

**Reserved**  
(On 08.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **15<sup>th</sup>** day of **May** 2018

**Contempt Petition No. 330/00068 of 2013**

**In**

**Original Application No. 330/00582 of 2009**

**Hon'ble Dr. Murtaza Ali, Member – J**

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

1. Dinesh Kumar Mishra, S/o Ram Murti Mishra, R/o Village Charwa Khurd, Post Charwa, District - Kaushambi.
2. Dwarker Nath Tiwari, S/o late Ram Udit Tiwari, R/o H. No. 500/2/10, Rama Nand Nagar, Allapur, District – Allahabad.

. . .Applicants

By Adv: Shri M.K. Updhayay

**V E R S U S**

1. Mr. P. Gopi Nath, Secretary, Ministry of Communication, Department of Post, Dak Bhawan, Sansad Marg, New Delhi.
2. Col. Kamlesh Chandra, Chief Post Master General, Lucknow.
3. M. Haq, Postmaster General, Allahabad.
4. Rahmad Ullah, Senior Superintendent of Post Offices, District – Allahabad.
5. Krishna Kumar Yadav, Director Postal Services, Allahabad.
6. P.C. Tiwari, Assistant Superintendent of Post Offices, Central Allahabad.

. . . Contemnor/Respondents

By Adv: Shri L.P. Tiwari and Shri S. Srivastava

**O R D E R**

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

This Contempt Petition is filed for non-compliance of the order dated 12.10.2012 of this Tribunal in the OA No. 582/2009. The operative part of the said order dated 12.10.2012 is as under:-

***“9. In view of the above, the OA is allowed. Impugned order dated 14<sup>th</sup> May 2009 is quashed and set aside. Respondents are directed to prepare the seniority lists of the applicants and similarly situated substitutes and in case they decide to regularize such persons, they shall follow the seniority list for the purpose of regularization. On preparation of such seniority lists, the applicants be informed of***

***their seniority position and the likelihood of their being absorbed on regular basis.”***

2. The respondents in their counter affidavit dated 17.07.2013 have stated that the applicants working as substitute employees, there is no provision for preparing seniority list of the substitutes as per the rules and the substitutes have no right to be absorbed against the regular post of GDS, since they are engaged as a stop-gap arrangement officiating on daily wages. A Supplementary Affidavit filed by the respondents on 31.10.2013, stated that this Tribunal, vide order dated 12.10.2012 has not passed any order to reinstate the applicants as they have no right to continue in service as per the judgment of Hon'ble Apex Court in Uma Devi's case. It was further stated that the Tribunal order dated 12.10.2012 has been challenged by the respondents before Hon'ble Allahabad High Court in Writ Petition No. 40638/2013, which was disposed of with following the directions vide order dated 30.07.2013:-

***“We, therefore, find no infirmity in the said order of the Tribunal. However, the last line of paragraph 9, where the Tribunal has observed that on preparation of such ‘seniority list’, the respondents shall be informed of their seniority list and the likelihood of their being absorbed on regular basis, is uncalled for. Only when the petitioners decide to regularize the services of respondent Nos. 1 and 2 such a question may arise. Therefore, that part of the order is set aside.***

***With the above modification in the impugned order, the writ petition is disposed of. However, the ‘seniority list’ of the substitutes which is directed to be prepared in the impugned order, shall be circulated amongst the substitutes.”***

3. The respondents also filed a Suppl. Affidavit dated 03.07.2014 stating that the applicants were working as substitute at the risk and responsibilities of the regular incumbents of the said post during the period when regular incumbents of the said post were working on some other post temporarily. It is further stated that the respondents have filed a modification application before Hon'ble High Court for modifying last para of the order dated 30.07.2013 passed while dismissing the Writ Petition No. 40638/2013 filed by the respondents.

4. The contention of the respondents were considered and this Tribunal vide order 02.07.2015, directed the respondents to re-engage the applicants since the impugned order dated 14.05.2009 of the respondents disengaging the applicants has been set aside vide order dated 12.10.2012, which will imply re-engagement of the applicants. Accordingly the respondents were allowed 04 weeks time for re-engagement of the applicants. The applicants, thereafter, filed another affidavit dated 08.09.2015 stating that the respondents have not taking any steps for re-engaging the applicants.

5. The respondents filed a compliance affidavit dated 31.08.2015 stating that the department is not in a position to comply the order dated 02.07.2015 in this contempt petition directing the respondents to re-engage the applicants. It is stated that if the applicants are re-engaged as substitute, the question arise against which post and on whose responsibility the applicants are to be re-engaged and hence, the order dated 02.07.2015 cannot be complied.

6. The respondents filed another affidavit on 05.01.2017, in which it was stated that the merger of MG Marg, Post Office with the Head Post Office has been effected on 25.01.2011 due to which the substitute employees who were engaged for a temporary period cannot be re-engaged. It was further reiterated by the respondents that the order dated 02.07.2015 cannot be complied with.

7. The respondents at the time of earlier hearing of the case had submitted written arguments enclosing the judgment of Hon'ble Apex Court in different cases. In the case of ***Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others vs. M. George Ravishekaran and others*** reported in (2014) 2

**SCC 373**, the respondents-employees were engaged on contract basis under ONGC. After 08.09.1994 the work Radio Operator on contractual basis was prohibited under the Contract Labour (Regularization and Absorption) Act, 1970. The respondents-employee moved Hon'ble Madras High Court to treat the contractual Radio Operator at par with the regular Marine Assistant Radio Operator. Thereafter, in pursuance of the order of the Court the respondents were directed to absorb them as junior helper from 29.01.1997. The respondents instituted another Writ Petition for direction for their absorption as Radio Operator w.e.f. 08.09.1994. The Writ Petition was allowed vide order dated 22.08.2006. The SLP filed against the order was dismissed. But since the order could not be implemented, due to the fact that there was no vacancy of such post, moved in Hon'ble High Court. In the Contempt case, Hon'ble High Court gave direction to the respondents to create supernumerary posts. The Hon'ble Apex Court has held as under:

***“.....If that be so, the direction to create supernumerary posts at the stage of exercise of the contempt jurisdiction has to be understood to be an addition to the initial order passed in the writ petition. The argument that such a direction is implicit in the order dated 2-8-2006 is self-defeating. Neither is such a course of action open to balance the equities i.e. not to foreclose the promotional avenues of the petitioners, as vehemently urged by Shri Rao. The issue is one of jurisdiction and not of justification. Whether the direction issued would be justified by way of review or in exercise of any other jurisdiction is an aspect that does not concern us in the present case. Of relevance is the fact that an alternative direction had been issued by the High Court by its order dated 2-8-2006 and the appellants, as officers of the Corporation, have complied with the same. They cannot be, therefore, understood to have acted in wilful disobedience of the said order of the Court. All that was required in terms of the second direction having been complied with by the appellants, we are of the view that the order dated 2-8-2006 passed in M. George Ravishakeran v. ONGC Ltd. stands duly implemented. Consequently, we set aside the order dated 19-1-2012 passed in Contempt Petition No. 161 of 2010, as well as the impugned order dated 11-7-2012 passed in Sudhir Vasudeva v. M. George Ravi Shekeran and allow the present appeal.”***

8. Another case cited by the respondents was decided by the Principal Bench of this Tribunal in OA No. 965 of 2013, where it was held by this Tribunal vide order dated 16.09.2014 as under :

***“3. Be that as it may, vide order dated 01.7.2014, direction was given to the respondents to examine the representation of the applicant for giving posting in Delhi keeping in view that normally husband and wife be given posting at one place. Admittedly, the***

*respondents have considered the representation of the applicant and rejected vide order dated 26.08.2014 and, therefore, it would be difficult to hold that the respondents have deliberately violated or flouted the aforesaid order of the Tribunal and thus in our view no case for contempt is made out. It is accordingly rejected. However, it would be open to the applicant, if he is aggrieved by the aforesaid order, to challenge the same in appropriate proceeding as per law."*

9. Learned counsel for the applicant submitted that the respondents have not taken any action for re-engagement of the applicant as per the order dated 02.07.2015 of this Tribunal passed in this Contempt case.

10. We have considered the submissions of learned counsel for the parties as well as the materials on record. It is clear that the respondents have taken the consistent stand from the beginning of this Contempt case that the order dated 12.10.2012 of this Tribunal cannot be implemented as there is no provisions under the rules to prepare the seniority list of the substitute. One part of the order has already been set aside by the Hon'ble Allahabad High Court vide order dated 30.07.2013 in Writ Petition No. 40638 of 2013 as discussed in para 2 of this order. Hence, we are of the view that although the order dated 12.10.2012 as modified by Hon'ble High Court vide order dated 30.07.2013 has not been implemented, it is not deliberate or wilful violation of the order of this Tribunal. Therefore, following the legal principles laid down by the Hon'ble Apex Court in the case of Sudhir Vasudeva (supra) as discussed in para 7 above the respondents cannot be held to be liable under the Contempt of Court Act, 1971. Therefore, the present contempt petition is dismissed. Notices issued to the respondents are discharged.

**(Gokul Chandra Pati)**  
Member (A)

**(Dr. Murtaza Ali)**  
Member (J)

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