

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. C.P. No. 84/2001
T.A. No.

200

DATE OF DECISION 12.12.2003

Shiv Kumar Sharma

Petitioner

Mr. Rajendra Soni

Advocate for the Petitioner(s)

Versus

Mr. Kamal Pandey and 5 others
Secy. Home Affairs

Respondent

Ms. Shalini Sheron Counsel for R.1

Advocate for the Respondents(s)

Mr. U.D. Sharma, Counsel for R.2 & 3

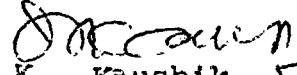
CORAM:

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.


(A.K. Bhandari)

Administrative Member


(J.K. Kaushik)
Judicial Member.

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

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH: JAIPUR.

12th December two thousand three.

Contempt Petition No. 84/2001

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

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Shiv Kumar Sharma
S/o Shri Narayan Prasad Sharma
B-40 Subash Nagar,
Jaipur. : Applicant.

rep. by Mr. Rajendra Soni: Counsel for the applicant.

versus

1. Kamal Pandey, Union Home Secretary,
Government of India, North Block
New Delhi.
2. Indrajeet Khanna, Chief Secretary, Govt. of
Rajasthan, Secretariate, JAIPUR.
3. Ashok Sampatram, Secretary, Department
Personnel Govt. of Rajasthan,
Secretariat, Jaipur.
4. Shri Gopalaswami, Principal Home
Secretary, Govt. of India, New Delhi
5. Shri R.K. Nair, Chief Secretary,
Govt. of Rajasthan, Secretariat, Jaipur.
6. Shri C.M. Meena, Secretary, Deptt.
of Personnel, Govt. of Rajasthan,
Secretariat, Jaipur.

: Respondents.

Ms. Shalini Shergill : Counsel for the respondent No. 1

Mr. U.D. Sharma : Counsel for respondents 2 & 3.

[Signature]

ORDER

Per Mr. J.K. Kaushik, Judicial Member

We have heard the learned counsel for the parties at great length and have anxiously considered the pleadings and records of this case. Shri Shiv Kumar Sharma has filed this Contempt Petition, alleging disobedience of the order dated 22.11.2000 passed by this Bench of the Tribunal in O.A. No. 435/2000, filed by him, wherein the following direction was given :

" In the light of above discussion, we are of the view that the applicant deserves consideration for promotion to the IPS as per the select list 1993-94 notwithstanding the fact that he had retired on superannuation from State Police service on 30.11.98. Accordingly we pass the order as under :

The OA is allowed. The applicant would be entitled for promotion to the IPS on the basis of select list for the year 1993-94 from the date his junior has been promoted as such with all consequential benefits. The period from the date of superannuation from State Police Service to the appointment as IPS would be treated as ' Dies non ' for the purpose of retiral benefits. The Central Government is accordingly directed to issue appointment orders in favour of the applicant and appoint him to the IPS by 5.00 PM of 24.11.2000. No costs. "

The said judgement came to be upheld by the Hon'ble Rajasthan High Court at Jaipur in State of Rajasthan and others

vs. Shiv Kumar Sharma & Ors (RLR 2001 (1) 38) in the following terms:

" 10. Keeping in view the observation of the Central Administrative Tribunal in its order dated 22.11.2000, we find that the finding arrived by the Tribunal are perfectly just and in accordance with the regulations and, hence deserves to be affirmed.

11. As a result of above discussion, the writ petition is dismissed. The impugned order of the learned Tribunal 22.11.2000 is upheld.

12. It is stated by the learned counsel for the petitioners that due to paucity of time, it is not possible to issue a formal notification in compliance of the aforesaid directions today. The petitioners are directed to immediately issue notification for compliance of the aforesaid directions by tomorrow i.e. 30.11.2000 and possibly by 1.00 PM upon being promoted to IPS cadre respondent No. 1- applicant Shiv Kumar Sharma

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shall be entitled to all consequential benefits such as pay revision, pension, gratuity and all other benefits which may be admissible to him in accordance with the Rules/Regulations. "

2. The learned counsel for the petitioner has reiterated the pleadings made in this Contempt Petition and has submitted that the respondents have not complied with the aforesaid order, in the spirit and the direction so given. Orders dated 18.09.2001 (Annex. C.P/4) and 25.09.2001 (Annex. C.P. 5) have been passed implementing the judgement of this Tribunal as upheld by the Hon'ble High Court of Rajasthan. He has strenuously submitted that a conjoint reading of both the judgements i.e. of the Tribunal as well as that of the High Court would make it evident that the applicant was entitled for promotion to IPS with all consequential benefits and the period from the date of superannuation from State Police Service to the date of appointment to IPS by promotion was to be treated as duty for all purposes other than the purposes of retiral benefits for which it has been directed that the same shall be treated as dies-non. He has submitted that the intention of the Hon'ble High Court is very clear that the applicant would be entitled to all consequential benefits such as pay, revision of pension, gratuity etc, but the respondents have categorically denied any payment of salary and allowances for the period which has been treated as dies-non. He has also submitted that it is clear from a bare reading of the operative portion of the order of this Bench of the Tribunal that the period from the date of superannuation from the State

Police Service to the appointment as IPS would be treated as 'Dies-non' for the purpose of retiral benefits. Therefore the petitioner would have been allowed pay and allowances for the said period. He has also submitted that he has been appointed to IPS by promotion with effect from 31.3.94. But instead of making actual payment only proforma fixation has been done and he has been given notional promotion. In support of his contention he relied on a judgement of one of the coordinating Benches in Ramesh Chander vs. R.S. Gahlewat (1992 (1) SLJ CAT 484) and contended that consequential benefits includes arrears of pay but the respondents have not paid him the due arrears despite there was an order that he would be entitled to all the consequential benefits.

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3. On the other hand, Mr. U.D. Sharma, /counsel for the respondents 2 & 3, with his usual vehemance has eloquently opposed the maintainability of this very contempt petition. He contended that the order of this Bench of the Tribunal has got merged entirely with the order of the Hon'ble High Court and since the doctrine of merger comes into play in cases where the order is challenged in the High Court and on decision the order gets merged . In this way the order of the Tribunal does not remain in existence and the Tribunal is empowered to deal with the contempt of its own order and not against the orders passed by other Courts including the High Court. He has next contended that a bare perusal of the pleadings in the contempt petition does make it clear that there has been any ~~wilful~~ intention to flout

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the order. In fact the contempt petition is now in the shape of an execution petition and until and unless ~~deliberate~~ there is an allegation of ~~deliberate~~ intentional disobedience of the order, contempt would not lie.

4. Mr Sharma has further contended that there was no specific direction to make payment of any arrears in as much as no amount was specified in the order and in such circumstances it cannot be said contempt has been committed by the respondents. He has endeavoured to satisfy us that the judgement of the Tribunal as upheld by the High Court has been fully complied with and there was no specific direction to make payment of any salary and allowance in respect of the period which is treated as dies non. Had the intention of the learned Tribunal been to make payment of salary and allowances for the said period some amount would have been spelt out in clear terms. As regards the pay fixation of the applicant from 31.3.94, the applicant's pay has been notionally fixed as per the rules in force. In this respect also there was no direction that actual monetary benefits are required to be given. Therefore no contempt whatsoever has been committed by the respondents 2 & 3. He has cited numerous decisions before us in support of his contention.

5. Ms. Shalini Sheron, representing Union of India, has submitted that the doctrine of merger does not apply in such cases. She has submitted that the

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order of this Tribunal as upheld by the High Court has been fully complied with in as much as he was appointed to I.P.S. with effect from 31.3.94 from the date his immediate junior was appointed to I.P.S. Therefore, the direction given to the Central Government has been fully complied with and no contempt lies against Union of India. The Union of India prayed for the dismissal of the Contempt Application.

6. In the rejoinder, the learned counsel for the petitioner has tried to counter the statements made on behalf of the alleged contemnors. It has been submitted that in the instant case, the judgement of the Tribunal has been simply upheld and neither it has been modified nor it has been altered and in such case, there is no question of merger of the order of this Tribunal with that of the higher forum. He has also submitted that if the contention of the respondents 2 & 3 (State of Rajasthan) to its logical conclusion, the result would be absurd in as much as wherever Writ Appeal is filed and if the Writ is dismissed on the very first day and that would be taken as an order of the High Court. Such proposition cannot lie. Hence this Bench of the Tribunal has power to entertain the contempt petition in the instant case. He has tried to reiterate his earlier version in the matter.

7. We have considered the rival contentions raised on behalf of the parties. At the very outset

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we would like to mention that we do not consider it necessary to refer to all the judgements which are cited on behalf of the State of Rajasthan by Mr. U.D. Sharma, because several authorities have been cited for the same proposition. We also notice that some of them has no relevance for arriving at a decision in this case.

8. Now, adverting to the factual aspect of the matter, a perusal of the judgement of this Tribunal as well as the order which has been passed by the Hon'ble High Court, reveal that the Hon'ble High Court has only extended the date of implementation from 24.11.2000 to 30.11.2000 and otherwise the judgement of this Tribunal has been fully upheld. In our considered opinion, it remains the judgement of the Tribunal and therefore this Tribunal has power to entertain this contempt petition against the order passed by this Tribunal. The various judgements cited by the learned counsel for the respondents on this point are distinguishable on facts. In the case of S.S. Kaushal vs. State Bank of India, Bhopal (2003 (3) SLR 327), the judgement was passed by a superior Court determining the rights of parties to the Writ Petition and the judgement was not simply upheld.

9. In Ram Lal Kapoor vs. Union of India and others. (1988 (4) SLR 556) it was held that per the provisions, the Tribunal has power to punish the authorities for contempt of its and not of any other Court. It was

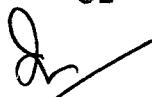


a case, where stay was granted by the High Court and the case came to be transferred to the Administrative Tribunal. It was held that there was disobedience of the said order granted by the High Court and the Tribunal was not competent to take cognizance of the order passed by the High Court and this judgement is also distinguishable on facts.

10. As regards the disobedience of the order is concerned, it is well settled that the disobedience of the order constitute civil contempt and that should be wilful and this proposition has been upheld by the Supreme Court in Indian Airports Employees' Union vs Ranjan Chatterjee and another (1999 SCC (L&S) 558). In the instant case there was an argument on behalf of the State of Rajasthan that the petitioner has not been able to point out as to how there was wilful disobedience of the order of this Tribunal.

11. The learned counsel for the petitioner in fact, tried to side track the main issue as to how the respondents have wilfully flouted the order. No doubt there was emphasis in making the submissions in as much as that the applicant was paid Rs.7.00 lakhs less than the person who was similarly situated and there has been huge financial loss to the petitioner.

12. Now, we shall advert to the submissions of the learned counsel for the applicant that the



'consequential benefits' includes arrears of pay when a promotion is wrongly denied as indicated in the judgement of Ramesh Chander (supra).

On this account, the learned counsel for the State of Rajasthan, has placed reliance on the decision of the Supreme Court in the case of State of Haryana and others vs. O.P. Gupta and others. (1996 SCC (L&S)

633), wherein there was a dispute regarding the preparation of seniority list and a fresh seniority list was prepared and in absence of any specific direction, notional promotions were given from a deemed date. Their Lordships of the Supreme Court have held notional in such circumstances, that/promotees would not be entitled to any arrears of pay from their deemed date of promotion to the promoted post as they had not worked during that period in this higher post.

He has submitted that in the instant case no arrear would be payable to the applicant.

13. However, in the contempt petition we cannot adjudicate upon rights of any parties and we cannot clarify the orders or elucidate the intention of the Court while passing the order earlier. Our scope in dealing with the contempt petition is meant to ensure that there is no deliberate or wilful disobedience of the order and the judgement has been fully complied with. We are of the considered opinion that there has been no wilful or deliberate disobedience of the order of the Tribunal and also

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the directions of this Tribunal has been substantially complied with.

14. The upshot of the aforesaid discussion is that the petitioner has not been able to make out any case of contempt and therefore the contempt petition stands dismissed. The notice of contempt issued stand discharged. No costs.

~~12/1/31~~
(A.K. Bhandari)

Administrative Member

JK Kaushik
(J.K. Kaushik)
Judicial Member.

jsv.