

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Date of decision: 18th March, 2004

CP No. 51/2003

in

OA No. 300/2000

Ashok Kumar s/o Shri Sukh Ram, aged about 40 years, r/o 481/31, Uttamchand Sunar Ka Bara, Nagra, Ajmer.

.. Applicant

Versus

1. Shri Rakesh Mohan Agarwal, General Manager, North Western Railway, Jaipur
2. Shri Jeevan Gupta, Divisional Railway Manager, North-Western Railway, Ajmer Division, Ajmer
3. Shri R.L.Gupta, Chairman, Railway Recruitment Board, 2010 Nehru Marg, Ajmer.

.. Respondents

Mr. P.V.Calla - counsel for the applicant.

Mr. R.G.Gupta, counsel for the respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judl.)

Hon'ble Mr. A.F.Bhandari, Member (Admn.)

O R D E R

PER HON'BLE MR. M.L.CHAUHAN.

The applicant has filed this Contempt Petition for non-compliance of the order dated

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14.11.2002 passed in OA No.300/2000 titled Ashok Kumar vs. Union of India and ors.

2. Facts of the case are that the applicant originally filed an OA No. 300/2000 in this Tribunal thereby alleging that though he was selected for the post of Diesel Assistant and offer of appointment was also given and thereafter he was sent for medical examination but he has not been given appointment. The Railway Doctor certified the applicant as fit for A-I category. This OA was disposed of by this Tribunal and in para 3, the following observations were made:-

"3. We have heard the learned counsel for both the parties and find that as per the medical certificate given by the authorized Railway Doctor in respect of the applicant (Ann.A6) he has been found to be fit in A-I category and thus we do not find any justification for the respondents to repeatedly ask the applicant to appear for special medical examination. Under the circumstances the applicant is fully eligible to be appointed to the post of Diesel Assistant on the basis of the medical fitness certified by the Railway Doctor. Accordingly we direct the respondents that the applicant be allowed to join duty immediately. It is

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however, open to the respondents to take such action as deemed necessary in order to clear the doubt, if any. As regards the seniority of the applicant, the same is left open. The applicant is however given liberty to file representation regarding his seniority which shall be decided by the respondents as early as possible."

2.1 Thereafter the matter was carried by the respondents before the Rajasthan High Court, Jaipur Bench by way of D.B.Civil Writ Petition which was registered as D.B.C.W.P. No. 1876/2002. The said writ petition was also finally disposed of vide order dated 4.3.2003. In the operative portion, the Hon'ble High Court observed as under:-

" In the circumstances, we are of the view that the petitioners are bound to give appointment to the respondent as Diesel Assistant within fifteen days subject to his being cleared by a Medical Board. The respondent shall appear before the Medical Board as and when directed by the petitioners and in case the respondent does not appear before the Medical Board, it will be open to the petitioners to take such action against the respondent as is permissible in law."

Thus, from reading of the operative portion of the order passed by the Hon'ble High

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Court as well as para 3 of the order passed by this Tribunal, it is evident that the order of this Tribunal was modified by the Hon'ble High Court. The writ petition was not dismissed in limine. As can be seen from para 3 of the order passed by this Tribunal, this Tribunal has given finding that the applicant has been declared medically fit by the Railway Doctor in A-I category and thus, there is no justification for the respondents to repeatedly ask the applicant to appear for special medical examination and under these circumstances, the applicant is fully eligible to be appointed to the post of Diesel Assistant on the basis of medical fitness certificate issued by the Railway Doctor. On the contrary, the Hon'ble High Court had held that appointment should be given to the original applicant as Diesel Assistant within 15 days subject to his being cleared by a Medical Board. Thus the direction issued by this Tribunal has been substantially modified by the Hon'ble High Court and as such it cannot be said that the order of the Tribunal is still subsisting on the principal of merger. It is only the order passed by the Hon'ble High Court which is operative and can be enforced. At this stage, it would be useful to quote the observations made by the Apex Court in the case of Funhayammed vs. State of Kerala, AIR 2000 SC 2587, wherein the Apex Court on the doctrine of merger has made the following observations:-

"The logic underlying the doctrine of

merger is that there cannot be more than one decree or operative orders governing the same subject matter at a given point of time. When a decree or order passed by inferior Court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding nevertheless its finality is put in jeopardy. Once the superior Court has disposed of the lis before it either way whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior Court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the Court, tribunal or the authority below. However, the doctrine is not of universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject matter of challenge laid or which could have been laid shall have to be kept in view... The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the

Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. The doctrine of merger can therefore be applied to the former and not to the latter."

3. In view of the law laid down by the Apex Court, it is only the order of the superior court which is final and binding and operative. As such the contempt proceedings cannot be initiated for violation of the order dated 14.11.2002 passed in OA No. 300/2000. At this stage it may also be relevant to mention here that after issuance of the notice of alleged violation, the respondents have filed reply. In para 6 of the reply affidavit, they have specifically stated that as per Hon'ble High Court's order dated 4.3.2003, the humble respondents have issued letter dated 27.5.2003 and 25.7.2003 to the applicant but the applicant has refused to accept the order and did not appear himself before the medical examination board as per directions of the Hon'ble High Court. It is further stated that the applicant never visited in the office of respondent No.2 for compliance of the order dated 14.11.2002 passed by this Tribunal. On the contrary, the humble answering respondents have issued a letter

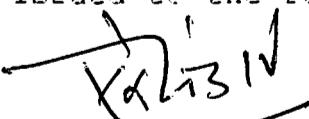
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dated 25.7.2003 (Ann.CP-R/2) in compliance of the order of the Hon'ble High Court but the applicant has totally refused to take the letter. Therefore, the applicant himself has disobeyed the order of the Hon'ble High Court. Since we are disposing of this Contempt Petition solely on the ground that the order of this Tribunal has been merged in the order of the Hon'ble High Court, whereby the original order passed by this Tribunal has been modified and it is not a case of affirmation of the order passed by this Tribunal or dismissal of the writ petition in limine. As such no contempt proceedings lies against the order dated 14.11.2002 passed by this Tribunal in OA No.300/2000.

4. It is settled position in law that there cannot be more than one operative order and when the petition is admitted and decided on merit, the principle of merger applies. Further, the Apex Court in the case of Kunhayammed vs. State of Kerala (supra) has held that when the petition is admitted and decided on merit, doctrine of merger is applicable and as such it is the High Court's order which is operative and contempt proceedings will not lie before the Tribunal.

5. In view of what has been stated above, the Contempt Petition is dismissed. Notices issued to the respondents are discharged.


(A.K.BHANPARI)
Member (A)


(M.L.CHAUHAN)
Member (J)