

Reserved on 5.4.2018

Central Administrative Tribunal, Allahabad Bench,
Allahabad

CCP No. 330/00145/2014 in O.A. No. 1450/2001
along with O.A. No. 22 of 2002

This the 10th day of April, 2018

Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. Gokul Chandra Pati, Member (A)

Om Prakash Tyagi son of Sri Ram Surat Ram Tyagi r/o village Kurkala P.O. Mugalsarai, District- Chandauli, presently posted as Library Information Assistant, in Central Library, North Eastern Railway, District- Gorakhpur.

Applicant

By Advocate: Sri M.K. Upadhyay

Versus

1. Sri Madhuresh Kumar, General Manager, North Eastern Railway, Gorakhpur.
2. Sri S.M.N. Islam, Chief Personnel Officer, North Eastern Railway, Gorakhpur.

Respondents

By Advocate: Sri R.K. Rai

ORDER

By Hon'ble Mr. Justice Dinesh Gupta, Chairman

This contempt petition is preferred by the applicant of O.A. No. 1450/2001 for non-compliance of the order dated 9th April, 2014 passed by this Tribunal in O.A.No. 1450/2001 along with O.A. No. 22 of 2002 by which Tribunal has passed the following orders:-

- (a) The promotion order dated 18.06.2001 by which respondent Nos. 3 to 6 have been promoted as Library Information Assistants in the scale 1400-2600 and the subsequent corrigendum dated

25.07.2001, which are impugned, are quashed and set aside with a direction that the official respondents 1 and 2 shall rework the promotion and pay fixation of the applicant and respondents No. 3, 4, 5 and 6 in the light of the extant Rules and directions on the subject issued by the Railway Board from time to time. While doing so, the eligibility criteria of each individual at various times in the past would be kept in mind particularly while fixing the date from which a particular rank and pay scale shall be awarded to each of the private respondents and the applicant. The bottom seniority principle should be meticulously applied in the case of the applicants, keeping in mind the cut off date of 20.11.2000 on which the applicant submitted his joining report on transfer from Vadodara. The fact that the applicant was working as L.I.A. in the scale of Rs.5000-8000 at that time is not controverted.

- (b) The seniority list of L.I.As issued by the Senior Personnel Officer, Head Quarter North Eastern Railway, Gorakhpur dated 12.04.2002 is also quashed and set aside as it may undergo material changes after compliance of the directions mentioned above. Similarly seniority list dated 10.02.2009 issued by Assistant Personnel Officer

(non gazzetted) is also quashed and set aside. A fresh seniority list should be published in respect of the applicants and respondents 3 to 6 after completing the actions enumerated at para 23 (a)

(c) Note No.2 of the A.V.C. (Annexure A-1 of the Original Application) has also been impugned in this O.A. Since the answering respondents have submitted (para 22 of the C.A.) that A.V.C. has already been cancelled by the General Manager through a notification dated 29.12.2002, no further orders are passed in this regard.

(d) It is further directed that while fixing the seniority of the L.I.A. according to rules and directions available on this subject, the applications given by this applicant dated 22.05.2001 (Annexure A-10) and 12.06.2001 (Annexure A-11) should also be examined carefully by respondents 1 and 2 for a just and satisfactory resolution of this issue.

(e) Respondents 1 and 2 are directed to complete the compliance of these directions within 3 months of the receipt of a certified copy of this order.

2. Notices were issued to the respondents who in turn filed the compliance affidavit on 29.4.2015 through

which it is stated that the aforesaid order passed by this Tribunal has been complied with in the spirit and in toto as per directed by the Tribunal with regard to direction given in paras 24-A and 24-B quashing the promotion order dated 18.6.2001 and subsequent corrigendum dated 25.7.2001 and further seniority list of LIAs issued on 12.4.2002.

2.1 In compliance of the order dated 9.4.2014 passed by this Tribunal, respondents has passed order dated 14.8.2014 (Annexure A-2 to contempt Petition) by which respondents have cancelled the promotion order dated 18.6.2001, corrigendum dated 25.7.2001 and seniority list dated 12.4.2002 and 10.2.2009 of Library Information Assistant. Respondents through this order has also cancelled the order dated 12.10.2001 by which Sri Shashipal Biruwa was promoted. In this letter it is also mentioned that process of rework of promotion and revised seniority is under progress.

3. Applicant filed rejoinder reply and it is the contention of the counsel for applicant that while fixing seniority as well as pay scale, the respondents have placed one Shri Dinesh Shukla above the applicant. Accordingly vide order dated 9.2.2016, counsel for respondents was directed to file an affidavit explaining as to how Shri Dinesh Kumar Shukla has been placed above the applicant.

4. Learned counsel for respondents filed Supplementary Compliance Affidavit on 8.4.2016 through which he has filed order dated 16.2.2015 (Annexure CA-2 of compliance Affidavit) wherein a tabulation of officials who are posted as Library/Information Assistant was compiled along with date of initial joining as well as entry into old pay grade of Rs. 5500-9000/- revised pay grade Rs. 9300-34800/- Grade Pay Rs. 4200/-. The order dated 16.2.2015 shows the seniority position on 9.4.2014 Sri Dinesh Shukla whose date of joining is 16.6.1983 and entered in the present grade of pay of Library Information Assistant which has been confirmed by the Hon'ble Tribunal vide order dated 27.2.2001 passed in O.A.No. 1885 of 1993 (Ram Krishna Das Vs. UOI). The applicant has initially joined on 18.12.1995 in his parent cadre and subsequently on his own request joined at Gorakhpur in the department at bottom seniority by transfer on 21.11.2000. As such as per relevant rules, the person transferred on his own request and joined at new place loose his initial seniority and this is the reason where in the order dated 16.2.2015, Sri Dinesh Shukla was placed at Sl. No.1 and applicant has been placed at Sl. No. 2.

5. Learned counsel for applicant has again filed Supplementary Rejoinder affidavit to Supplementary Compliance Affidavit and this Tribunal again vide order

dated 12.5.2016 directed the respondents to furnish specific compliance of para 24 (b) of order dated 9.4.2014 passed in this OA. Again vide order dated 3.9.2016, counsel for respondents was directed to file a comprehensive chart vis-à-vis the applicant and respondent No. 5 within five days.

6. Learned counsel for respondents have filed 3rd compliance affidavit on 22.9.2016 through which he has submitted a comprehensive chart which is reproduced below:-

Sl.No.	Name of employee	Date of Initial joining	Date of acquired qualification i.e. B.Lib Science	Date of entry Into pay scale of 1400-2600 (5000-8000)	Date of merger in pay scale of 5500-9000
1	Om Prakash Tyagi	18.12.1995	23.8.1994	18.12.1995 at Baroda	1.1.1996 in pursuance to Railway Board letter dated 27.11.2003 Para 3(i)
2	Dinesh Shukla	16.6.1983	4.9.1996	17.9.1994 in Pursuance of Railway Board letter dated 8.7.2003 Para C (i)	4.9.2016 in pursuance of Railway Board letter dated 27.11.2003 Para 3(ii)

7. It is further stated that since the applicant has joined office of answering respondents after transfer from Baroda on his own request at bottom seniority and joined this office on 20.11.2010 to the post of LIA in the pay scale of Rs.5000-8000/- which was merged in the pay scale of Rs. 5500-9000/- and given to the applicant w.e.f. 1.1.1996 retrospectively whereas respondent No. 5 Dinesh Shukla was promoted in the pay scale of Rs. 4000-6000 on 16.9.1991. He has completed 3 years service in pay scale of Rs. 4000-6000 therefore, in pursuance of Railway Board letter dated 8.7.2003, he

was placed in pay scale of Rs. 5000-8000 w.e.f. 17.9.1994.

8. Heard the learned counsel for applicant Sri M.K.Upadhyay and learned counsel for respondents Sri R.K. Rai.

9. From perusal of record, it is clear that respondents in compliance of the order passed by this Tribunal has passed order dated 14.8.2014 through which they have cancelled the promotion order dated 18.6.2001, corrigendum dated 25.7.2001 and seniority list dated 12.4.2002 and 10.2.2009 of Library Information Assistant as directed by this Tribunal. They have also cancelled the order dated 12.10.2001 by which Sri Shashipal Biruwa was promoted. In this letter it is also mentioned that process of rework of promotion and revised seniority is under progress. Further in compliance of order dated 3.9.2016, by which Tribunal directed the respondents to file a comprehensive chart vis-à-vis the applicant and respondent No. 5 within five days, they have filed a comprehensive chart which is quoted above. As such, they have fully complied with the order passed by this Tribunal and there is no willful disobedience of the order passed by this Tribunal.

10. In terms of the decision rendered by the Hon'ble Apex Court in the case of **J.S. Parihar Vs. Ganpat**

Duggar and others AIR 1997 Supreme Court 113, the

Apex Court has held as under:-

"The question then is whether the Division Bench was right in setting aside the direction issued by the learned Single Judge to redraw the seniority list. It is contended by Mr S.K. Jain, the learned counsel appearing for the appellant, that unless the learned Judge goes into the correctness of the decision taken by the Government in preparation of the seniority list in the light of the law laid down by three Benches, the learned Judge cannot come to a conclusion whether or not the respondent had wilfully or deliberately disobeyed the orders of the Court as defined under Section 2(b) of the Act. Therefore, the learned Single Judge of the High Court necessarily has to go into the merits of that question. We do not find that the contention is well founded. It is seen that, admittedly, the respondents had prepared the seniority list on 2-7-1991. Subsequently promotions came to be made. The question is whether seniority list is open to review in the contempt proceedings to find out whether it is in conformity with the directions issued by the earlier Benches. It is seen that once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum. 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. But 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 learned Single Judge cannot be given to redraw the seniority list. In other words, the learned Judge was exercising the jurisdiction to consider the matter on merits in the contempt proceedings. It would not be permissible under Section 12 of the Act."

11. In the case of **Lalit Mathur Vs. L. Maheswara Rao** (2000) 10 SCC 285, the Hon'ble Supreme Court held as under:-

"The High Court in the writ petition had issued a direction for the consideration of the respondent's representation by the State Government. This direction was carried out by the State Government which had considered and thereafter rejected the representation on merits. Instead of challenging that order in a fresh writ petition under Article 226, the respondent took recourse to contempt proceedings which did not lie as the order had already been complied with by the State Government which had considered the representation and rejected it on merits."

12. In the case of **Brahma Deo Tiwari Vs. Alok Tandon, District Magistrate, Allahabad** 2004 (1) AWC 543 the Hon'ble Court has held as under:-

" As already noted hereinabove, this contempt petition has been filed alleging violation of the order of the writ court dated 10.12.1997 by which the writ court had directed to consider the case of the applicant with regard to his appointment. The contempt court after perusing the order dated 11.7.1997, though had disapproved the decision taken by the opposite party, had directed vide order dated 10.12.1997, to reconsider the case of the applicant after taking into consideration different aspect which are mentioned in the order itself. By the order dated 17.12.2002, the opposite party has considered all the aspects mentioned in the order dated 10.12.1997. Counsel for the applicant has urged that the order dated 17.12.2002 is neither legally nor factually correct. It may be so, but it is well settled that the contempt court can neither sit in appeal nor examine the correctness of a resultant order. The Apex Court in *Lalith Mathur v. L. Maheshwara Rao*, (2000) 10 SCC 285 and [J. S. Parihar v. Ganpat Duggar](#), (1996) 6 SCC 291, has held that correctness of an order passed by a statutory authority on the directions of the writ court cannot be examined under the contempt

jurisdiction. No doubt the resultant order may give rise to a fresh cause of action."

13. In the case of **Shail Raj Kishore , Secretary, Education basic, U.P. Lucknow and others** 2004 (3)

AWC 2444 the Hon'ble court has held as under:-

"If the applicants feel that the order passed by the opposite party is not in accordance to the intent or desire of the Court or otherwise illegal and arbitrary, the same can only be challenged before the appropriate forum. In various cases, Apex Court has held that the Contempt Court cannot go into the merit of the order. Various grounds raised by the learned for the applicant to submit that the order is bad in law required consideration and adjudication, which can only be done by the appropriate Court and not by this Court."

14. Apart from this, the learned counsel for the respondents relied upon on the decision rendered by the Hon'ble Apex Court in the case of **Chhotu Ram Vs. Urvashi Gulati and anothers** reported in **AIR 2001 SC**

3468. The Hon'ble Apex Court has observed as under:-

"Court directed for considering the case of the applicant for promotion. The case of the petitioner was duly considered but his claim for promotion was rejected and in that event, since the case of the applicant was considered as such, the contempt proceedings cannot be proceeded as there is no violation of any direction issued by the Court."

15. Since the respondents in compliance of order passed by this Tribunal has passed the order and cancelled the promotion order dated 18.6.2001, corrigendum dated 25.7.2001 and seniority list dated

12.4.2002 and 10.2.2009 of Library Information Assistant as directed by this Tribunal and also cancelled the order dated 12.10.2001 by which Sri Shashipal Biruwa was promoted and stated that process of rework of promotion and revised seniority is under progress. Further in compliance of order dated 3.9.2016, by which Tribunal directed the respondents to file a comprehensive chart vis-à-vis the applicant and respondent No. 5 within five days, filed a comprehensive chart as such they have complied with the order passed by this Tribunal and correctness of an order passed by a statutory authority on the directions of the court cannot be examined under the contempt jurisdiction.

16. Accordingly, contempt petition is dismissed. Notices issued to the respondents stand discharged. In case applicant has still any grievance by the order passed by this respondents, he can challenge the same by filing a fresh O.A. before the appropriate forum.

(Gokul Chandra Pati)
Member (A)

(Justice Dinesh Gupta)
Chairman

HLS/-