

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI****C.P. No.12/2017 In
O.A No.2480/2006****Reserved On:20.11.2017
Pronounced on:27.11.2017****Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Data Ram, Age 69 years (Retired)
S/o Shri Hardev Singh
R/o B-129, Sector-55,
Noida (UP). ... Petitioner

(By Advocate: Shri Yogesh Sharma)

Versus

1. Shri Ajay Mittal
Secretary,
Ministry of I&B, Govt. of India,
Shastri Bhawan,
New Delhi.

2. Ravi Ram Krishan
Director (Admn.),
Directorate of Advertising & Visual Publicity,
B-Block, K.G. Marg,
New Delhi. ... Respondents

(By Advocate: Shri R.N. Singh)

ORDER**By Hon'ble Ms. Nita Chowdhury, Member (A)**

This Contempt Petition has been filed by the petitioner alleging disobedience of the order passed by the Tribunal in Original Application (OA) bearing No.2480/2006 on 27.09.2012. The order reads as under:-

“4. In these premises, this application can appropriately be disposed of with the directions to the respondents to determine the pay of the applicant having due regard to the pay finally fixed in the case of his junior Shri Bhola Nath Sharma, respondent No.3 herein. In case, the higher pay is granted to the respondent No.3, they shall allow the applicant the benefits of stepping up at par with the pay of the junior, i.e., respondent No.3. If not so, the applicant may be informed of the same through a reasoned and speaking order. It is further clarified that if the respondent No.3 could succeed through the judicial intervention in having the higher pay contrary to the stand taken by the respondents in these proceedings at a later date, the respondents shall then reconsider the claim of the applicant herein upon the ultimate fixation of pay of respondent No.3.

5. Before I part with this application, I may record my displeasure at the conflicting stands taken by the official respondents in these proceedings causing avoidable inconvenience to the parties and this Tribunal as well as loss of valuable judicial time. This would have warranted imposition of exemplary costs upon the official respondents. However, I refrain myself from doing so in view of the earnest plea put forth by Shri R.N. Singh, learned counsel for the official respondents that the lapse on the part of the official respondents is not intentional and wilful but is on account of prolonged judicial proceedings between the parties as well as involvement of number of authorities in the matter, that resulted in a lack of coordination in the matter to some extent, leading to unwitting lapse on their part. Nonetheless, suffice to say that I deprecate the aforesaid conduct of the respondents as aforesaid in the strongest terms as it deserves.

6. The OA is disposed of in terms of para 4 above, leaving the parties to bear their own costs”.

2. The facts, in brief, are that petitioner is seeking benefit of stepping up of his pay at par with his junior, namely, Shri Bhola Nath Sharma w.e.f. 21.01.1993. He has specifically relied on paras 4 and 5 of the judgment passed in OA No.2480/2006 which has been quoted above. He has further stated that in para 5, it has been recorded that “I may record my displeasure at the conflicting

stands taken by the official respondents in these proceedings causing avoidable inconvenience to the parties and this Tribunal as well as loss of valuable judicial time. This would have warranted imposition of exemplary costs upon the official respondents". Further, instead of implementing the order passed in the OA for grant of stepping up of his pay with his junior vide order dated 12.09.2012 but decided to make recovery from his salary.

3. Petitioner further submits that his immediate junior Shri Bhola Nath Sharma had filed OA No.1109/2013 before this Tribunal and the said OA was decided on 12.02.2016. The operative part of the said order reads as under:-

"15. The O.A. is, therefore, allowed and the respondents are directed to withdraw all the orders issued to refix the pay of the applicant and affecting recoveries and to restore the pay of the applicant drawn by him prior to re-fixation order. It is needless to say that the amount recovered should be refunded to the applicant. The seniority of the applicant would also be fixed in accordance with the ratio laid down by the Hon'ble High Court of Madras in its judgment dated 10.04.2001 in Writ Petition (C) No.3620/1998. The timeframe for compliance of above directions is fixed at three months from the date of receipt of a copy of this order. No costs".

He has further submitted that respondents vide order dated 26.08.2016 have restored the pay of his junior person by re-fixing the same and accordingly Shri Bhola Nath Sharma is getting more pay than him w.e.f. 21.01.1993. He even made representations on 02.03.2016, 31.05.2016, 27.07.2016 and 06.09.2016 but in vain.

Hence, he has pleaded that respondents have wilfully disobeyed the orders of this Tribunal and action be taken against them under The Contempt of Courts Act, 1971 and CP be allowed.

4. The respondents have filed their reply and submitted that they have highest regard for the judicial orders including the one passed in this OA 2480/2006 on 27.09.2012 and have not committed any wilful non-compliance of the said order of this Tribunal. They have further stated that "if the respondent No.3 could succeed through the judicial intervention in having the higher pay contrary to the stand taken by the respondents in these proceedings at a later date, the respondents shall then reconsider the claim of the applicant herein upon the ultimate fixation of pay of respondent No.3". Thus, they have submitted that the CP be dismissed as respondents have not committed any contempt.

5. We have heard the learned counsel for the parties and perused the pleadings.

6. We may mention that this Tribunal has considered all the pleas raised by the petitioner and his junior Shri Bhola Nath Sharma in OA No.1109/2013 filed by him, which was disposed of by a detailed order. The relevant paras of the said order read as under:-

"6. The present O.A. is fall out of the earlier O.A. No.2480/2006 filed by Shri Data Ram, Ex-Field Exhibition Officer, DAVP for stepping up of pay vis-à-vis the applicant herein. In the aforementioned O.A., the respondents in consultation with the

DoPT, which is the nodal department for pay related issues, had taken a stand that the pay of the applicant was not fixed correctly in 1993 and that his pay will be re-fixed and recoveries will be effected from him and Shri Data Ram is, therefore, not entitled for stepping up of pay. Accordingly, it has been decided to re-fix the pay of the applicant and effect recoveries from his salary.

7. The applicant being aggrieved by the order dated 11.09.2012 has filed this O.A. seeking the following relief(s):

- “1. That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to withdraw all the orders issued to PAO, IRLA to refix the pay of the applicant and affect recoveries and to restore the pay of the applicant drawn by him prior to the refixation order issued by the PAO, IRLA at the behest of the respondent and refund the entire amount recovered from him on this account.
- 2. That the Hon’ble Tribunal may also graciously pass an order directing the respondents to refix the seniority of the applicant in accordance with the directions of the Hon’ble High Court of Madras in the Petition No.3620/1998 of Mr. Md. Meeran Pillai v/s Union of India and others.
- 3. Any other relief which the Hon’ble Tribunal deems fit and proper may also be granted to the applicant.”

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9. The applicant’s main claim seems to rest on the case of Mohd. Meeran Pillai. He has also filed the order dated 9.07.2009 passed by Madras Bench of this Tribunal in O.A. No.596/2007 alongwith his rejoinder dated 31.03.2015, which only has a direction to the respondents to pass a fresh order taking into account the service rendered by Shri K.K. Nayagam, the applicant therein, as Exhibition Assistant in DAVP from 5.8.1976 to 21.11.1986.

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15. The O.A. is, therefore, allowed and the respondents are directed to withdraw all the orders issued to refix the pay of the applicant and affecting recoveries and to restore the pay of the applicant drawn by him prior to re-fixation order. It is needless to say that the amount recovered should be refunded to the applicant. The seniority of the applicant would also be fixed in accordance with the ratio laid down by the Hon’ble High Court of Madras in its judgment dated 10.04.2001 in Writ Petition (C) No.3620/1998. The timeframe for compliance of above directions is fixed at three months from the date of receipt of a copy of this order. No costs”.

7. We may also mention that Shri Bhola Nath Sharma was promoted along with other officials to the post of FEO on regular basis w.e.f. 21.01.1993 but as Shri Data Ram, who was put under suspension for the period from 26.4.1991 to 25.02.2002 on being tried on a criminal charge and later on exonerated, was also granted promotion to the post of FEO w.e.f. the same dated, i.e., 21.01.1993 but in the year 2004. The Tribunal considered all the aspects raised by the applicant in OA No.1109/2013 and it was ordered that his pay be also restored to previous level and recoveries made therefrom be reimbursed. The judgments of the courts in the cases of M.M. Pillai and Bhola Nath Sharma are specific to the applicants therein and hence cannot be made applicable to all. The respondents in their reply to para 12 have clearly indicated that the review DPC for promotion to the JTS of IIS is to be conducted through UPSC and final pay fixation of Shri Sharma will be done after the entire process is completed. We may further mention that, vide order dated 26.08.2016 (Annexure C-3) has been issued to restore the pay of Shri Bhola Nath Sharma to previous levels as per directions passed in OA No.1109/2013 (supra). Thus, petitioner cannot claim any benefit as granted to Shri Bhola Nath Sharma.

8. In a Contempt Petition, we have only to see whether the directions issued by the court have been complied with or not and

since respondents have complied with the directions issued by the Tribunal, we do not find that the respondents have committed any contempt. Moreover, the Hon'ble Apex Court in **Lalith Mathur v. L. Maheswara Rao (2000) 10 SCC 285** has held that “once the Court direction to consider the employee's representation was complied with and his representation was rejected on merits, contempt petition would not be maintainable”.

9. Thus, seen from any angle, no case for contempt is made out. Hence, CP is rejected. Notices are discharged.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

Rakesh