

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI.

Contempt Petition No.: 53/2001 in O.A. 77/1999.

Contempt Petition No.: 54/2001 and 110/2001 (C.P. 3/2006 and 4/2006) in O.A. No. 755/1998.

Dated this Friday the 19th day of Feb 2010.

CORAM : Hon'ble Shri Jog Singh, Member (J).

Hon'ble Shri Sudhakar Mishra, Member (A)

C.P. No. 53/2001 in O.A. 77/1999

1. Shri Rajendra Kumar Raj,
Working as Senior Section
Engineer (P.Way, Const.),
Central Railway,
Ajani, Nagpur.
2. Shri A.P. Arya
working as Senior Section
Engineer (P.Way, Maint.)
Central Railway,
Kalyan.
3. Shri C.P. Kuldeep
Working as Section
Engineer (P.Way. Maint.),
Central Railway,
Igatpuri.

*Petitioners
(Orig. Applicants)*

(By Advocate Shri S.V. Marne)

Versus

1. Shri R.K. Singh
The Secretary,
Railway Board,
Ministry of Railway,
Rail Bhawan,
New Delhi.
2. Shri Sudhir Chandra
General Manager,
or his Successor in Office
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai 400 001.

Respondent-Contemnors

(By Advocate Shri S. C. Dhavan)

C.P. No. 54/2001 in O.A. 755/1998

Shri J P Shoke
 Senior Section
 Engineer (Maint),
 Central Railway,
 Kalyan

... *Petitioner*
(Original Applicant).

(By Advocate Shri D.V. Gangal)

Versus

1. Shri R.K. Singh
 The Secretary,
 Railway Board,
 Ministry of Railway,
 Rail Bhawan,
 New Delhi.
2. Shri Sudhir Chandra
 General Manager,
 or his Successor in Office
 Central Railway,
 Headquarters Office,
 Mumbai CST,
 Mumbai 400 001.

Respondent-Contemnors

(By Advocate Shri S.C. Dhawan)

C.P. No. 110/2001 in O.A. 755/1998

Shri J P Shoke
 Senior Section
 Engineer (Maint),
 Central Railway,
 Kalyan

... *Petitioner*
(Original Applicant).

(By Advocate Shri D.V. Gangal)

Versus

1. Shri R.K. Singh
 The Secretary,
 Railway Board,
 Ministry of Railway,
 Rail Bhawan,
 New Delhi.

2. Shri Sudhir Chandra
 General Manager,
 or his Successor in Office
 Central Railway,
 Headquarters Office,
 Mumbai CST,
 Mumbai - 400 001.

3. Smt. P.I. Shahdadpuri
 Senior Personnel Officer / Acting
 Chief Personnel Officer (Engg)
 Or her Successor in Office,
 Central Railway,
 Headquarters Office,
 Mumbai CST,
 Mumbai 400 001.

Respondent-Contemnors

(By Advocate Shri S.C. Dhawan)

C.P. 3/2006 IN CP 110/2001 in O.A. 755/1998

Shri J P Shoke
 Working as Senior Section
 Engineer (Maintenance),
 Central Railway,
 Kalyan - 421 306

Petitioner
(Original Applicant)

(By Advocate Shri D.V. Gangal)

Versus

1. Shri R.K. Singh.
 The then Secretary
 Railway Board
 Ministry of Railway, Railway Board
 Rail Bhawan, New Delhi.

2. Shri Sudhir Chandra
 The than General Manager,
 Central Railway
 & his successors in
 O/o. Central Railway, HQ,
 Mumbai CST 400 001.

3. Shri A.K. Pandharkar
 Dy.CPO(NG), Head Quarter,
 Central Railway,
 Mumbai- CST.

Respondent-Contemnors.

(By Advocate Shri S.C. Dhawan)

C.P. No. 4/2006 IN O.A. 755/1998

Shri J P Shoke
 Senior Section
 Engineer (Maintenance),
 Central Railway,
 Kalyan - 421 301

Petitioner
(Original Applicant)

(By Advocate Shri D.V. Gangal)

Versus

1. Shri B.K. Panigrahi,
 Assistant Personnel Officer
 (Court) HQ.,
 Central Railway CST,
 Mumbai. *Proposed Contemnor*
2. The General Manager,
 Central Railway,
 CST-Mumbai, GM's Bldg.,
 Mumbai C.S.T. *Respondent.*

(By Advocate Shri S.C. Dhawan)

ORDER

Per : Shri Jog Singh, Member (J)

The relief sought by the applicant in the main
 O.A. No. 755/1998 are as follows :

"(a) This Hon'ble Tribunal may be
 graciously pleased to call for records of the
 case from the Respondents and after examining
 the same quash and set aside the impugned
 order dated 11-07-1998, 07-08-1998 and 02-09-
 1998;

or alternatively

(b) To hold and declare that the
 Applicant is eligible to appear for Class
 II/Group B selection impugned herein.

(c) To hold and declare that the
 Respondents should publish integrated
 seniority list of all six streams of Civil
 Engineering Departments for promotion to
 Class II/Grade B selection, before ordering
 Group B selection.

(d) To hold and declare that the selection called vide Notification dated 19-03-1998 is legal and valid.

(d2) To hold and declare that the letter dated 15-05-1998 is illegal and void ab initio and be quashed and set aside."

2. Contempt Petitions 54/2001 and 110/2001 have been filed by the applicant contending that the respondents have not complied with the directions contained in this Tribunal's order dated 30.03.2001 passed in the main O.A. No. 755/1998. Contempt Petition No. 53/2001 has been filed contending non-compliance with the decision in O.A. No. 77/1999, which was disposed of along with O.A. No. 755/1998 through the common order dated 30.03.2001 in similarity of facts, circumstances and contentions. The Learned Counsel for the applicant submits that there are two different components in the direction issued by the Tribunal in its order dated 30.03.2001 and, as such, he has preferred two different contempt petitions. The learned counsel has further pointed out that he has moved two more Contempt Petitions, namely - 3/2006 and 4/2006 in respect of non-compliance of the same order dated 30.03.2001 but notices have not been issued to the respondents in respect of Contempt Petitions No. 3/2006 and 4/2006. However, in the other two contempt petitions, namely - 54/2001 and 110/2001 the parties have filed detailed pleadings and have been heard at length. It is useful to read the operative portion of the order dated 30.03.2001 passed by this Tribunal which is as under :

"We have heard the learned counsel for the applicants and the respondents carefully.

The entire issue relates to the letter of 15.05.1998 issued by the Railways which has deleted the portion relating to a

person promoted in an earlier panel being senior to one promoted on a later panel. There have been several judgments pronounced on not exceeding the reserved quota, the seniority of SC/STs acquiring accelerated seniority vis-a-vis the seniors promoted later and restoring their seniority etc. The respondents have relied on the judgment dated 5.5.98 which is one of the latest judgments on the issue in consideration. The judgment has taken into account the judgment in Jagdish Lal's case as well as all the other relevant judgments. The case has been distinguished. The ratio laid down is that accelerated promotion cannot grant accelerated seniority to SC/STs. All the same we find that in these various judgments the actions taken, initiated in the past has been protected. In Ajit Singh II's V/s. State of Punjab also while discussing about the prospectivity of the judgment in Ajit Singh Januja dated 1/3/96 it was observed in conclusion that while promotions in excess of roster made before 10/2/95 are protected. Such promotees cannot claim seniority which has no element of immediate hardship. So the reference is to cases where promotions have been granted in excess of the quota. That does not appear to be the case here. The applicant was promoted in 1984 against reserved quota. It is not stated that the applicant was promoted in excess of the quota. This being so the applicant's seniority of 1984 remains. Therefore, in our view, the applicant deserves to be included in the eligibility list for selection to Class II post as per his seniority in his cadre irrespective of the letter dated 15/5/98. Also it cannot be ignored that the Principal Bench also had ruled at interim stage, against the deleting of the five lines incorporated in the amended para 319-A of IREM. Considering that the judgment of 5/5/1998 has been challenged in the High Court there is no finality about it. In the facts and circumstances of the case we quash and set aside the impugned orders dated 11/7/98, 7/8/1998 and 2/9/98 and direct the respondents to give a supplementary test to the applicants for selection to Class II post/grade 'B' and consider them for promotion if found suitable. This shall be done within a period of three months from the date of receipt of a copy of this order.

Accordingly the OAs are allowed. No costs."

3. From the chronology of events, as reflected in the pleadings, we note that on receipt of the Tribunal's order dated 30.03.2001, the applicant preferred a representation to the respondents requesting them to implement the order in question on 16.04.2001. The respondents, instead of implementing the order, approached this Tribunal by way of Review Petition No. 30/2001 on 20.04.2001 and by order dated 30.08.2001, the said Review Petition was allowed. The O.A. was restored to file. The applicant challenged the said decision, allowing the Review Petition by the Tribunal, before the Hon'ble High Court of Bombay by way of Writ Petition No. 2605/2001. The Hon'ble High Court, after hearing the matter, was pleased to set aside the order passed by this Tribunal in Review Petition on 30.08.2001 and directed the Tribunal to rehear the matter by its order dated 02.11.2001. The Review Petition was accordingly reheard and by order dated 19.04.2002 the Tribunal directed the respondents to implement the original order dated 30.03.2001 within a period of two months from the date of receipt of a copy of the order dated 19.04.2002. The respondents again did not implement the order of this Tribunal and preferred a Writ Petition No. 1753/2002 before the Hon'ble High Court against the orders dated 30.03.2001 and 19.04.2002. By order dated 15.07.2002, the Hon'ble High Court has been pleased

to stay the order dated 30.03.2001 with certain observations. Para 4 of the said order of Hon'ble High Court is relevant and is reproduced herein below :

"4. The impugned order dated 30.03.2001 is stayed but this stay will not affect promotion that has already been granted to the general category candidates and will also not prevent the petitioner from considering the cases of the Scheduled Castes/ Scheduled Tribes for promotion. All orders will be subject to the final decision in this petition."

4. The above said Writ Petition is pending before the Hon'ble High Court and it was informed by the Learned Counsel for the respondents that they have moved for expediting the said writ petition.

5. Thus, the issue before this Tribunal in the present contempt petition is as to whether there is any deliberate violation of this Tribunal's order dated 30.03.2001 passed in the main O.A.No. 755/1998. Simply and undoubtedly, the answer would have been in the positive if the respondents had not approached the Hon'ble High Court and sought the stay of the Tribunal's order dated 30.03.2001 on 15.07.2002 in Writ Petition No. 1753/2002. Therefore, we have to dwell on the facts and contentions of parties for a while.

6. The learned counsel for the applicant submits that the Tribunal has quashed the impugned orders dated 11.07.1998, 07.08.1998, 02.09.1998 and further directed the respondents to give a supplementary test

to the applicants for selection to Class II Post/Grade 'B' and consider them for promotion if found suitable, within a period of three months. Further, specifically it was pointed out by the Tribunal that the promotion granted to the applicant in the year 1984 against reserved vacancy was not in excess of the quota. As such, his name should have been included in the eligibility list for selection to Class-II post as per his seniority in his cadre.

6.1 The learned counsel for the applicant further submits that although the above said order dated 30.03.2001 has been stayed by the Hon'ble High Court, at the same time, a direction is issued that the stay will not affect promotions already granted to General category candidates and will not prevent the petitioner (i.e. the Railways) from considering the case of reserved candidates for promotion.

7. Respondents have filed their reply and on the basis of sequence of dates and events, have pointed out that there is no deliberate or intentional non-compliance of the order of this Tribunal dated 30.03.2001 as the same has been stayed by the Hon'ble High Court by its order dated 15.07.2002 in the Writ Petition No. 1753/2002. The respondents have also stated that they have approached the Hon'ble High Court for expediting the matter.

8. We have heard both the learned counsel for the parties at length and have perused the pleadings and

documents annexed therewith. We note that the directions contained in Tribunal's order dated 30.03.2001 cannot be implemented by the respondents as long as there is a clear stay by the Hon'ble High Court of the order dated 30.03.2001. Neither this Tribunal's order dated 30.03.2001 nor the order dated 15.07.2002 passed by the Hon'ble High Court can be segregated into different parts and make one of them implementable.

9. The direction of the Hon'ble High Court that the stay will not affect the promotions which have already been granted to general candidates is passed to meet out justice to those general candidates who had already been promoted and, as such, their interest was required to be protected by the Hon'ble High Court. The other direction of the Hon'ble High Court that the stay will not prevent the petitioner (Railway) from considering the case of SC/ST for promotion is in the form of liberty to enable the Railway organization to do justice in the matter of promotion of SC/ST candidates. Since the applicant also happens to be a reserved category candidate belonging to Schedule Caste, his case should also be considered along with others for promotion to any appropriate post if the respondents wish to do so. However, this cannot be interpreted to include the implementation of this Tribunal's direction contained in its order dated 30.03.2001 which has been specifically stayed by the Hon'ble High Court.

10. We note that this is a hard case. The applicant belongs to reserved category and has been fighting for justice for the last ten years but is deprived of the actual benefit because of the technicalities of law. But at the same time, as long as the Hon'ble High Court's stay is in currency, the Tribunal cannot proceed with the contempt matters any more. Therefore, the present contempt petitions are disposed of with an observation that as and when an eventuality arises either on modification, if any, of the stay order dated 15.07.2007 granted by the Hon'ble High Court in the Writ Petition No. 1753/2002 or when the Writ Petition is finally disposed of, the applicant would be at liberty to approach the appropriate forum as per law and in accordance with the direction of the Hon'ble High Court which may be passed eventually.

11. With the above observations, the contempt petitions, namely - 53/2001, 54/2001 and 110/2001 stand disposed of. Notices discharged. Similarly, the contempt petitions no. 3/2006 and 4/2006 which also arise out of the same order of this Tribunal in O.A. No. 755/1998 are also disposed of without notice to the other side. Accordingly, M.Ps. No. 91/2006, 185/2006, 471/2006, 472/2006, 317/2007, 44/2008 and 45/2008 also stand disposed of.

C. P. No. 53/2001 IN. O.A. 77/1999.

NO.CAT/MUM/JUDI / C. P. 54/2001 and 110/2001 (C. P. 03/2006 and 04/2006) IN. O.A. 755/1998.

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