

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**C.P. No.232/2018 In
O.A No.2279/2003**

**Reserved On:16.04.2018
Pronounced on:25.04.2018**

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)**

Northern Railway Physically Handicapped
Employees Welfare Association
Through its President,
Mukesh Gupta (Aged about 50 years)
S/o Late Shri B.L. Gupta
R/o C-5/81, Ground Floor,
Sector-11, Rohini, Delhi-110085.Petitioners

(By Advocate: Shri T.D. Yadav)

Versus

1. Shri Ashwani Lohani,
Chairman,
Railway Board,
Rail Bhawan,
New Delhi.
2. Shri Vishwesh Chabe
General Manager,
Northern Railway,
Baroda House,
New Delhi.Respondents

ORDER

By Mr. V. Ajay Kumar, Member (J)

The petitioner, a Welfare Association of the Northern Railway
Physically Handicapped employees along with another, earlier, filed
OA No.2279/2003, assailing the orders of the respondents wherein
they have refused to adopt DOP&T's OM dated 20.11.1989 which

provided for implementation of reservation in promotion for the Physically Handicapped employees in the sedantary posts. This Tribunal, by its order dated 30.04.2004 (Annexure CCP-I), disposed of the said OA, as under:-

“8. Consequently, in the result, for the foregoing reasons, OA is allowed. Respondents’ impugned decisions dated 05.12.1995, 26.04.2002 and 25.03.2003 are quashed and set aside. Respondents are directed to comply with their earlier policy decision of 1987, DOP&T’s instructions dated 20.11.1989, Govt. of India instructions 1997 and 24.07.1998 to consider providing reservation to the physically handicapped persons in posts such as described in Paragraph-7 above. Then respondents shall, as per the roster for the physically handicapped, consider the claim of the physically handicapped employees to those posts. The aforesaid exercise shall be completed by the respondents within a period of three months from the date of receipt of a copy of this order. No costs”.

2. C.P. No. 142/2015 filed by the petitioners in OA No. 2279/2003 alleging non-implementation of the aforesaid orders of this Tribunal, was closed by this Tribunal, vide order dated 17.05.2016 and relevant paragraphs of the same, read as under:-

“5. Learned counsel for the applicant submits that according to the order of this Tribunal, the respondents were required to identify the posts for which the reservation to PH category in promotion had to be given and consider providing reservation to the physically handicapped candidates, who are eligible. It is the contention of the applicant that the posts are to be identified as per roster and as such, it is not possible for the members of the applicants association to know as to which are the posts against which they have to apply under physically handicapped quota.

6. We have perused the order passed in the OA and also the letters dated 20.11.2015 as well as the facts that the respondents have already promoted the 76 candidates under the physically handicapped quota in compliance of the order of this Tribunal and further promotions are in the process.

7. We, therefore, are satisfied that there has been substantial compliance of our order and there is no ground to substantiate that there is willful disobedience of our order by the respondents to attract the offence of the Contempt.

8. In view of the above, the Contempt Petition is closed. The respondents are discharged.

9. The respondents will, however, issue the list identifying the posts against which reservation is being given within a fortnight. The applicants would be at liberty to file fresh application in any case

they are still dissatisfied with any decision of the respondents in regard to the promotion of physically handicapped candidates.

3. MA No. 1233/2018 filed by the petitioners in OA No.2279/2003 was dismissed as withdrawn on 15.03.2018 and the said order, reads as under:-

“ M.A. No.1233/2018

The applicant seeks to withdraw the MA with liberty to file fresh CP in view of the order dated 17.05.2016 passed in CP No.142/2015. Dismissed as withdrawn with liberty prayed for”

4. Heard Shri T.D. Yadav, learned counsel for the petitioners.

5. The learned counsel for the petitioners submits that though his earlier CP No.142/2015 in OA No.2279/2004 was closed by recording satisfaction of the court and the substantial compliance of the orders in the OA by the respondents, but while disposing of the said CP, this Tribunal directed the respondents to issue the list identifying the posts against which reservation is being given. Hence, the respondents, who failed to comply with the said directions, are liable for fresh contempt and accordingly the instant CP is maintainable. The learned counsel further submits that this Tribunal while dismissing petitioner's MA No.1233/2018 granted liberty to them to file a fresh CP and in view of the said liberty also, the present CP is maintainable.

6. Firstly, a perusal of the order dated 17.05.2016 in CP No. 142/2015 in OA No. 2279/2003, clearly indicates that this Tribunal while closing the CP No.142/2015, recorded its

satisfaction in view of the substantial compliance of the orders of this Tribunal in the OA. Though a further observation was made for issuance of the list identifying the posts against which reservation is being given, but a liberty was granted to the petitioners to file “fresh application” in case they are dissatisfied with any decision of the respondents. Therefore, the petitioners, if dissatisfied with any of the action/decision of the respondents with regard to identifying the posts or promotion of Physically Handicapped Candidates thereto, can only file a fresh Original Application, but not a fresh CP.

7. Secondly, this Tribunal, while dismissing the MA No.1233/2018, simply accepted the request of the petitioners, however, without any adjudication on the issues. Hence, the said liberty can be construed that the liberty to file fresh CP is in accordance with law and if permissible as per law only. No right was created to the petitioners under the said order to file a fresh CP, if the same was not maintainable.

8. Once a CP was closed after recording satisfaction of this Tribunal in respect of an order of this Tribunal in OA, no second CP is maintainable unless it is shown that the said earlier order whereunder satisfaction was recorded was obtained by fraud or by misrepresentation. Since it was not the case of the petitioners, the instant CP is not maintainable. Accordingly, the same is dismissed. However, this order shall not preclude the petitioners from filing a

fresh Original Application, if aggrieved by any of the actions of the respondents subsequent to the disposal of CP No.142/2015. No costs.

(NITA CHOWDHURY)
MEMBER (A)

(V. AJAY KUMAR)
MEMBER (J)

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