

Central Administrative Tribunal
Principal Bench
New Delhi

C.P.No.162/2015
M.A.No.876/2015
in
O.A.No.1343/2007

Order Reserved on: 09.03.2016
Order pronounced on 26.04.2016

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)
Hon'ble Shri Raj Vir Sharma, Member(J)

Sh. Raghubir Singh
Aged about 66 years
S/o Sh. Sheodhan Singh
R/o 674, Sector-22B
Urban Estate, Gurgaon (HR). .. Applicant/Petitioner

(By Advocate: Sh. S.K.Gupta)

Versus

Ms. Padma T.
Principal Registrar
Central Administrative Tribuna
Principal Bench
61/35, Copernicus Marg
New Delhi. ... Respondent

(By Advocate: Sh. R.N.Singh with Sh. Amit Sinha)

ORDER

By V. Ajay Kumar, Member (J):

Since the order against which the non-implementation is alleged in this Contempt Petition, was of a Full Bench of this Tribunal, this adjudication by this Full Bench.

2. Brief facts, as narrated in the O.A. are that the applicant while working as Civilian Staff Officer (in short, CSO) in the Ministry of Defence, initially joined in Respondent-Central Administrative Tribunal (in short, CAT) on deputation on 08.05.1992, as Deputy Registrar in the same pay scale and later he was regularly absorbed in CAT, w.e.f. 06.08.1995. Subsequently, due to legal proceedings, his date of joining in the post of CSO was re-fixed as 01.10.1988.

3. The applicant, while working as Registrar on Deputation at Ravi & Beas Water Tribunal (in short, RBWT) filed OA No.1343/2007 seeking the following relief(s):

"(i) to quash and set aside the Revised Final Seniority List No.PB/1/35/97/E-I/Vol-2 dated 10.9.2007 (Annexure A-19).

(ii) to quash and set aside the impugned Memorandum dated 6.10.2006 (Annexure A-1) and revised draft seniority list dated 26.4.2006 (Annexure-I).

(iii) to direct the respondents to fix the seniority of the applicant in the cadre of Dy. Registrar after taking into account the service rendered by him as Civilian Staff Officer (CSO) in the Ministry of Defence w.e.f. 1.10.1988, by applying the DOP&T instructions and the principle as laid down by the Hon'ble Supreme Court in case of SI Roop Lal, and restore the position of the applicant as it was in the Final Seniority List of Dy. Registrars issued on 17.2.2005 above Shri N. Ramamurthy by making correction in column 7 of this seniority list showing 1.10.1988 instead of 6.8.1995.

(iv) to declare the applicant to be entitled for all consequential benefits with retrospective effect, i.e., promotion to the grade of Principal Registrar from the date the voluntary retirement of its incumbent Shri Gautam Ray was approved to join the post of Member, CAT which was delayed due to unknown reasons."

4. A Full Bench of this Tribunal while answering the point raised in the OA, i.e., whether the applicant would be entitled to reckon his seniority as Deputy Registrar from the date of his absorption in the Central Administrative Tribunal or from the date he was holding the analogous post in his initial parent Department, i.e. Ministry of Defence, allowed the OA on 02.06.2011 as under:

"24. Accordingly, this OA is allowed. Memorandum dated 6.10.2006 and revised seniority list dated 26.4.2006 are quashed and set aside. Respondents are directed to fix the seniority of the applicant as Dy. Registrar by taking into account his past service in the analogous post in his parent department, i.e., w.e.f. 1.10.1988 and give him all the consequential benefits including promotions by holding review DPCs. In case he is found fit, he should be promoted from the due date and his pay and retiral benefits also fixed accordingly. In case any arrears become payable to the applicant after the above exercise, the same shall be paid to the applicant along with a due and drawn statement within 3 months from the date of communication of this order.

25. OA is allowed. No costs."

5. In compliance to the said orders, the President, being the competent authority, since the applicant retired from service on attaining the age of superannuation on 31.05.2008, passed orders vide Annexure CP-4 No.A-12013/4/2011-AT, dated 07.10.2013 and the same reads as under:

"The President is pleased to appoint Sh. Raghubir Singh, the then Deputy Registrar on promotion as Joint Registrar in the scale of pay of Rs.3700-5000/- (pre-revised) in the Central Administrative Tribunal w.e.f. 26.08.1996 i.e. from the date of promotion of his immediate junior, with all consequential benefit.

2. The above promotion to Sh. Raghubir Singh is accorded by revising his seniority in the grade of Deputy Registrar in compliance with the directions contained in judgement dated 13.03.2012 of the Hon'ble High Court of Guwahati in WP(C) 1262/2005 and the order dated 02.6.2011 of CAT, PB in O.A.No.1343/2007."

6. Though the Respondent-CAT executed the orders passed by the competent authority, but since arrears were not paid, the petitioner

preferred a representation on 11.09.2014 and the same was answered by the respondent-Contemnor vide Annexure CP-3 dated 20.11.2014 as under:

"I am directed to refer to your representation dated 11.09.2014 on the above mentioned subject and to say that in implementation of Full Bench judgment in OA-1373/2007, Review DPC was convened on 04.09.2013 and on acceptance of the recommendations of the said Review DPC, DOP&T issued order on 07.10.2013. Accordingly, the said order of the DOP&T was communicated to you vide our letter dated 11.10.2013 & 25.10.2013 with endorsement to DOP&T wherein directions were given to fix your pay w.e.f. 26.08.1996 notionally in the grade of Joint Registrar and on actual basis in the grade of Registrar from the date you assumed the charge.

Since on 26.08.1996, you were not holding the said post, the pay fixation, if any, is to be done from that date on notional basis only on the well settled principle of 'No work No Pay'.

As regards your prayer to consider you for promotion to the post of Principal Registrar from the date of vacancy caused after becoming Member of the CAT by Shri Gautam Ray is concerned, it is stated that Shri Gautam Ray was promoted as Principal Registrar w.e.f. 11.02.2002 and he took voluntary retirement on 05.06.2006 from the said post before joining as Member in CAT. However, you were on deputation to NCDRC w.e.f. 22.02.2000 at that point of time and did not come back to CAT and finally retired from Ravi Beas Tribunal on 31.05.2008 from the same scale of pay of Rs.18400-22400 applicable for the post of Principal Registrar in CAT.

Further, after voluntary retirement of Shri Gautam Ray on 05.06.2006, next immediate junior to you was Shri N. Ramamurthy who became the Principal Registrar w.e.f. 27.08.2009 and by that time you had already retired from deputation and thus, your consideration for promotion as Principal Registrar at this belated stage, even from the date of your immediate junior also will not serve any purpose. As you remained on deputation outside CAT w.e.f. 22.02.2000 till your retirement, so no case for NBR could either be considered at this belated stage since as per Govt. instructions promotions should be prospective.

This issues with the approval of the Competent Authority."

7. Contending that when this Tribunal directed the respondents to fix his seniority as Deputy Registrar w.e.f. 01.10.1988 and to give him all the consequential benefits, including promotions by holding review DPCs, he is entitled for payment of arrears also w.e.f. 26.08.1996, from which date he was promoted as Joint Registrar and non-payment of the same amounts to contempt of the orders of this Tribunal, the petitioner filed the present Contempt Petition.

8. The respondent-CAT vide the reply affidavit while submitting that since the petitioner had not physically worked in the promotion post of Joint Registrar w.e.f. 26.08.1996 till the date of his retirement, and since no specific direction to pay the arrears for the aforesaid period was issued by the Tribunal, stated that the petitioner is not entitled for payment of any arrears. It is further submitted that this Tribunal specifically observed that the applicant is entitled for payment of arrears, only, '*in case any arrears become payable to him*'. Since, the petitioner is not entitled for arrears, as per law, it is submitted that they have not committed any contempt of the orders of this Tribunal.

9. The respondent-CAT further submitted that since the petitioner did not actually hold the charge of the higher post during the relevant period, he is entitled for the promotion only on notional basis and not entitled for any arrears as per FR 17(1) on the principle of '*no work no pay*'. It is further submitted that due to the retrospective promotion granted to the applicant, his pay was notionally fixed under FR 22(I)(a)(1), for the period during which he was given retrospective promotion. Reliance was placed on the decisions of the Hon'ble Apex Court in **A.K.Soumini v. State Bank of Travancore and Another**, (2003) 7 SCC 238, **Union of India v. B.M.Jha**, (2007) 11 SCC 632, **J.S.Parihar v. Ganpath Duggar**, AIR 1997 SC 113 and **State of Haryana v. M.P.Mohla**, (2007) 1 SCC 457.

10. It is further contended that the CP is barred by limitation, delay and laches.

11. Heard Shri S.K.Gupta, the learned counsel for the petitioner and Shri R.N.Singh, the learned counsel for the sole respondent-CAT (alleged contemnor), and perused the pleadings on record.

12. In pursuance of the orders of this Tribunal, the competent authority issued orders promoting the petitioner as Joint Registrar on 07.10.2013, w.e.f. 26.08.1996, with all consequential benefits. However, when the representation of the petitioner for payment of arrears was rejected on 20.11.2014, the applicant preferred the present CP on 13.01.2015. Therefore, the respondent alleged to have committed the contempt of the orders of this Tribunal when they have rejected to pay the arrears to the petitioner, i.e., on 20.11.2014, in spite of the fact that the competent authority passed orders promoting the petitioner as Joint Registrar w.e.f. 26.08.1996, with all consequential benefits. Hence, we reject the contention of the respondent-CAT that the CP is barred by limitation.

13. In **Anil Kumar Shahi v. Prof. Ram Sewak Yadav**, (2008) 14 SCC 115, it was held when a court directs the authority to consider the matter in accordance with law, it means that the matter should be considered to the best of understanding by authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. Further it was held that there is no wilful

disobedience if best effort are made to comply with orders, therefore, it cannot be said that a deliberate circumvention and dubious method was adopted by the respondent to avoid implementation of judgment/order of the Court or wilfully or deliberately disobeyed the judgment/orders, hence, no case of contempt is made out. The relevant paras of the said Judgement are reproduced hereunder:

"48. A cursory glance of the Contempt of Courts Act, 1971 and the provisions thereof makes it abundantly clear that the Act has been brought in the Statute book to define the limit and powers of certain Courts punishing for contempt of courts and it has laid down the procedure for exercise of such powers.

49. Contempt of Court has been defined under Section 2(a) of the Act, to mean civil contempt or criminal contempt. 'Civil Contempt' has been defined under Section 2(b) of the Act to mean 'wilful disobedience of any judgment, decree, direction, order, writ or other process of court of willful breach of undertaking given to a court.

50. It is by now well-settled under the Act and under Article 129 of the Constitution of India that if it is alleged before this Court that a person has willfully violated its order it can invoke its jurisdiction under the Act to enquire whether the allegation is true or not and if found to be true it can punish the offenders for having committed 'civil contempt' and if need be, can pass consequential orders for enforcement of execution of the order, as the case may be, for violation of which, the proceeding for contempt was initiated. In other words, while exercising its power under the Act, it is not open to the court to pass an order, which will materially add to or alter the order for alleged disobedience of which contempt jurisdiction was invoked. When the Court directs the authority to consider a matter in accordance with law, it means that the matter should be considered to the best of understanding by the authority and, therefore, a mere error of judgment with regard to the legal position cannot constitute contempt of court. There is no willful disobedience if best efforts are made to comply with the order."

51. Having considered the entire factual backdrop of the matter and given our due consideration to the above extracted various orders passed by this Court in this case and having considered the detailed explanations given by the Chairman, UPPSC, Secretary, UPPSC, and Deputy Director [Education] in their respective affidavits as noticed above which in our view are quite satisfactory and further examination of the details of year-wise vacancies position for the posts in question stated in the above- extracted Chart submitted by the UPPSC, it cannot be said that a deliberate circumvention and dubious method was adopted by the contesting respondents to avoid implementation of the judgments/orders of this Court nor the facts and circumstances mentioned above would establish that the contesting respondents have willfully or deliberately disobeyed the judgments/orders of this Court dated 07.03.2006 and 09.03.2007 as alleged by the petitioners.

52. In terms of the order dated 07.03.2006, the respondents have passed an appropriate order which was communicated to the petitioners. The UPPSC have placed on record all the relevant documents relating to these proceedings as directed by this Court in its order dated 09.03.2007.

53. In the result, there is no merit in these contempt petitions and they are, accordingly, dismissed. We, however, make it clear that the contesting

respondents are not precluded from considering the legitimate claims of the petitioners as well as the applicants who have filed Interlocutory Applications before this Court if they are otherwise eligible in accordance with law. As no substantive relief, as prayed for by the applicants in their applications, can be granted to them in these contempt proceedings these applications shall stand disposed of."

14. In view of the above law as enunciated by the Hon'ble Apex Court, it is to be seen whether the dispute in question was already adjudicated by this Tribunal while allowing the OA No.1343/2007 and whether the action of the respondent-CAT in holding that the petitioner is not entitled for arrears, is in accordance with law.

15. This Tribunal while allowing the OA No.1343/2007 by its Judgement dated 02.06.2011 directed the respondents to fix the seniority of the applicant as Deputy Registrar by taking into account his past service in the analogous post in his parent department i.e., w.e.f. 01.10.1988 and give him all consequential benefits including promotions by holding review DPCs and in case he is found fit, he should be promoted from the due date and his pay and retiral benefits also fixed accordingly. It is not in dispute that the respondents have fully complied with these directions.

16. It is true that this Tribunal further observed that '*in case any arrears become payable to the applicant after the said exercise, the same shall be paid along with due and drawn statement*'. This itself indicates that the Tribunal has not determined whether even after giving retrospective promotion to the applicant as per other directions, he would be entitled for any consequent arrears. The Tribunal left the

same to the respondents for determination, which obviously to be done, in accordance with law. The respondent submits that to the best of their understanding of the law, the applicant is not entitled for any consequential arrears on the principle of '*no work no pay*', since admittedly the petitioner has not worked during the relevant period in the higher post as he was on deputation at that time in another organization, i.e., Ravi and Beas Water Tribunal.

17. As observed above, this Tribunal while allowing the OA has not given any finding that after granting retrospective promotions to the petitioner, as per its directions, the petitioner is entitled for the consequential arrears. It left the question open to the respondent-CAT to decide, by directing to pay the arrears, if the same become payable. Hence, it is to be seen whether the decision of the respondent that the petitioner is not entitled for the arrears for the relevant period, in which admittedly he has not discharged the duties in the higher post of Joint Registrar at CAT, as he was on deputation in Ravi and Beas Water Tribunal, is in accordance with law.

18. In a recent decision of the Hon'ble Apex Court in **Ramesh Kumar v. Union of India & Others**, AIR 2015 SC 2904, it was held as under:

"12. In normal circumstances when retrospective promotions are effected, all benefits flowing therefrom, including monetary benefits, must be extended to an employee who has been denied promotion earlier. So far as monetary benefits with regard to retrospective promotion is concerned that depends upon case to case. In *State of Kerala & Ors. vs. E.K. Bhaskaran Pillai*, (2007) 6 SCC 524, this Court held that the principle of "no work no

pay" cannot be accepted as a rule of thumb and the matter will have to be considered on a case to case basis and in para (4), it was held as under:-

"... We have considered the decisions cited on behalf of both the sides. So far as the situation with regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 per cent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given for reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administration has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also."

13. We are conscious that even in the absence of statutory provision, normal rule is "no work no pay". In appropriate cases, a court of law may take into account all the facts in their entirety and pass an appropriate order in consonance with law. The principle of "no work no pay" would not be attracted where the respondents were in fault in not considering the case of the appellant for promotion and not allowing the appellant to work on a post of Naib Subedar carrying higher pay scale. In the facts of the present case when the appellant was granted promotion w.e.f. 01.01.2000 with the ante-dated seniority from 01.08.1997 and maintaining his seniority alongwith his batchmates, it would be unjust to deny him higher pay and allowances in the promotional position of Naib Subedar.

14. The impugned orders passed by the High Court are set aside and this appeal is allowed. The respondents shall release the arrears of pay and allowances to the appellant for the period from 01.08.1997 till the date of his actual promotion that is 13.11.2000 in the promotional post of Naib Subedar within eight weeks from today. No order as to costs."

19. It is obvious from the above decision that the normal rule is 'no work no pay' but payment of arrears though a public servant actually not worked in the higher post, is an exception to the rule. An exception should always be specific, i.e., the Court, in the facts and circumstances of a particular case after adjudicating the issue should have held whether the employee therein is entitled for arrears.

20. In the present case, while allowing the OA, though this Tribunal specifically held that the petitioner is entitled for retrospective promotion, but neither adjudicated about the entitlement of consequential arrears nor given any direction for the same. On the other hand, it left the said issue to decide, in accordance with law, to the respondents and only directed that if in case the respondents found that the applicant is entitled for the said arrears, the same may be paid to him within a specific period.

21. In **J.S.Parihar v. Ganpat Duggar**, (1996) 6 SCC 291, the Hon'ble Apex Court held as under:

"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, and hence, no contempt."

22. In view of the aforesaid decision, it is not open to this Tribunal to examine whether the order passed by the respondent on 20.11.2014 holding that the applicant is not entitled for arrears from 26.08.1996, for the reasons mentioned therein. Further, in view of the Judgement in **Ramesh Kumar** (supra), it cannot be also said that a deliberate circumvention and dubious method was adopted by the respondent to avoid implementation of the Judgement of this Tribunal and the respondent have not considered the issue to the best of their understanding and the same is not in accordance with law.

23. In the circumstances and for the aforesaid reasons, we do not find any wilful and deliberate contempt of the orders of this Tribunal by the respondent, and accordingly, the CP is dismissed. Notices are discharged. Pending MAs, if any, stand disposed of. No costs.

(Raj Vir Sharma)
Member (J)

(V. N. Gaur)
Member(A)

(V. Ajay Kumar)
Member (J)

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