

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
OA 253/2003 with MAs 257/03 & 258/03

DATE OF ORDER: 19.09.2003

1. Jitendra Swaroop Sharma son of Late Shri B.S. Sharma working as TNCR in the Office DCTI, North Western Railway, Jaipur.
2. Ashok Kumar Gupta son of Shri R.L. Gupta working as HTTE in the Office of DCTI, North Western Railway, Jaipur.
3. Man Mohan Gaur son of Shri J.P. Gaur working as HTTE in the office DCTI, North Western Railway, Jaipur.

... Applicants

VERSUS

1. Union of India through General Manager, North West Railway, Jaipur Division, Jaipur.
2. Divisional Railway Manager, North West Railway, Jaipur Division, Jaipur;
3. Sr. Divisional Personnel Officer, North West Railway, Jaipur Division, Jaipur.

... Respondents

Mr. Rajendra Vaish, Counsel for the applicant

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

The applicants, three in number, have earlier filed OA No. 390/2000 against the impugned order dated 25.1.2000 by which General Secretary, MERJ Grant Road, Mumbai was informed that the currency of the panel dated 9.1.97, in which the names of the applicants were interpolated by order dated 5.1.1999 had expired on 6.1.1999 after the lapse of two years and hence the question of inclusion of names of any employees in the said panel does not arise. The said OA was allowed by this Tribunal vide order dated 2.2.2001, in the ~~the~~ ^{the} directions issued by this Tribunal was to the following effect.

"(i) The official respondents are directed to grant promotions to the applicants in OA No. 390/2000 on the basis of panel dated 9.1.97 with effect from the date their immediate junior candidates in the said panel were promoted with all consequential benefits.

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2. Pursuant to the said direction issued by this Tribunal, the respondents have issued office order dated 23.02.2001 (Annexure A/2) whereby giving proforma promotion to the applicants w.e.f. 7.8.97, the date on which immediate juniors in the said panel were promoted. Feeling aggrieved by the aforesaid order, the applicants have filed the present OA whereby praying for the following reliefs:-

"(i) By an appropriate order or direction, the impugned order dated 23.02.2001 Annexure A/2 whereby the promotion has been ordered to the higher merit and eligible applicants only as proforma promotion and notional fixation has been done contrary to the order dated 02.02.2001 Annex. A/1 passed by this Hon'ble Tribunal for all consequential benefits in favour of the applicants. The order may be modified to that extent deleting the word "proforma" and notional fixation and thereby direct the respondent to pay all arrears as per retrospective promotion and Annex. A/1.

(ii) By an appropriate order or direction the respondents may be directed to modify the order dated 23.2.2001 Annex. A/2 in view of the order dated 02.02.2001 passed by this Hon'ble Tribunal and pay all financial benefits of the promoted posts retrospectively."

3. The grievance of the applicants as can be seen from the grounds taken in this OA as well as from the prayer clause, as reproduced above, is that the order dated 23.2.2001 (Annexure A/2) is not in accordance with the direction issued by this Tribunal in OA No. 390/2000 and is contrary to the law laid down by the Supreme Court in Food Corporation of India vs. S.N. Nagarkar, 2002 SCC (L&S) 312 and directions issued to the respondents to grant financial benefits to the applicants from the date from which notional promotion has been granted to the applicants in terms of the aforesaid order dated 2.2.2001 passed by this Tribunal.

4. The matter was listed for admission on 04.6.2003 and subsequently on 04.8.2003 on which date, the attention of the applicant was invited as to how the fresh OA is maintainable for the execution of the order passed by this Tribunal dated 02.02.2001 specially when there is remedy available under the Administrative Tribunal's Act, 1985 (hereinafter referred to Act). The matter was adjourned for two weeks on the prayer of the learned counsel for the applicant to study the matter further and the matter was ordered to be listed on 4.9.2003. Thereafter, the matter was adjourned for admission from time to time, and finally on 16.9.2003. The learned counsel for the applicant submitted that the present application is maintainable and it is a fresh order passed by the authorities and insisted that the finding may be given on this point.

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5. We have heard the learned counsel for the applicant and we are not inclined to accept the contention raised by the learned counsel for the applicant. From the facts as can be gathered from the earlier OA No. 390/2000, it is clear that the respondents prepared a panel dated 9.1.1997 for the post of Head Travelling Ticket Examiner in which the names of the applicants were not there. The names of the applicants were subsequently inserted/interpolated at sl. nos. 22(a), 23(a) and 23(b) vide order dated 5.1.1999, almost after lapse of two years. It is also not disputed that the persons who were at sl. nos. 24 to 29 in the earlier panel were promoted earlier to insertion of names of the applicants in the panel subsequently. The names of the applicants were inserted after a lapse of two years on the panel dated 9.1.1997 when the said panel had already expired. Hence the inclusion of names of any employee after the expiry of period of panel may not be proper. However, this Tribunal vide order dated 02.02.2001, the relevant portion of which has been reproduced herein above, had granted the relief to the applicant rightly or wrongly. Further the said judgement has attained finality. As such correctness of this judgement cannot be gone into.

6. As already stated above in this OA, ~~the only grievance of the applicants, is regarding the implementation of the order of this Tribunal dated 2.2.2001 which according to the applicant has not been fully complied with in as much as they were promoted from back date notionally whereas they should have also been given the monetary benefits from the said date. This is evident from the grounds taken in the OA as well as from the relief sought in the OA, which has been quoted above.~~ Thus the question which arise for our consideration in this case is whether the applicants should have filed the substantive OA for seeking the implementation of the order of this Tribunal or they should have resorted to ~~other~~ efficacious and effective remedies available as provided under the Administrative Tribunal's Act, 1985.

7. The Tribunal can execute its own order in view of the provisions contained under Section 27 of the Act. Similarly, the Tribunal has power under the Contempt of Court Act in case the order of the Tribunal has not been complied with. Thus in view of the provisions contained in the Administrative Tribunal's Act, according to us, fresh OA is not remedy in case the order of the Tribunal has not been complied with fully by the respondents. It is legally well settled that where under statue remedy is available, that remedy has to be exhausted. In case fresh OA is entertained for part implementation of the order passed by this Tribunal without resorting the remedy available under the Act, it will amounts to giving go-way to the statutory provisions which is not permissible under the law.

In view of this, we are of the firm view that the fresh OA for non implementing the order dated 02.02.2001 is not a proper remedy.

8. At this stage, it may be useful to refer to the decision of the Delhi High Court in the case of M.J. Ganesh vs. A.K. Belwal, 2003(4) SLR 336. In this case, two writ petitions, CWP No. 508/99 and CWP 833/1999 were filed against the judgement of the Tribunal whereas CWP No. 223/2001 containing the reliefs, as mentioned in Para 14 of the judgement, were filed directly by the petitioner before the Hon'ble High Court whereby challenging the O.M. dated 22.02.2000 which were not the subject matter before the Tribunal in earlier OA and had also challenged the impugned judgement of the Tribunal dated 7.1.1999. The learned judges of the Hon'ble High Court after considering the decision of the Hon'ble Apex Court in L. Chandra Kumar vs. Union of India 1997 (2) SLR 1 in Paras 29 and 30 has observed as under:-

"29. A Writ petition cannot be filed before this Court directly for implementation of the judgement of the Tribunal. The Tribunal can execute its own order. It has also been observed in T. Sudhakar Prasad v. Govt. of A.P. (2001) 1 SCC 516; 2001(1)SLR 595 (SC) that the Tribunal has power under the contempt of Court Act. Sections 17 and 27 of the Administrative Tribunal Act are absolutely clear and unambiguous. The said provisions read thus:-

"17. Power to punish for contempt:- A Tribunal shall have, and exercise, the same jurisdiction, power and authority in respect of Contempt of itself as a High Court has any may exercise and for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect subject to the modifications that -

- (a) the reference therein to High Court shall construed as including a reference to such Tribunal.
- (b) the reference to the Advocate-General in Section 15 of the said Act shall be construed, -
 - (i) in relation to the Central Administrative Tribunal, as a reference to the Attorney General or the Solicitor General or the Additional Solicitor General; and
 - (ii) in relation to an Administrative Tribunal for a State or a Joint Administrative Tribunal for two or more States, as a reference to the Advocate General of the State or any of the States for which such Tribunal has been established."

27. Execution of orders of a Tribunal- Subject to the other provisions of this Act and the rules, the order of a Tribunal finally disposing of an application or an appeal shall be final and shall not be called in question in any Court (including a High Court) and such order shall be executed in the same manner in which any final order of the nature referred to in clause (a) of sub-section (2) of the section 20 (whether or not such final order has actually been made) in respect of the grievance to which application relates would have been executed."

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30. In that view of the matter, we are of the opinion that CW No. 223/2001 is not maintainable. The remedy of the petitioner therefore, would be to approach the Administrative Tribunal at the first instance."

Thus the matter is squarely covered by the decision of the Delhi High Court in the case of M. Ganesh vs. A.K. Belwal (supra)

9. The learned counsel for the applicant has also relied upon the decision of the Apex Court in Food Corporation of India vs. S.N. Nagarkar, 2002 SCC (L&S) 312 to contend that he is entitled for monetary benefits. This judgement is not of any help to the applicants. In that case, learned Single Judge of the High Court allowed the Writ Petition in terms of direction given in Para 7 of the judgement. Thereafter petitioner filed the Contempt Petition which was withdrawn and subsequently filed second contempt petition which was disposed of relegating the petitioner by filing a civil Writ Petition. Thereafter the petitioner filed Writ Petition before the Punjab and Haryana High Court and on 10.12.1996, the High Court held that since the writ petition was in the nature of application for execution and full implementation of order passed by Court a second Writ Petition was not maintainable. It was however, observed that if so advised, may file application for executing the order passed in early CWP.

In view of the observation of the High Court in its order dated 10.12.1996, Petitions were filed by the applicant under order 21 Rule 10 & 11(2) read with Section 151 of the CPC praying for execution of order but the same was dismissed as not maintainable on the ground that applicant had earlier filed contempt Petition. Against this order, the petitioner filed SLP(C) No. 1182 of 1998. The Apex Court made the following observations:-

"The doubt of the petitioner is with regard to the final direction in the impugned order i.e. the remedy to approach the civil court, whether it is to approach the execution court or to file a fresh suit for that remedy. In the circumstances, he is at liberty to move the High Court for review or clarification of the impugned order to clear the doubt. Without prejudice to the rights of the petitioner to move the High Court for that purpose, the SLP is dismissed."

The petitioner thereafter filed the Review Petition in Execution Application filed earlier. Review Petition was allowed. Application for execution of original order passed in CWP No. 4983 of 1993 was also allowed and original order passed in CWP was modified to the extent that petitioner shall be entitled to arrear of pay from the date of judgement. It was in this context the Apex Court observed that in execution proceedings, it is not permissible to go beyond the order which was passed in the Writ Petition.

Thus from the above, it is quite evident that even the Apex Court has not set aside the finding of the Punjab and Haryana High Court that second writ petition which is in the nature of application for execution and full implementation of the order passed by court is not maintainable. But the Apex Court in that judgement had observed is that while executing the order/judgement it is not permissible to go beyond that order and modify the same.

10. In the instant case, as already submitted, the applicants have not filed any execution proceedings especially when such remedy was available to them under Section 27 of the Act. At this stage, we may also hasten to add that the names of the applicants did not find ~~be~~ mentioned in the panel dated 9.1.1997 but their names were incorporated after a lapse of about two years vide order dated 5.1.1999 at slⁿ nos. 22(a), 23(a) and 23(b) respectively and subsequently ~~be~~ they have been given proforma promotion w.e.f. 7.8.1997 as can be seen from the impugned order dated 23.2.2001 (Annexure A/2). In the facts and circumstances of the case, as mentioned above, in case the competent authority had held that the applicants were entitled for promotion from the date they have actually joined on the post of Head Travelling Ticket Examiner, such a finding cannot be said to be palpably wrong in view of the law held by the Apex Court in Post Graduate Institute of Medical Education & Research, Chandigarh vs. Raj Kumar, 2001 SCC (L&S) 65, where the Apex Court had held that the payment of back wages having a discretionary element involved in it has to be dealt with in fact and circumstances of each case. No strait jacket formula can be evolved. However, facts have to be considered in its true and proper perspective.

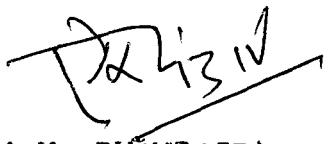
11. Since we have given a positive finding that the present application is not maintainable in view of the efficacious and effective remedy available under the Administrative Tribunal's Act, 1985, we have made these observations in order to satisfy ourselves as to whether the impugned order (Annexure A/2) passed by the respondents whereby the applicants have been given all the consequential benefits from the back date except wages, can be said to be wholly illegal. However, since we have given our finding that the present application is not maintainable in view of the non application of effective remedy available to the applicants under the Administrative Tribunal's Act, 1985, these observations have been made by way of passing reference. Thus we are of the view that this OA is in the nature of application for execution and full implementation of order dated 2.2.2001 passed in OA No. 390/2000 hence not maintainable.

12. Even yet for another reason, the present application is not maintainable. Even if it is held that the OA is maintainable against the impugned order dated 23.2.2001 (Annexure A/2), the same should have been filed within the period of one year as per the provision contained in Section 21 of the Administrative Tribunal's Act. In this case, the OA was filed admittedly after the expiry of two years. Even a legal notice dated 16.4.2003 was issued after a lapse of two years. No doubt, the applicants have filed a condonation of delay application in terms of the Section 21(3) of the Act but ^{no} sufficient cause has been shown for not making the application within the prescribed period. The reason given in the MA for condonation of delay for not preferring the OA within the prescribed time is that the applicants were desirous to settle the issue amicably. This, according to us, does not constitute sufficient cause. In case the authorities have not responded to the oral request of the applicants, they should have waited for reasonable period and should have instituted further proceedings within one year, time limit prescribed under the Act ^{for filing OA and also} for filing the contempt Petition as well as for executing the order. Admittedly the applicants have not taken such steps within the time prescribed under the Act.

In view what has been stated above, we see no reason even for condoning the delay in filing the OA even if it is held that the present OA is maintainable.

13. Having regards to the reasons recorded above, we are of the view that the present OA deserves to be dismissed on both counts with no order as to costs.

14. Resultantly the MA No. 257/2003 and MA No. 258/2003 also stand disposed of accordingly.


(A.K. BHANDARI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)