

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 11-11-04

Contempt Petition No. 50/2003.

IN

Original Application No.258/2003.

Shiv Dutt Sharma S/o Shri Som Dutt Sharma, aged about 45 years, r/o Plot NO.32, Ram Nagar, Jhotwara, Jaipur.

... Applicant.

v e r s u s

1. Shri K. S.Sarma, CEO & Director General, Prasar Bharti, PTI Building, Parliament Street, New Delhi.
2. Shri Ranjeet Singh, Chief Engineer (North Zone), Akashwani & Doordarshan, Jam Nagar House, Shahjahan Road, New Delhi.
3. Shri Govind Verma, Station Director, All India Radio, Jaipur.

... Respondents.

Mr. Manish Bhandari & Mr. Anupam Agarwal counsel for the applicant.

Mr. Bhanwar Bagri counsel for the respondents.

CORAM

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

: O R D E R :
(per Hon'ble Mr. M. L. Chauhan)

This Contempt Petition has been filed against the alleged violation of the order dated 07.03.2004 passed by this Tribunal in OA No.258/1998, whereby while allowing the OA this Tribunal in operative part of the judgement has observed as under :-

"7.4 In view of above discussions, we find no reason as to why the ACP scheme should not be applicable to the applicant. Accordingly, this OA is allowed. The respondents are directed to hold the meeting of the Screening Committee to consider the case of the

40

applicant for grant of benefits in accordance with the ACP scheme and, if found suitable, grant all benefits under the ACP scheme within a period of 3 months from today. No order as to costs."

2. At this stage it may be relevant to mention here that the applicant has initially filed the aforesaid OA in this Tribunal thereby inter alia praying for appropriate direction to the respondents to provide proper promotional avenue for Diesel Technician to the extent of 3 promotions and in the alternative, to provide benefit of career advancement/selection scale on completion of a specific period as is prevalent in the State of Rajasthan and in a few departments of the Central Government with consequential benefits from the date the applicant became eligible for grant of selection grade. This Tribunal while rejecting other pleas regarding prayers for striking down the pay scales for the post of Diesel Technician to the extent that it provides different pay scale than those granted to the Senior Technician and also the benefit of career advancement on completion of a specified period as prevalent in the State of Rajasthan and other departments of the Central Government, was however inclined to accept the alternative prayer of the applicant that he should be granted the benefit of ACP based on the recommendations of the 5th Central Pay Commission and granted the relief as per operative portion which has been extracted herein above. For arriving at the aforesaid decision this Tribunal placed reliance on the order dated 05.12.2002 (Annexure A/13) passed by the Principal Bench in OA No.2293/2001, whereby the Principal Bench has held that Programme Staff Association of All India Radio and Doordarshan is entitled for the grant of first and second financial upgradation in accordance with the ACP scheme and the contention put forth by the respondents that since the applicants therein have opted for upgraded pay scale granted vide Ministry of Information and Broadcasting OM dated 25.2.99 which itself is a scheme for grant of upgraded pay scales and in accordance with the said OM, the upgraded pay scales have been allowed to the

Programme Executives and thus as per condition No.13 annexed to their OM of 9.8.99 the incumbent is covered under a time bound promotion scheme including the in-situ promotion scheme cannot avail of the benefit under the ACP scheme was rejected. The Principal Bench further held that the contention put forth by the respondents that the scheme envisaged in OM dated 25.02.1999 is by no means an existing time bound promotion scheme nor it is an in-situ promotion scheme cannot be accepted and, therefore, the condition No.13 cannot be said to find application in the circumstances of the case.

3. Notice of this CP was issued to the respondents. Respondents have filed reply. In the reply it has been stated that against the order dated 07.03.2003 passed by this Tribunal in OA NO.258/1998, writ petition has been filed before the Hon'ble High Court of Rajasthan, Jaipur Bench, along with the stay application and on the basis of this averment made in the reply, it was stated that the CP should be dismissed and notices be discharged. However, subsequently respondents have filed additional affidavit/rejoinder in support of documents filed for taking the compliance order on record. In Para 2 it has been stated that the ACP scheme is only applicable to the employees of the Central Government including the employees of All India Radio and Doordarshan Kendra and the same is not applicable for the employees opted for the pay scale admissible in the Prasar Bharti. The applicant-respondent after the options were sought in the year 1999, opted for the pay scale of Prasar Bharti for the post of Diesel Technician. As per the said option and the undertaking given by him, the order dated 22.4.1999 was passed fixing the applicant-respondent in the pay scale of Rs.5000-8000. It is further stated that all the post of Diesel Technicians existing in All India Radio and Doordarshan were restructured in three different grades at the time of formation of Prasar Bharti. 15% of the total posts were continued in the pay scale of Rs.4000-6000, 20% of the said posts were

upgraded in the pay scale of 4500-7000 and rest of the 65% posts were upgraded in the pay scale of 5000-8000. Subsequently, vide order dated 9.3.2000 issued by the answering respondents it was made clear that the benefits under the ACP scheme for those categories of employees holding the post of Diesel Technician, Mast Technician are in -built in OM/order dated 25.2.1999. The said higher pay scale was prescribed by the respondents for the persons holding the post of Diesel Technician while taking into consideration the stagnation faced by the said categories of persons and the limited promotional avenues provided from the said post. The photo copy of the same has been placed on record as Annexure-AA/1.

4. It is further stated that when the applicant opted for the pay scale of Prasar Bharti, the said higher pay scale for the post of Diesel Technician was made admissible to him. Had the applicant not opted for the pay scale applicable for the Prasar Bharti for the post of Diesel Technician and continued in the pay scale applicable for All India Radio and Doordarshan Kendras in the Central Government, he by now would have been entitled for the pay scale of Rs.4500-7000 under the ACP Scheme after completion of 12 years of service. As per the schedule appended to ACP Scheme an employee drawing the pay scale No.S-7 (Rs.4000-100-6000) is entitled to be given the pay scale No.S-8 (Rs.4500-125-7000) after completion of 12 years of service, which the applicant has been given. It is further stated that the applicant was initially appointed on the post of Diesel Technician on 10.1.1983 in the pay scale of Rs.380-560, which was subsequently revised to the pay scale of Rs.4000-6000. It is further stated that at the time of formation of Prasar Bharti in the year 1997, he had completed 14 years of service and drawing the pay scale of Rs.4000-6000. Had he not opted for the pay scale applicable for the Prasar Bharti and continued in the pay scale applicable for the All India Radio and Doordarshan Kendras in the Central Government, applicant would have been entitled for the

pay scale No.S-8 i.e. Rs.4500-125-7000 under the ACP scheme after completion of 12 years of service. The averment made by the applicant ~~that the pay scale of Rs.4000-6000 was modified by the respondents as Rs.5000-8000 is factually incorrect and misleading.~~ The said pay scale No.S-9 of Rs.5000-8000 is admissible for the employees after completion of 24 years of service, had he not opted for the pay scale applicable for the Prasar Bharti and continued in the pay scale applicable for All India Radio and Doordarshan Kendras in the Central Government.

5. The respondents have also placed on record order dated 29.04.2004 whereby the applicant has been granted higher pay scale of Rs.4500-125-7000, which is the next pay higher to the pay scale of Rs.4000-6000 under the ACP scheme w.e.f. 09.08.1999 and it was also made clear that the applicant will continue to enjoy his higher scale so long as he has opted for Prasar Bharati scale. The upgraded scales under the ACP scheme mentioned in para 1 of the aforesaid order shall be applicable to him, if and when he opts for the Central Govt. Service and the said order was made subject to the outcome of the Writ Petition pending in the Hon'ble High Court of Rajasthan in Jaipur.

6. We have heard the learned counsel for the parties and gone through the material placed on record. Admittedly, this Tribunal vide operative portion of the judgement has directed the respondents to hold the meeting of the Screening Committee to consider the case of the applicant for grant of benefits in accordance with the ACP Scheme and, if found suitable, grant all benefits under the ACP scheme within a period of 3 months from the date of passing of order. This direction was given on the basis of the decision dated 05.12.2002 rendered by the Principal Bench in OA No.2293/2001, Programme Staff Asso. & Ors. vs. Union of India & Ors.

7. During the course of arguments, learned counsel

for the respondents has brought to our notice order dated 13.08.2003 passed by the Principal Bench whereby the CP filed pursuant to the decision rendered in OA No.2293/2001 was dismissed in view of the stay granted by the Hon'ble Delhi High Court vide order dated 25.06.2003 in CWP filed against the Tribunals order dated 05.12.2002 in OA NO.2293/2001. Since the judgement rendered by this Tribunal was also based on the decision rendered by the Principal Bench, the operation of which has been stayed by the Hon'ble High Court, we are of the view that no case for contempt is made out and the CP is liable to be dismissed on this ground also.

8. That apart, the respondents have also passed order dated 29.04.2004 whereby the applicant has been given the financial upgradaton under ACP scheme w.e.f. 09.08.1999, as according to the respondents, the applicant was initially appointed on the post of Diesel Technician on 10.08.1993 in the pay scale of Rs.380-560 which was subsequently revised to the pay scale of Rs.4000-6000 and as such under the ACP scheme he shall be entitled for the grant of first financial upgradation after completion of 12 years in pay scale No.S-8 i.e. Rs.4500-125-7000. Thus, according to the respondents, the order of this Tribunal has been complied with and the applicant has been granted the financial upgradation under the ACP Scheme pursuant to the direction given by this Tribunal in OA No.258/1998.

9. The respondents have further stated that [redacted] the applicant is not entitled to the financial upgradation under ACP scheme in respect of upgraded scale of Rs.5000-8000 which was granted to the applicant as he had opted for the pay scale of Prasar Bharti and the said scale was not admissible to the Government employee working under All India Radio and Doordarshan Kendras which pay scale was made effective from 01.01.1996 pursuant to order dated 25.02.1999. It is further argued that the applicant has accepted the upgradated scale on the terms and conditions stipulated

in Para 2 of the OM dated 25.02.1999 and he has also given undertaking to refund all payment including arrear received by him w.e.f. 01.01.1996 on this account in the event of his not opting to become an employee of Prasar Bharati whenever he is asked to exercise such option. Since the applicant has not been absorbed in Prasar Bharati, as such, the applicant has been given the upgraded scales not as Govt. employee per se but as Government employee currently in service of Prasar Bharati (Broadcasting Corporation of India). As such, the applicant was required to be granted the financial upgradation in the next higher pay scale of Rs.4000-6000 which the applicant was drawing from inception and after completion of 12 years of service he was entitled to the scale S-8 i.e. Rs.4500-125-7000 as per ACP scheme. Thus, according to the respondents, even on merit, no case for contempt proceedings is made out.

10. We have given thoughtful consideration to the submissions made by the respondents. We are of the view that no case for contempt proceedings is made out. We do not however, agree with the contention raised by the learned counsel for the applicant that the applicant is entitled to the benefit under ACP scheme in the pay scale of Rs.5000-8000 which scale was granted to him vide order dated 22.04.1999 when he was placed in the service of Prasar Bharati and such upgraded scale was not allowed to him as Government employee.

11. Further the decision relied upon by the learned counsel for the petitioner in the case of Anil Ratan Sarkar & Ors. vs. Hirak Ghosh & Ors. JT 2002 (2) SC 602 is not applicable in the facts and circumstances of this case. It cannot be said to be a case where the respondents have willfully and deliberately violated the order of the court in the guise of a totally non-acceptable and sham defence. Thus the petitioner cannot have any assistance from this authority. On the contrary, the Apex Court in the case of J. S. Parihar

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vs. Ganpat Duggar (1996) 6 SCC 291 has held that once there is an order passed by the Government on the basis of direction issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. It was further held that the preparation of the seniority list may be wrong or may be right or may or may not be in conformity with the directions but that would be a fresh cause of action for the aggrieved party to avail of the opportunity of judicial review. However, that cannot be considered to be the wilful violation of the order. After re-exercising the judicial review in contempt proceedings, a fresh direction by the Single Judge could not be given to redraw the seniority list as in doing so the Single Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. The ratio as laid down by the Apex Court in the case of J. S. Parihar is fully applicable in the facts and circumstances of this case. Once the respondents have passed an order dated 29.04.2004 thereby granting benefit under the ACP Scheme to the applicant, persuant to judgement of this Tribunal, that would be a fresh cause of action to the applicant, to avail of the opportunity of judicial review, if still aggrieved, and contempt proceeding is not appropriate remedy.

12. Similarly it is well settled that disobedience of orders of the court, in order to amount to "civil contempt" under Section 2(b) of the Contempt of Courts Act, 1971 must be "wilful" and proof of mere disobedience is not sufficient (S. S. Roy v. State of Orissa, AIR 1960 SC 190). Where there is no deliberate flouting of the orders of the court but a mere misinterpretation of the executive instructions, it would not be a case of civil contempt (Ashok Kumar Singh v. State of Bihar, (1992) 1 SCC 152).

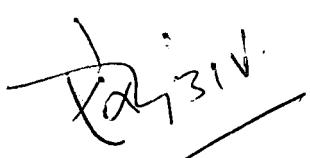
12.1 Further the Apex Court in the case of Indian Airports Employees' Union vs. Ranjan Chatterjee and another, (1999)2 SCC 537, in para 11 has made the

following observations :

"11. In our view, these rival contentions involve an interpretation of the order of this court, the notification and other relevant documents. We are not deciding in this contempt case whether the interpretation put forward by the respondents or the petitioners is correct. That question has to be decided in appropriate proceedings. For the purpose of this contempt case, it is sufficient to say that the non-absorption of these six sweepers was bona fide and was based on an interpretation of the above orders and the notification etc. and cannot be said to amount to "wilful disobedience" of the orders of this court."

13. In the instant case also, the respondents have interpreted the order of this Tribunal that the ACP has to be granted in the higher stage of pay scale of Rs.4000-6000 i.e. Rs.4500-125-7000. It cannot be said that the action of the respondents amounts to wilful disobedience of the order of this Tribunal simply because as per the petitioner he should be granted ACP in the next higher scale of Rs.5000-8000 which he start drawing vide order dated 22.04.1999 when he has opted for the pay scale when his service was placed ~~at~~ the disposal of Prsar Bharati. Thus according to observation made by the Apex Court in para 11 of the aforesaid judgement, the question whether interpretation given by the respondent whether ACP is to be granted in the pay scale of Rs.4000-600 is correct or it should be granted in the scale of Rs.5000-8000 as claimed by petitioner has to be decided in appropriate proceeding and for that purpose it cannot be said that action of the respondent amount to "wilful disobedience" of the order of the court.

14. For the reasons stated above, the CP is dismissed. Notices issued to the respondents are hereby discharged.


(A. K. BHANDARI)
MEMBER (A)


(M. L. CHAUHAN)
MEMBER (J)