

Reserved
(on 23.08.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the 30th day of August 2018

Civil Contempt Petition No. 330/00037 of 2018
In
Original Application No. 330/00936 of 2005

Hon'ble Mr. Gokul Chandra Pati, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Ashwani Kumar Singh, S/o Shri Paras Nath Singh, At present posted as Income Tax Officer, Office of the Income Tax, Sector – 24, Noida, U.P.

By Adv: Ms. Saumya Mandhyan . . . Applicant

V E R S U S

1. Shri Sushil Chandra, Chairman, C.B.D.T., North Block, New Delhi.
2. Shri Abhay Tayal, Principal Chief Commissioner of Income Tax (C.C.A.), Aaykar Bhawan, Civil Lines, Kanpur.

By Adv: Shri L.M. Singh . . . Respondents

O R D E R

By Hon'ble Mr. Gokul Chandra Pati, Member – A

This Civil Contempt Petition is filed by the applicant for non-compliance of the order dated 13.9.2005 passed by this Tribunal in OA No. 936/2005. The operative part of the order dated 13.9.2005 states as under:-

“The OA thus, succeeds. Respondents are restrained from holding any DPC for the post of Income Tax Officers without conducting necessary departmental examination for promotion to the post of I.T.O. The DPC can be held only after the results of such exams are pronounced and all those who qualify in the exam are also considered for promotion. No cost.”

2. The applicant joined the income Tax department as Income Tax Inspector on 18.10.1994. He was required to clear the departmental examination in order to be eligible for being considered for promotion as Income Tax Officer (in short ITO). The applicant was to appear in the departmental examination in 2004, but the respondents did not conduct any examination in 2004 and 2005 and held the DPC. As a result, the applicant was not considered as he had not cleared the departmental examination and many juniors were promoted to ITO, disturbing the seniority of the applicant. Being aggrieved by withholding the departmental examination in 2004 and 2005, the applicant filed OA No. 936/2005. An interim order was passed on 17.8.2005 (Annexure no. 2 to the CCP) by this Tribunal. It is alleged that in spite of the order dated

17.8.2005, the respondents conducted the DPC on 18.8.2005 for promotion to ITO. The applicant's stand is that there has been violation of the order dated 13.9.2005 and of the interim order dated 17.8.2005 passed by this Tribunal in OA No. 936/2005.

3. The respondents filed a compliance affidavit stating that after receipt of the order dated 13.9.2005 of this Tribunal, next DPC was called on 12.6.2007, after declaring the result of the departmental examination and hence, there was no question of contempt.

4. The applicant filed an objection to the compliance affidavit, stating that holding of the DPC on 18.8.2005 was a violation of the interim order dated 17.8.2005 of this Tribunal in OA No. 936/2005, although the order dated 17.8.2005 was served on the respondents on 18.8.2005, without considering the case of the applicant. Against the judgment of the Tribunal, the respondents filed a Writ Petition No. 25425/2006, which was finally dismissed on 5.10.2016. The applicant was considered and promoted in the DPC held on 12.6.2007 and he was given the seniority year 2007-08, where as his seniority should have been 2004-05.

5. We have heard learned counsels and considered the affidavits filed. The grievance of the applicant is for holding of the DPC on 18.8.2005, which he feels, is a violation of the interim order dated 17.8.2005 in OA No. 936/2005. Assuming the contention to be correct, then the applicant should not have waited for more than 12 years to file this contempt petition. It is also noted that after passing of the final order dated 13.9.2005, the interim order merges with the final order. Hence, no contempt against such interim order is permissible after passing of the final order. In addition, the interim order dated 17.8.2005 (Annexure no. 2 to the CCP) did not direct anything about holding of the DPC. It simply stated as under:-

"List on 31.8.2005, on which date the final order regarding interim relief shall be passed. It is further provided that any promotion made shall be subject to the outcome of the OA."

In view of above direction, by holding of the DPC on 18.8.2005, no contempt was committed.

6. In the circumstances, we are of the view that the present Contempt Petition, has no merit and hence, it is dismissed. Notices issued are discharged.

(Rakesh Sagar Jain)
Member (J)

/pc/

(Gokul Chandra Pati)
Member (A)