it is noted that the respondents were directed to reconsider the case of the applicant for grant of compassionate appointment against the next available vacancy. The respondents have brought out that the case of the applicant has been reconsidered as per the directions and observations made in the order and the applicant's case has not been found fit for compassionate appointment. The applicant has been advised of the result of the reconsideration as per letter dated 22.1.1999. Thereafter, the applicant has been again advised of the result of reconsideration as per letter dated 27.7.1999. The respondents have pleaded that the order of the Tribunal has been complied with and therefore there is no case of contempt of court. The counsel for the applicant, however, during the hearing submitted that the respondents have not reconsidered the case of the applicant for compassionate appointment as per the observations made in the order dated 25.3.1998. The respondents have again rejected the claim of the applicant by allocation of marks and in competition with the other candidates seeking compassionate appointment. The counsel for the applicant also stated that Bench has observed that the system of marking followed by the Department in determining the need for compassionate appointment is irrational and therefore the same should not be followed in considering the case of the applicant. The counsel for the respondents, however, contested this statement of the applicant and has stated that the procedure of allocating of marks has been



followed as per the instructions laid down by the Department and the applicant has been allowed extra marks based on the observations made in the order. However, inspite of allotting the additional marks, the case of the applicant was not found more deserving as compared with the other candidates seeking compassionate appointment.

8. We have carefully considered the rival contentions and find that there is a substantial compliance of the order ^{by} of the respondents. The respondents have reconsidered the case of the applicant and we find that additional marks have been allotted as per the observations made in the order. In the contempt proceedings, it is to be seen whether there is any wilful disobedience. In the present case, we find that the order has been complied with and there is no wilful disobedience. It is altogether separate issue in case the applicant is aggrieved by the decision of the reconsideration. The submissions made by the counsel for applicant will call for going into the merits of the reconsiderationsⁿ. It is not the scope of contempt of court proceedings. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of J.S.Parihar vs. Ganpat Duggar & Ors., 1996 SCC (L&S) 1422. In this judgement, the Hon'ble Supreme Court has held that merits of ^{Compliance of} the court's order cannot be considered in the contempt of court proceedings. If the party is aggrieved by order passed in pursuance of the directions of the court, then there is a fresh cause of action and the

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matter can be agitated as per the law but no findings can be recorded on merits in the contempt application and to issue fresh directions for compliance to the respondents. Keeping these observations in focus, we are of the view that there is no wilful disobedience and the respondents have complied with the order of the Tribunal. In case the applicant is aggrieved by this order, he can seek legal remedy as ^{a r} fresh cause of action.

9. In the result of the above, the contempt petition is devoid of merits and the same is dismissed accordingly. Notices issued are discharged.

S.L. Jain
(S.L.JAIN)
MEMBER (J)

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

mrj.

20/6/2020
order/Judgement despatched
to Applicant Respondent (s)
on 20/6/2020
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