

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. CP No. 66/96 199
T.A. No.

DATE OF DECISION 6.6.1997

All India Non Scheduled Caste and Non-Scheduled Tribe
Railway Employees Association and another
Petitioner

Mr. P.V.Calla Advocate for the Petitioner (s)

Versus

Shri C.L.Kav and others Respondent

Mr. B.P.Agarwal, Advocate General Advocate for the Respondent (s)
for all the respondents with
Mr. Rajendra Agarwal
Mr. U.D. Sharma, counsel for respondents Nos. 1 to 3 & 5 to 6
Mr. Manish Bhandari, counsel for respondent No.4

CORAM :

The Hon'ble Mr. Hon'ble Shri O.P.Sharma, Member (Administrative)

The Hon'ble Mr. Hon'ble Shri Ratan Prakash, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*


(RATAN PRAKASH)
MEMBER (J)


(O.P.SHARMA)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

C.P.No.66/96 in O.A. No.62/86

Date of order: 6-6-1997

All India Non-Scheduled Caste and Non-Scheduled Tribe Railway Employees Association, Ajmer and another.

: Petitioner

Versus

1. Shri C.L.Kav, Chairman, Railway Board, Rail Bhawan, New Delhi.
2. Shri V. Venkateshwaran, General Manager, Western Railway, Church Gate, Mumbai.
3. Shri N.P.Singh, Divisional Railway Manager, Western Railway, Ajmer Division, Ajmer.
4. Shri S.P.Singh, Chief Works Manager, Western Railway, Ajmer Nagara, Ajmer.
5. Shri L.C.Sharma, Deputy C.O.S., Western Railway, Ajmer.
6. Shri Abhay Mishra, Dy. Chief Accounts Officer (TA), Western Railway, Ajmer.

: Respondents

Mr. P.V.Calla, counsel for the petitioner

Mr. B.P.Agarwal, Advocate General for Rajasthan with

Mr. Rajendra Agarwal for all the respondents

Mr. U.D.Sharma, counsel for respondents Nos.1 to 3 & 5 to 6

Mr. Manish Bhandari, counsel for respondent No.4

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

The petitioner All India Non Scheduled Caste and Non-Scheduled Tribe Railway Employees Association, Ajmer and another have filed this petition to initiate contempt proceedings against the respondents Nos. 1 to 6 S/Shri C.L.Kav, V. Venkateshwaran, N.P.Singh, S.P.Singh, L.C.Sharma and Abhay Mishra for non-compliance of the directions given by this Tribunal in its order dated 30.7.1996 in OA No.62/1986 All India Non-Scheduled Caste and Non-Scheduled Tribe Railway Employees Association and another Vs. Union of India and others.

2. The grievance of the petitioner is that instead of complying with the directions given by the Tribunal, the respondents have issued certain promotion orders in respect of reserved category candidates in the different departments attaching scant regard to its directions and have wilfully dis-obeyed the directions and have thus committed contempt of the Court.

3. While dispensing with the personal attendance of the respondents notices were issued to show cause why contempt proceedings be not initiated against them. All the respondents have opposed the petition by filing reply. However, respondent No.5 has also filed a separate reply to the contempt petition.

4. This Tribunal vide its order dated 30.7.1996 disposed of the O.A. No.62/86 by giving the following directions:-

"8. In view of the directions given by the Hon'ble Supreme Court, this application is disposed of with direction to the respondents to refix the seniority/promotion reversion and take necessary suitable consequential steps in accordance with law laid down by the Hon'ble Supreme Court in the case of Ajit Singh Januja (supra) within a period of six months from the date of receipt of a copy of this order. It is further clarified that it will be open to the employees concerned to make representation to the authority concerned pointing out the relevant decision of the Hon'ble Supreme Court laying down the law on this subject and the effect of the same on his/her seniority. If such representation is made within a period of one month from today, the same shall be taken into consideration by the authority concerned while complying with the directions contained hereinabove.

9. An ad interim order was issued in this case on 29.4.86 restraining the respondents from making promotion of such candidates belonging to SCs and STs as have attained their present position as a result of being appointed/promoted in the reserved quota, in excess of 15% and 7½% respectively of the total number of posts in Ajmer Division, Western Railway including Workshop and Stores. The said interim order has continued to be operative till date. In the circumstance in so far as reworking of the seniority of the officials promoted in excess of 15% and 7½% is concerned, it shall have to be done with from the date from which the ad interim order as aforesaid was issued

i.e. with effect from 29.4.1986."

In disregard of aforesaid directions given by the Tribunal; it has been vehemently argued by Shri P.V.Callan, learned counsel for the petitioner; that issuance of orders as at CP-5 to CP-10 by the respondents amounts to violating the directions and as such all the respondents are guilty of committing contempt of Court.

5. Shri B.P.Agarwal, learned Advocate General for the State of Rajasthan appearing on behalf of all the respondents has urged that not only the petition is premature but is also not tenable in the eye of law. It has further been urged that the respondents have highest regard for the orders of the Tribunal and they have not flouted any directions given by this Tribunal in OA No.62/86. Shri U.D.Sharma for respondents Nos. 1 to 3 & 5 to 6 and Shri Manish Bhandari for respondent No.4 have also addressed the Tribunal in the matter and urged that the contempt petition being not maintainable should be dismissed and the respondents deserve to be discharged. On behalf of respondent No.4 Shri S.P.Singh, the learned counsel Shri Manish Bhandari has urged that none of the orders placed by the petitioner alongwith the contempt petition have been issued by his client and that the proceedings against him are not only baseless but also malicious, preposterous, made with ulterior motives and utter carelessness on part of the petitioner and that exemplary cost should be imposed on the petitioner.

6. We heard the learned counsel for the parties and have given anxious thought to the material placed on the record.

7. At the outset, it is necessary to deal with the



Preliminary Objections raised on behalf of the respondents pertaining to the non-maintainability of the contempt petition. It has been argued on behalf of the respondents that this contempt petition has been filed with the caption 'All India Non-Scheduled Caste and Non-Scheduled Tribe Railway Employees Association and another' and that the mandatory provisions laid down under Rule 7 of the Central Administrative Tribunal Rules of Practice, 1993 (hereinafter referred to as the 'Rules of Practice, 1993') as also Rule 4(5)(b) of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as the 'Procedure Rules, 1987') have not been complied with and as such the petition is not maintainable. Rule 4(5)(a)(b) aforesaid reads as under:-

"Rule 4(5)

(a) Notwithstanding anything contained in sub-rules (1) to (3), the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause of action and the nature of relief prayed for that they have a common interest in the matter.

(b) Such permission may also be granted to an association, representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed (provided that at least one affected person joins such an application)."

Further Rule 7 of the Rules of Practice, 1993 which deals with production of authorisation for and on behalf of an Association reads as under:-

"7. Production of authorisation for an on behalf of an Association.- Where an application/pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce alongwith such application, etc., for verification by the Registry, a true copy of the resolution of the Association empowering such person(s) to do so.


Provided the Registrar may at any time call upon the party to produce such further materials as he deems fit for satisfying himself about due authorisation."

On reading these two provisions, it is made out that in order

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to file an original application under Section 19 of the Administrative Tribunals Act, 1985 one has to comply with the provisions of Rule 4 of the Procedure Rules, 1987. If the number of petitioners is more than one and they wish to join together and file a single application, they may be permitted by the Tribunal to proceed jointly having regard to the cause of action, and the subject matter and the nature of relief prayed for by them. In case of an Association representing the persons desirous to join in a single application, such permission can also be granted by the Tribunal provided that the application discloses the class/grade /categories of persons on behalf of whom it has been filed and also that atleast one affected person joins in filing such an application.

8. In the instant petition which is a contempt petition, strictly speaking this Rule 4(5) (b) of the Procedure Rules, 1987 does not apply because this provision deals with the procedure and manner in which OA has to be filed under the Administrative Tribunals Act, 1985. The reliance, therefore, placed by Shri U.D.Sharma, the learned counsel for the respondents on the decision in All India Station Masters' Association and another Vs. Union of India and others, (1996) 34 ATC 345 is misplaced. On the other hand, the relevant provision to decide the objection raised on behalf of the respondents is Rule 7 of the Rules of Practice, 1993. The scope of Rule 7 of the Rules of Practice, 1993 is much wider than Rule 4(5)(b) of the Procedure Rules, 1987. This provision specifically lays down that where an application /pleading or other proceeding purported to be filed is by an Association, the person or persons who sign(s)/verify(ies) the same shall produce alongwith such application, for verification by the



Registry, a true copy of the resolution of the Association empowering such person to do so. In the instant contempt petition neither the person who is stated to have signed and verified the petition has joined as a petitioner in the petition, nor any copy of resolution of the petitioner association empowering him to do so has been annexed with the contempt petition. The provision under Rule 7 is mandatory. Even in the affidavit; which has been filed in support of the contempt petition by one Shri S.N.Modi who states to have filed this petition in the capacity of Additional Secretary of the petitioner association; it is not disclosed that he has been empowered or authorised by the All India Non-S.C. & Non-S.T. Railway Employees Association Ajmer to file this contempt petition. Petitioner association has further failed to file any resolution of the Association empowering Shri S.N.Modi, the signatory to the contempt petition to file this contempt petition. This is not the end of the matter. In the contempt petition, none of the aggrieved persons has been made a petitioner. Even in the title of the petition it has not been indicated that this petition is being filed through Shri S.N.Modi in the capacity of an Office holder of the petitioner association. It all goes to show that in their anxiety to show their upper hand vis-a-vis the respondents, the petitioner association has presented this petition in perfect disregard and violation of the mandatory provisions laid down under Rule 7 of the Rules of Practice, 1993 read with Rule 22 of the Central Administrative Tribunal (Contempt of Courts) Rules, 1992 which specifically provides that "in matters not specifically provided for in these rules, the procedure prescribed in the relevant rules of the Tribunal as amended from time to time shall mutatis mutandis apply to proceedings under these rules." We are, therefore, of the firm view that this contempt petition is not maintainable as having

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been not presented in compliance with the mandatory provisions laid down under the Rules of Practice, 1993 read with Contempt Rules, 1992.

9. Coming now to the objection raised on behalf of the respondents, of the petition being premature; it may be noted that the order of the Tribunal in the OA was passed on 30.7.1996 and it was received by the respondents not before 9th August, 1996. The Tribunal while disposing of the OA has allowed six months period to "take necessary suitable consequential steps in accordance with the law laid down by the Hon'ble Supreme Court in the case of Ajit Singh Januja from the date of receipt of a copy of this order". This direction, in unambiguous terms required the respondents to initiate necessary suitable steps within a period of six months from the date of receipt of a copy of the order i.e. the starting point of initiation of the steps on part of the respondents at the most can be taken as 9th August, 1996 which expires on 8th February, 1997. Admittedly, this petition has been presented by the petitioner on 17.10.1996 in the Tribunal i.e. much before the expiry of the period allowed to the respondents to comply with the directions in the OA. Therefore, this contempt petition is liable to be dismissed as being premature also.

10. Although in view of our finding that the contempt petition is not maintainable and is premature, yet it would not be out of place to refer to the argument of the learned counsel for the petitioner regarding the effect of the orders at CP-5 to CP-10 annexed to the contempt petition, issued by the respondents. It has been vehemently argued by the learned counsel for the petitioner Shri Calla that these orders at CP-

5 to CP-10 giving promotion to the reserved category candidates ~~are~~ violative of the directions given by the Tribunal in its order dated 30.7.1996 even though they were brought to the notice of the respondents and discussions were also held in the office of the respondents and that the respondents have intentionally flouted the directions of the Tribunal thus committing contempt. On the contrary, it has been urged on behalf of the respondents that the orders in question are only adhoc orders wherein it has also been specifically mentioned that they are subject to the judgment of the Hon'ble Supreme Court or the Central Administrative Tribunal in the matter. In other words, these orders which have been issued between 31.7.1996 to 3.9.1996 are purely adhoc/interim orders and have been further made subject to the judgment of Hon'ble the Supreme Court/Central Administrative Tribunal in the matter and cannot be categorised as regular orders of promotions. It should not be forgotten that the Indian Railways come within the purview of Essential Services, and any adhoc orders, such as at CP-5 to CP-10 issued by respondents cannot be viewed as being with an intention to disobey the direction given by the Tribunal in its judgment dated 30.7.1996. It may also be observed that none of the persons who could have been aggrieved by the issuance of the orders CP-5 to CP-10 have approached this Tribunal in the matter, nor have been made party in the array of petitioners in this contempt petition. Further, in any view of the matter, none of the orders namely CP-5 to CP-10 has been passed by respondent No.4 who has unnecessarily been impleaded in the array of respondents by the petitioner.

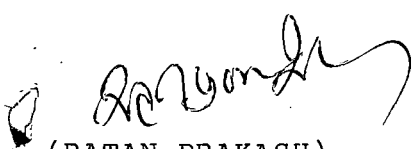
11. It is well understood that proceedings under the Contempt Law are exceptional and entail serious repercussions.



Individuals, who claim to assert their legal rights are not expected to act in a reckless and irresponsible manner - more so when the officials to abide by the orders/directions of the Courts/Tribunals are holding senior and responsible positions in the hierarchy of their Organisations; as in the instant petition. When there is a relationship of employer and employee nothing should be done to create an atmosphere of displeasure between them.

12. For all that has been said above, we are of the firm view that not only the present contempt petition is premature and not maintainable in the eye of law but is also devoid of any merit and being liable to be dismissed is, hereby, dismissed. The notices issued to all the respondents are hereby discharged.

13. The petitioner shall pay cost of Rs. 500/- to each of the respondents.


(RATAN PRAKASH)

MEMBER (J)


(O.P. SHARMA)

MEMBER (A)